

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
CRIMINAL REVIEW APPLICATION No. 10 OF 2022
HIGH COURT CRIMINAL APPEAL NO. 149 OF 2021
(Originating from The Chief Magistrates Court of Luwero
Criminal Case No 494 of 2019)

KAMANZI STEPHEN

.....

APPLICANTS

versus

UGANDA

.....

RESPONDENT

BEFORE: HON. JUSTICE MICHAEL ELUBU
RULING

This application is commenced under Sections 33 and 39 of **the Judicature Act**.

The applicant, Kamanzi Stephen, seeks an order that:

1. The ruling and orders of Hon Justice Gadenya Paul Wolimbwa delivered on the 17th of January 2022 in **Criminal Appeal No. 149 of 2021 Kamanzi Stephen vs Uganda** be reviewed and set aside.

There are several grounds on which this application is premised and they are set out in the Notice of Motion and elaborated in the supporting affidavit deposed by one Tereraho John an uncle to the applicant.

It is stated that the applicant was produced before the Magistrates Court in Luwero and charged with the offence of stealing cattle c/s 261 and 264 of **The Penal Code Act**. On the 7th of October 2021 he was tried, convicted and sentenced to three years imprisonment and

also ordered to pay compensation of twenty seven million shillings (Ugx 27,000,000). On the 8th of October 2021 and being dissatisfied with the judgement, the applicant filed an appeal in the High Court. That he also applied for the record of proceedings that same day. That the Office of the DPP immediately thereafter lodged a complaint with the Principal Judge, stating there were several law firms purporting to represent the applicant. That when the complaint was resolved, the Registrar provided certified copies of the proceedings and directed the parties to file written submissions. That after the applicant had filed his submissions, the Office of the DPP raised another complaint with the Principal Judge, this time stating that Counsel who represented the applicant did not have a valid practising certificate. That matter was heard by the Learned Justice Paul Gadenya who made a ruling where he found that Counsel had a valid practising certificate and had indeed filed the Notice of Appeal in time. He also found that there was no request for the proceedings of the lower court on file. He then held that the application for bail and the memorandum of appeal were not properly before Court and were struck them off the record.

It is stated that the ruling has greatly prejudiced the appellant since the request for proceedings was actually on the record and filed at the same time the Notice of Appeal was lodged. That it was served on both the DPP and The Registry at the High Court. That striking out the memorandum of appeal and the applicants bail application leaves the applicant suffering in prison without any hope of hearing and determining his appeal on merit.

The parties in this application were directed to appear before this Court on the 6th of June 2022. On that date, the Court issued directions that the respondent (office of the DPP) files an affidavit in reply together with its submissions. The ruling was then reserved for the 27th of June 2022.

I note that the DPP (respondent) did not file an affidavit or submissions in reply. On the other hand, the applicant's submissions are on record. I have studied them but will not reproduce them here.

Determination

This matter arises from High Court Appeal No. 149 of 2021. The matter came up before Hon Justice Paul Gadenya. While the applicant here calls him ‘the investigator’, the Honourable Justice Gadenya, was actually the judge to whom the appeal was allocated for hearing and determination. His mandate was not therefore limited to disposing of the complaints raised but to determine the appeal filed by the applicant.

That said on the 17th of February 2022 the Learned Judge made a ruling which states in part that,

... the appellant commenced the appeal with a general notice of appeal without stating the grounds of appeal. The appellant did not indicate that he needed the record of the lower court to frame grounds of appeal. That being the case, he should have filed the memorandum of appeal within 14 days from the date of judgement. However, despite clear provisions of the law, the appellant filed the memorandum of appeal after one month and three days from the date of the judgement, which was after the 14 days required by law. Clearly the memorandum of appeal was filed out of time.

An appeal filed out of time, without leave of Court is no appeal at all. Consequently, the appeal filed by the appellant is dismissed for contravening Section 28 (1) and 28 (2) (b) of **the Criminal Procedure Code Act...**

Having dismissed the appeal, it therefore, follows that the application for bail pending appeal and another application for extension of time within which to appeal are moot and accordingly dismissed.

It is against this ruling that the applicant has invoked Section 39 and 33 of **the Judicature Act**. His argument is that the ruling referred to, relied on an obvious error as both the Notice of Appeal and the request for the lower court record were lodged on the same day, the 8th of October 2021, but not seen by the Judge before he made his finding. For that reason they

are praying to this Court for review of the decision and to strike out the ruling, validate the appeal and set a hearing date for both the appeal and the application for bail pending appeal.

