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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 132 OF 2022

ARISING FROM THE CHIEF MAGISTRATES’ COURT OF WAKISO AT

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KASANGATI CRIMINAL CASE NO’s. 323, 318 & 317 OF 2022

ZIWA HERBERT APPELLANT

Vs.

UGANDA RESPONDENT

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JUDGEMENT

BEFORE HON. JUSTICE GADENYA PAUL WOLIMBWA

1.0. Introduction

On 26th May 2022, the Appellant was convicted on his plea of guilty by H/W Nangobi Miria Jackie of the Chief Magistrates’ Court at Kasangati for stealing from a vehicle contrary to section 254(1) and 267(c) of the Penal Code Act. At trial, the prosecution case was that the Appellant and others, on the night of 12th/ 13th April 2022, at Gayaza B Zone in Wakiso District, stole Motor Vehicle Number Plates UAK 787J, the property of Wafula Edward from Motor Vehicle UAK787J, Toyota Corona. After conviction, he was sentenced to one year and nine months’ imprisonment. On 27th October 2022 (approximately 5 Months after sentencing), the Appellant filed a Notice of Appeal against the conviction and sentence.

2.0. Issue for Determination

Whether this Appeal should be allowed?

30 **3.0. Determination of Issue**

Issue: Whether this Appeal should be allowed?

Section 32 (1) (b) of the Criminal Procedure Code Act empowers this Court to summarily dismiss an appeal after perusal of the trial court record where:

1. No question of law is raised for proper consideration by it;
- 35 2. No material in the circumstances of the case raises reasonable doubt whether the conviction was right or the sentence ought to be reduced, and
3. Where the sentence appealed from is not excessive in an appeal against sentence only.

For ease of reference, Section 32 (1) (b) of the Criminal Procedure Code Act provides that:

40 *(1) On receiving a notice or grounds of appeal under section 28, the appellate court, or a judge of that court, shall peruse it and, after perusing the record of the trial court-*

(b) in the case of an appeal against sentence only, where it considers that the sentence is not excessive; or in any other case, where it considers that no question of law is raised proper for consideration by it, or that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or led the court to consider that the sentence ought to be reduced, it may dismiss the appeal summarily without hearing the appellant.

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In the instant case, the trial court record does not raise any legality and propriety issues for determination by this court. Additionally, in his Notice of Appeal, the Appellant did not demonstrate that there is a question of law to be decided by this court, nor has he cast reasonable doubt as to whether the conviction was right or the sentence should be reduced. In fact, what the record reveals is the incompetence and lack of merit in this Appeal.

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The record shows that the Appellant filed this Appeal approximately five months after he was sentenced. The Appellant violated section 28 of the Criminal Procedure Code Act, which requires appeals to be filed within fourteen days from the date of judgment or order. Where the appellant requests for the record of the lower court, then he or she must file their memorandum of appeal within 14 days from the date of receipt of the record. In situations where the appellant does not comply with the provisions of Section 28 of the Criminal Procedure Code Act, they

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must apply for leave to appeal out of time under Section 31(1) of the Criminal Procedure Code Act, and the court may, for sufficient cause, enlarge the time. The Appellant did not take
60 advantage of section 31(1) of the Criminal Procedure Code Act, and therefore, the appeal before me is as good as no appeal.

In terms of merit, the record reveals that the Appellant was convicted on his guilty plea, yet he is
Appealing against both conviction and sentence. The law under Section 204 (3) of the
Magistrates' Court Act prohibits appeals from cases where a person pleaded guilty and was
65 convicted unless the legality of the plea or the extent or legality of the sentence is called into
question. It provides that:

*“No appeal shall be allowed in the case of any person who has pleaded guilty and has been
convicted on that plea by a magistrate’s court except as to the legality of the plea or to the extent
or legality of the sentence.”*

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In a similar provision, section 132(3) of the Trial on Indictment Act equally prohibits appeals
from cases where a person pleaded guilty and was convicted unless the legality of the plea or the
extent or legality of the sentence is called into question. It provides that:

75 *“No appeal shall be allowed in the case of any person who has pleaded guilty in his or her trial
by the chief magistrate or magistrate grade I or on appeal to the High Court and has been
convicted on the plea, except as to the legality of the plea or the extent or legality of the
sentence.”*

80 These sections empower the High Court to entertain an appeal of a case where the ‘appellant’
pleaded guilty to a charge in the trial court, but the legality (legality means the state of being in
accordance with the law) of the said plea is in question or where the extent or legality of the
sentence is called into question. Since the legality of the Plea has not been called into question,
the Appellant is barred from Appealing against the conviction and sentence. He is only permitted
to appeal against his sentence. I may hasten to add that the Appellant received a lenient sentence
85 of one year and nine months for stealing from a vehicle, which attracts a maximum sentence of
seven years. That being the case, even if the Appellant had filed the Appeal in time against the

sentence, I would have summarily dismissed it under section 32(1)(b) of the Criminal Procedure Code Act for lack of merit.

4.0. Decision

90 This appeal is summarily dismissed for the following reasons:

1. It was filed out of time without an order for extension of time;
 2. There is no question of law raised by the Appellant or the Trial Court record for proper consideration by this court, and,
 3. Neither the Appellant nor the Trial Court record raised reasonable doubt about whether
- 95 the conviction was proper or the sentence ought to be reduced.



Gadenya Paul Wolimbwa

JUDGE

100 **31st January 2024**