

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

{Coram: Arach-Amoko, Mugamba and Tuhaise, JJ.S.C}

CRIMINAL REFERENCE NO.22 OF 2021

(ARISING FROM CRIMINAL APPLICATION NO. 01 OF 2021)

BETWEEN

MUHUMUZA CRESCENT ::::::::::::::::::::::::::::::::::: APPLICANT

AND

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

(A Reference from the Ruling of Hon. Opio-Aweri, JSC (sitting as a single Justice) dated 18th February 2021, in Criminal Application No. 01 of 2021.)

RULING OF THE COURT

This is a reference by the Applicant, **Muhumuza Crescent**, against the ruling of Hon. Opio-Aweri, JSC (sitting as a single Justice) wherein the application to be granted bail pending appeal was denied to the applicant. Court found that the applicant had no valid appeal filed in this court.

The applicant filed this Criminal Reference to a panel of three Justices of the Supreme Court under the provisions of Section 8(2) of the Judicature Act and Rule 52(1) (b) of the Rules of this Court seeking that the decision of the single judge in Criminal

Application No.1 of 2021 be set aside and that this application be heard and granted.

In this reference the applicant relied on the grounds which read as follows:

- 1. The Learned Justice erred in fact and in law in his refusal to hear the application and dismissing the same upon reason that there was no valid appeal instituted in the Court.**
- 2. The Learned Justice of the Court erred in fact and in law in not appreciating and applying the provisions of Rule 6 together with Rule 3 of the Judicature (Supreme Court Rules) Directions and came to a wrong decision.**
- 3. The Learned Justice of the Court erred in fact and in law in his failure to appreciate and apply the provisions of Rules 60(2) (f) and 60(3) (b) of the Judicature (Supreme Court Rules) directions.**
- 4. The Learned Justice erred in fact and in law in citing this Court's decision in Busulwa Bulasio Vs Uganda Criminal Reference No.1 of 2016 and failing to abide by its conclusion.**

Representation

Mr. Felix Ampaire together with Mr. James Agaba represented the applicant while Ms. Nakafeero Fatina, Chief State Attorney from the Office of the Director of Public Prosecution represented the respondent. The applicant was present in court.

Background to the Reference

The brief background facts to this reference as summarized in Miscellaneous Application No.1 of 2021 and Court of Appeal Criminal Appeal No.147 of 2017 are that the applicant, Muhumuza Crescent, was tried and convicted by the Grade One Magistrate's Court, sitting at the Law Development Centre on two counts of Forgery contrary to Sections 342 and 347 of the Penal Code Act, three counts of Uttering False Documents contrary to Section 351 of the Penal Code Act, Criminal Trespass contrary to Section 302 of the Penal Code Act, Forcible Detainer contrary to Section 78 of the Penal Code Act and Theft contrary to section 254 (1) & 261 of the Penal Code Act. He was however acquitted of the offence of Obtaining Registration by Fraud contrary to Section 312 of the Penal Code Act and one count of Uttering False Documents contrary to section 351 of the Penal Code Act.

The applicant was found guilty by the trial court and sentenced to imprisonment on the respective counts to a period between six (6) months and two (2) years imprisonment, with two (2) years' imprisonment being the longest period. The sentences were to run concurrently.

Being dissatisfied with the finding of the trial court, the applicant lodged an appeal with the High Court against conviction and sentence. The High Court allowed the appeal, quashed the conviction, and set aside the prison sentences. As the result, the applicant was set free.

The State was dissatisfied with the finding of the High Court and challenged the acquittal of the applicant by appealing to the Court of Appeal. In its finding, the Court of Appeal allowed the appeal

and set aside the orders of the High Court. It reinstated the judgment and orders of the Grade One Magistrates Court.

The applicant was aggrieved by the decision of the Court of Appeal and proceeded to file a Notice of Appeal in this court. Thereafter he filed in this court a criminal application. It was Criminal Application No.1 of 2021, seeking bail pending appeal.

As mentioned earlier, that application was heard by the single judge who dismissed it on the ground that he found it to be incompetent. The applicant was not satisfied with the reasoning of the single judge and has made this reference to three justices.

Submissions by Counsel for Applicant

Counsel for the applicant contended that Rule 6 of the Rules of this Court is express on the competence of applications for bail. According to counsel competence for a bail application is upon lodgment of a Notice of Appeal. Counsel blamed the learned justice for failure to address the provisions of Rule 40 of the Rules of this court. He averred that one does not need a certificate in order to lodge a Notice of Appeal.

Counsel submitted that the application was competent as the applicant had validly filed the appeal and expected to secure a certificate of importance.

Counsel contended that the conclusion in **Busulwa Bulasio vs Uganda, Criminal Reference No.1 of 2016** was that a third appeal need not be filed with the certificate of importance.

In reference to **Section 5(5) of the Judicature Act**, counsel submitted that the applicant's appeal in this court was a second appeal and not a third appeal and that as such it did not require a certificate of great public importance. According to counsel, the applicant first made his appeal to the High Court where he was successful, that the DPP appealed to the Court of Appeal where the applicant was unsuccessful. He submitted further that it was thereafter the applicant made his second appeal to this Court.

Submission by Counsel for Respondent

Counsel for the respondent opposed the assertions of the applicant. She supported the finding of the learned justice and stated that Rule 60 (2) (f) is to the effect that a third appeal such as the impugned one is deemed incomplete without a certificate of great public importance. She stated that the Registrar is precluded from preparing the record until leave or a certificate is obtained by the applicant.