Section 33 of **The Judicature Act** states,

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

Section 39

(1) The jurisdiction vested in the High Court by the Constitution, this Act or by any other enactment shall be exercised in accordance with the practice and procedure provided by this or any other enactment or by such rules and orders of the court as may be made or existing under this Act or any other enactment.

(2) Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.

It is clear from the ruling reproduced above that the learned Judge dismissed the appeal thereby disposing of it and the matter concluded.

It was following that ruling that the applicant applied for Review premised on the two sections of the Judicature Act.

I have however scoured the Statutes on Criminal Procedure and the mandate of the High Court. The power to Review, on its merits, a judgment or dispositive ruling, entered on first appeal, has not been given to the Courts in criminal matters. There is no specific provision anywhere that grants the High Courts the jurisdiction to review a judgment or orders of the Court sitting as an appellate Court.

The applicant has relied on the case of **Tumukunde vs Uganda HCT-00-CR-CM-56-2020**. In that case the application was for bail. The court was specific that it did not dismiss the application but stayed it, pending reconsideration at a later stage, when certain conditions had been met.

For that reason the Court invoked Section 39 (2) of **the Judicature Act** to allow the applicant appear a second time in the same application for bail. This court therefore finds the circumstances in that case different and is unable to follow the decision.

Additionally a careful scrutiny of Section 33 of **the Judicature Act**, which the applicant seeks to rely on, shows a Court can only grant a remedy utilising this provision where it has the jurisdiction to do so.

I note first that once the High Court has reached a decision and signed the judgment or dispositive ruling on appeal, it becomes *Functus Officio*.

In ***Criminal Procedure and Practice*** by Musa Ssekana (*Law Africa*) pg 377 the term is defined as

‘having performed his office’. It refers to a legal term used to describe court not retaining any legal authority because its duties and functions have been completed.

The general rule is that a final decision of court cannot be reopened.

In this instant case, it was following the ruling on appeal that this application was filed. The applicant is aggrieved by the manner in which the appeal was conducted. It is his contention that the decision in Criminal Appeal No. 149 of 2021 was premised on an obvious error.

Remedies in Section 33 of the Judicature Act can only be granted where the Court has Jurisdiction. The 5th Edition of **the Oxford Dictionary of Law** defines jurisdiction as ‘The power of a court to hear and decide a case or make a certain order’. The 9th Edition of **Black’s Law Dictionary** describes Judicial Jurisdiction as ‘The legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it’.

I also find the holding in the case of **Owners and Masters of The Motor Vessel "Joey" v Owners and Masters of the Motor Tugs "Barbara" and "Steve B"; [2008] 1 EA 367** the Court very instructive. It states that,

The question of jurisdiction is a threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything and without it, a court has no power to make one more step.

Although the cited decision was arrived at in a civil dispute, it properly sets out the principle on determining jurisdiction, and doing so at the earliest opportunity.

In this instant case, the Ruling against the applicant in **High Court Cr Appeal No 149 of 2021** was final, giving effect to the principle of finality in criminal appeals. In the absence of finality there would be no end to criminal proceedings by persons reopening proceedings.

Having considered all the above, this Court finds that it has no jurisdiction to re-hear the appeal, or review the decision and set aside the Ruling in Criminal Appeal No 149 of 2021.

In my view, to invoke Section 33 of **the Judicature Act** in these circumstances would be for this Court to assign itself a jurisdiction that it does not have. It is trite law as stated in **Kasibante Moses vs Katongole Singh Marwaha & Anor Election Petition No.23 of 2011** that no court can confer jurisdiction upon itself. It is also true that a decision of a court without jurisdiction is a nullity (**Mubiru Vs Edmond Kayiwa[1979] H.C.B. 212**).

It is therefore the finding of this Court that it has retained no residual power and jurisdiction to Review the decision in Criminal Appeal No 149 of 2021. That decision was final and can only be reversed on 2nd appeal.

It therefore follows, that this application to review the ruling is incompetent and for the reasons given earlier in this ruling, stands dismissed.

A handwritten signature in blue ink, appearing to read "Michael Elubu", is written over a faint circular stamp. The signature is positioned above a horizontal dotted line.

Michael Elubu

Judge

7.07.2022