

Uganda v Oscar and Others
(HCT-01-CR-CN-0014-2024)
[2025] UGHC 521 (4 July 2025)
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Respondents who pleaded not guilty to the charges were unrepresented at trial while the state was represented by Ms. Naiga Margaret.

- 2. At the end of the trial, the trial Magistrate Grade One*, His Worship Ahimbisibwe Kagumire* Innocent held that the bodily injury/harm inflicted on the complainant was not a consequence of any unlawful act or omission of anyone but rather a result of a fall by the complainant himself as he staggered from a bar belonging to Mrs. Akugizibwe. He found that the Respondents were not guilty of the offence and he thereby acquitted them in his judgment of 18th September 2024.
- 3. On 25th September 2024, the Office of the Director Public Prosecutions filed a Notice of Appeal in this Court and stated that they intended to appeal against the said decision of *His Worship Ahimbisibwe Kagumire Innocent*, Magistrate Grade One at Kamwenge Chief Magistrates Court delivered on 18th September 2024 and that the appeal is against the acquittal of the Respondents. It was stated in the Notice of Appeal that the appellant desires to peruse the record of proceedings before filing the memorandum of appeal.
- 4. By letter dated 7th October 2024, the Chief State Attorney/Regional Officer Fort Portal, requested this Court to avail it with the trial court's certified record of proceedings and a copy of the judgment to enable her formulate the grounds of appeal. On 8th October 2024, this Court through its Deputy Registrar wrote to the trial court and requested for its record, certified judgment and

proceedings for purposes of this Appeal, and these were availed to this Court on 1st November 2024. The Appellant has however never filed a memorandum of appeal and the case has continued clogging the court system.

Determination of the Appeal:

- 5. The right to appeal in criminal matters is a creature of statute and this right is primarily enshrined under **Section 203 of the Magistrates Courts Act, Cap 19**, and **Section 28 of the Criminal Procedure Code Act, Cap 122**. **Section 203 of the Magistrates Courts Act** provides for appeals to the High Court from decisions of a Magistrate Grade One.
- 6. **Section 28 of the Criminal Procedure Code Act, Cap 122** provides that; *"Notice of appeal"
- *(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) A 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)."

- 7. The facts of this case reveal that the Office of the Director of Public Prosecutions (ODPP), as the Appellant, filed a Notice of Appeal on 25th September 2024, indicating an intention to appeal against the acquittal of the Respondents. Crucially, the Notice of Appeal explicitly stated the Appellant's desire to peruse the record of proceedings before formulating the grounds of appeal. This aligns with the provisions of **Section 28(3) of the Criminal Procedure Code Act**.
- 8. In furtherance of this, the Appellant, through the Chief State Attorney/Regional Officer – Fort Portal, formally requested the certified record of proceedings and judgment on 7th October 2024. This Court promptly facilitated this request, and the necessary documents were availed on 1st November 2024. According to **Section 28(3) of the Criminal Procedure Code Act**, where an Appellant indicates a wish to peruse the judgment or order before formulating grounds of appeal, "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." In this case, the certified judgement and the lower court's typed record of proceedings were available to the Appellant on 1st November 2024 meaning that the memorandum of appeal, containing the grounds of appeal, ought to have been filed by 15th November 2024.

- 9. However, as the record clearly shows, more than seven months have elapsed since the certified judgement and the lower court's typed record of proceedings were availed to this court, but the Appellant has not made any positive step towards furtherance of the appeal and no memorandum of appeal has been filed to date. This protracted delay amounts to an inordinate and unexplained failure to prosecute the appeal. The purpose of statutory time limits in appeals is to ensure the expeditious disposal of cases and to prevent unwarranted delays that can cause prejudice to parties, particularly respondents who face the uncertainty of an unresolved legal matter. Furthermore, the general principles of expeditious disposal of justice, enshrined in **Article 126(2)(b) of the Constitution of the Republic of Uganda, 1995**, which mandates that justice shall not be delayed, are paramount. This constitutional imperative applies with equal force to the prosecution of appeals. An appeal, once initiated, must be pursued with diligence.
- 10. The case of **Standard Chartered Bank (U) Ltd. vs. National Social Security Fund, Civil Appeal No. 6 of 2005 (SC)**, although a civil matter, laid down the principle that failure to take essential steps in prosecuting an appeal can lead to its dismissal. While the facts differ, the underlying reasoning that an appeal cannot be left to hang indefinitely, causing prejudice to the respondent and clogging the court system, is highly relevant. *Justice Odoki* CJ

(as he then was) emphasized the need for parties to adhere to the rules of procedure to ensure efficient dispensation of justice. In the context of criminal appeals, the continued uncertainty faced by acquitted respondents due to an unprosecuted appeal is a matter of serious concern. To leave an acquittal under a perpetual cloud of an un-prosecuted appeal infringes on the fundamental right to liberty and presumption of innocence.

- 11. I note that the Appellant has had sufficient time and opportunity, spanning over seven months since 1 st November 2024, to file the memorandum of appeal. The absence of a memorandum of appeal means there are no articulated grounds of appeal for this Court to consider. The appeal, in its current state, is effectively a placeholder, lacking the necessary substance for judicial determination. This conduct amounts to an abandonment of the appeal, or at the very least, a failure to prosecute it diligently.
- 12. I am alive to the fact that under **Section 44 (2) of the Criminal Procedure Code Act**, an appellate court may consider and determine an appeal in the absence of the appellant and may make any other order as it thinks fit. That is however only practical where the grounds upon which the Appeal was preferred by the Appellant are known by the Court. The Court cannot peruse the record of the lower court and formulate its own grounds of appeal. Therefore, since the Appellant has not filed any grounds of Appeal, this Court

cannot evoke **Section 44 (2)** of the **Criminal Procedure Code Act** to resolve the appeal.

13. **Section 44 (1) (b)** of the **Criminal Procedure Code Act** provides that; *the appellate court may dismiss an appeal for want of prosecution if the appellant fails to take any necessary step in prosecuting his or her appeal within the time allowed and has not made an application for extension of time.* The Court of Appeal in **Peter Muramira vs. Brian Kaggwa, Civil Application No. 104 of 2009**, observed that:

"It is the duty of every intending appellant to be seen taking an active role within the time stipulated by the rules to prosecute his or her appeal."

14. In this case, the Appellant has not been involved in any active role to prosecute the appeal. The last active step taken by the Appellant of requesting for the certified record of proceedings filing in October last year, and since then, the Appellant has not taken any other steps. To allow this appeal to remain on the court's registry indefinitely, without any steps being taken by the Appellant to advance it, would be contrary to the constitutional imperative of expeditious justice and would set a poor precedent for the management of criminal appeals. It would also cause undue prejudice to the Respondents, who have a right to finality in their legal proceedings and to resume their lives without the spectre of an unresolved criminal appeal.

Consequently, for want of prosecution, this Criminal Appeal **HCT-01-CR-CN-0014-2024** is hereby dismissed. I so order.

Dated at Fort Portal this 4 th day of July 2025

Vincent Wagona

High Court Judge

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Ruling delivered on 14th July 2025.

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Prepared on 14 October 2026 · Esheria