

UGANDA / JUDGMENT

Habib Buwembo v Uganda (Criminal Appeal 49 of 2023) [2024] UGHCCRD 4 (31 January 2024)

[2024] UGHCCRD 4

COURT

HC: Criminal Division (Uganda)

BEFORE

Gadenya, J

CASE / FILE NUMBER

Criminal Appeal 49 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 49 OF 2023

ARISING FROM THE CHIEF MAGISTRATES' COURT OF BUGANDA ROAD CRIMINAL CASE NO.
220 OF 2022

HABIB BUWEMBO APPELLANT

Vs.

UGANDA RESPONDENT

JUDGEMENT

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

1. Introduction

On 25th February 2022, Buwembo Habib, hereinafter called the Appellant, was charged with the Offense of threatening violence contrary to section 81(a) of the Penal Code Act. The prosecution case was that the Appellant and others still at large, during February 2022, in Kampala District, with the intent to intimidate or annoy Honourable Anita Among, the then Deputy Speaker of the Parliament of Uganda, threatened to injure her. However, on 28 February 2023, H/W Owomugisha Siena dismissed the matter for want of prosecution. Being dissatisfied with the decision of H/W Owomugisha Siena on 16th June 2023, the Appellant filed this appeal because:

1. The Learned Trial Magistrate erred in law and fact when she ignored the alternative suspect theory that the complainant threatened herself.
2. The Learned Trial Magistrate erred in law and fact when she failed to order the return of the Appellants Gadget after dismissing him.
3. The Learned Trial Magistrate erred in law and fact when she did not order the prosecution to compensate the Appellant with costs and damages after incarcerating him in Luzira Prison and making him suffer for no reason.
4. **Issue for Determination**
5. Whether the Appeal before this court was properly instituted within the statutory time for filing appeals?
6. **Determination of Issue**

Issue: Whether the Appeal before this court was properly instituted?

Section 28 of *the* Criminal Procedure Code Act, which governs the filing of criminal appeals, provides as follows:

“(1). Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his or her behalf and shall be lodged with the registrar within fourteen days of the date of judgment or order from which the appeal is preferred.*

(2). Every notice of appeal shall state shortly the effect of the judgment or order appealed against and shall-

(a) Contain a full and sufficient address at which any notices or documents connected with the appeal may be served on the appellant or his or her advocate, and;

(b). except where subsection (3) applies, state the general grounds upon which the appeal is preferred.

(3). If the appellant or an advocate on his or her behalf indicates at the time of filing a notice of appeal that he or she wishes to peruse the judgment or order appealed against before formulating the grounds of appeal, he or she shall be provided with a copy of the judgment or order, free of charge, and the grounds of appeal shall be lodged with the registrar within fourteen days of the date of the service on him or her of the copy of the judgment or order.

(4). Where the appellant is represented by an advocate or the appeal is preferred by the Director of Public Prosecutions, the grounds of appeal shall include particulars of the matters of law or of fact in regard to which the court appealed from is alleged to have erred.

(5). Where an appellant who is not represented has not availed himself or herself of the provisions of subsection (3), nothing in this section shall be read as preventing the appellate court from permitting the appellant from raising any proper ground of appeal orally at the hearing of the appeal.

(6). The appellate court may, for good cause shown, extend the periods mentioned in subsection (1) or (3).”

According to section 28 of the Criminal Procedure Code Act, appeals shall be commenced by either filing a Notice of Appeal containing the proposed grounds of appeal or a Notice of Appeal with a request to the trial court to avail the appellant with the record of the lower court for purposes of enabling them formulate grounds of appeal. The notice of appeal must be filed within fourteen days of the judgment or order being appealed. However, where the appellant requests for the record of the lower court, then they must file their memorandum of appeal within 14 days from the date of receipt of the record. In all other cases, if the appellant does not comply with Section 28 of the Criminal Procedure Code Act, they must apply for leave to appeal out of time under Section 31(1) of the Criminal Procedure Code Act. The court may enlarge the time for appealing if the applicant shows sufficient cause.

In the instant case, the Appellant filed his Notice and Memorandum of Appeal on 16th June 2023, approximately three months and 19 days after the lower court dismissed the case for want of prosecution. The Notice and Memorandum of Appeal were filed after the statutory 14-day period provided for under Section 28(1) of the Criminal Procedure Code Act. The Appellant did not seek an order to extend the time for appealing. Given this default, the Appellant does not have a valid appeal before the court, and the appeal is consequently dismissed for being incompetent.

1. Decision

In the result, the Appeal is dismissed for being incompetent.

Gadenya Paul Wolimbwa

JUDGE

31st January 2024

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Prepared on 13 October 2026 · Esheria