Counsel submitted that the applicant's appeal is a third appeal given that the matter has been subjected to review by two lower Courts on appeal. Counsel submitted that the application giving raise to this reference was an application for bail pending appeal. She noted that its success depended on the success of the appeal which in turn was dependent on the applicant being granted a Certificate of importance or leave to file a third appeal to this court.

Counsel submitted that the application before this court was incompetent and an abuse of the Court process. She prayed that it be dismissed.

Applicant's Rejoinder

In rejoinder counsel for the applicant submitted that the interpretation of Rule 56 (3) of this Rules of the court is to the effect that an appeal to this court even if it is a third appeal in criminal matters, is only commenced by a Notice of appeal. He contended that the applicant followed the law and commenced Criminal Appeal No.01 of 2021 by filing a Notice of Appeal in this court.

Counsel for the applicant submitted that it was contrary to law to hold that a third appeal merely results from the number of times a case has appeared before appellate courts for review. In counsel's view the numbering of sequences given to an appeal related to which of the parties initiated a given appeal and on how many occasions that had appealed.

Consideration of the Reference by Court

We have perused the record and considered the submissions by both counsel. We must first resolve the issue of whether the applicant's appeal is a second appeal or a third appeal. Resolution of this should inform the disposal of this reference. This issue was first raised by the applicant in his written submissions, where he contended that his appeal is a second appeal hence no need to secure leave or a certificate as required by Section 5 (5) of the Judicature Act. That proposition by the applicant was opposed by counsel for the respondent who argued that the matter had been before two appellate courts on appeal and that as such any appeal to this Court would be a third appeal.

Section 5 (5) of the Judicature Act provided as follows;

“Where the appeal emanates from a judgment of the chief magistrate or a magistrate grade I in the exercise of his or her original jurisdiction, and either the accused person or the Director of Public Prosecutions has appealed to the High Court and the Court of Appeal, the accused or the Director of Public Prosecutions may lodge a third appeal to the Supreme Court, with the certificate of the Court of Appeal that the matter raises a question of law of great public or general importance or if the Supreme Court, in its overall duty to see that justice is done, considers that the appeal should be heard, except that in such a third appeal by the Director of Public Prosecutions, the Supreme Court shall only give a declaratory judgment.”

The keyword from the above section is the word ‘**emanates**’. **Black’s Law Dictionary**, Ninth Edition, defines the word emanation as follows:

“1. The act of coming or flowing forth from something. 2. That which flows or comes forth from something; an effluence.”

From the above wording, under Section 5(5) of the Judicature Act, an appeal is considered a third appeal to this court if it comes from or emanates from a Chief Magistrate or a Magistrate Grade I.

The intended appeal by the applicant arose from Criminal Case No.11 of 2015 from the Chief Magistrate’s Court of Mengo. It was heard and determined by a Magistrate Grade One. As such it is our finding that the intended appeal by the applicant under section 5(5) would be a third appeal.

Back to the reference, the applicant made a reference to us, faulting the single justice of this Court in the course of hearing an application for bail, for finding that the applicant had no valid

appeal in this Court. The applicant contended he had a valid appeal in this Court because he has filed a Notice of Appeal in this Court. The respondent on the other hand opposed the applicant's submissions and fully supported the findings of the learned justice.

In his ruling the single justice strenuously explained the procedure and the law concerning institution of appeals in this Court especially criminal appeals and more precisely third appeals.

The learned justice quoted the case of **Busulwa Bulasio vs Uganda**, (supra) and stated as follows;

“A clear interpretation of the above statutory provisions, and the decision of this court leads me to the finding that a third appeal to this court cannot competently lie to the Supreme Court from the decision of the Court of Appeal on a second appeal without a certificate of the Court of Appeal; that a point of law of great public or general importance is involved, or leave has been granted by the Supreme Court. As a consequence, no valid application can emanate from an incompetent appeal.

It was however the argument of the applicant that rule 3 of the rules of this court define an appeal to the court to include an intended appeal.

Related to this, is the argument by the applicant that in all criminal matters, an appeal is commenced by a notice of appeal. I beg to disagree with this line of argument that not all appeals to this court lie as of right. There are exceptions to this general rule and one such exception is in regard to third appeals which can only and validly be competent when the

court of Appeal issues a certificate that a point of law of great public or general importance is involved. Where the court of Appeal does not issue such certificate, then the appellant has to apply to this court for leave to regularize their appeal. Where such certificate or leave is not granted, then there cannot be said to be a competent appeal before this court.

Regarding the argument that in all criminal matters, an appeal is commenced by notice of appeal, it is true that quite often than not, all appeals are commenced by a notice of appeal but a notice of appeal in itself does not amount to an appeal. For third appeals to this court, one can argue that the appeal has been instituted when he or she has obtained a certificate of public or general importance from the Court of Appeal or this court has granted leave in case of denial by the Court of Appeal in granting the certificate. It is only in circumstances that a valid appeal exists before this court, that an appellant can legally commence another action arising out of that appeal. The above discussion rests the applicant's argument that there is a valid appeal before this court simply because he has filed a Notice of appeal. I hasten to add that there is no formal appeal filed yet before this court by the applicant.”

It is our considered view that the above finding of the learned justice is the correct application of the law. Needless to say, third appeals to this court are deemed instituted upon the applicant obtaining leave or a certificate of great public importance from the Court of Appeal or this Court.

Consequently, we find no merits in this reference which is hereby dismissed.

Dated at Kampala this6th.....day ofMay.....2021.



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Hon. Justice Stella Arach-Amoko
JUSTICE OF THE SUPREME COURT



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Hon. Justice Paul Mugamba
JUSTICE OF THE SUPREME COURT



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Hon. Justice Percy Night Tuhaise
JUSTICE OF THE SUPREME COURT