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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 61 OF 2023

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**ARISING FROM THE CHIEF MAGISTRATES’ COURT OF MAKINDYE CRIMINAL
CASE NO. 1589 OF 2022**

TUMUSIIME ASHIRAF APPELLANT

Vs.

UGANDA RESPONDENT

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JUDGEMENT

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

1.0. Introduction

On 12th June 2023, the Appellant was convicted by H/W Adikin Esther, a Chief Magistrate sitting at the Chief Magistrates Court, Makindye, for Theft Contrary to Section 254 (1) and 261 of the Penal Code Act. On 15th June 2023, the Appellant was sentenced to serve three (3) years imprisonment. On 4th July, 2023, the Appellant filed a Notice of Appeal against his conviction and sentence. He, however, did not file a Memorandum of Appeal, nor did he attach to his Notice of Appeal a copy of a letter addressed to the lower court requesting the record of proceedings.

2.0. Issue for Determination

1. Whether this Appeal was properly instituted before court?

3.0. Determination of Issue

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

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

35 “(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;

40 (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
45 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.

50 (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
55 (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 court to give the appellant the lower court record to enable them formulate grounds of appeal. The notice of Appeal must be filed within fourteen days from the date of
60 judgment. 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.

Section 31(1) of the Criminal Procedure Code Act provides that:

65 “(1) an application to extend the time for lodging a notice of appeal or grounds of appeal under section 28(1) or (3) shall be made in writing to the registrar to the appellate court and shall be supported by an affidavit specifying the grounds for the application.”

This statutory provision empowers the court to enlarge the time for appealing if the applicant shows sufficient cause.

70 In the instant case, the Appellant filed a Notice of Appeal on 4th July 2023, approximately 19 days after the delivery of the Judgment. The Notice of Appeal, however, was not accompanied by a copy of the letter requesting typed and certified copies of the record of proceedings from the lower court to enable the Appellant to formulate his grounds of appeal. Additionally, the Appellant did not apply for an extension of time within which to file his Appeal out of time. The
75 court further notes that, approximately seven months after the Notice of Appeal was filed, the Appellant has not taken further steps to prosecute his Appeal. In the absence of a Memorandum of Appeal on record without justification for its absence and an order enlarging the time for appealing, the court finds that the Appellant does not have a proper appeal before the court. As a matter of diligence, a litigant who files an appeal out of time should demonstrate that they have a
80 plausible or arguable appeal to trigger Article 126(2) (e) of the Constitution, which obliges the court to promote substantive justice over procedural regularities. This was not the case here.

4.0. Decision

This appeal is dismissed for being incompetent.



85 Gadenya Paul Wolimbwa
JUDGE
31st January 2024