

5 THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CRIMINAL APPEAL NO. 01 OF 2025
(ARISING FROM CRIMINAL CASE NO. 16 OF 2024)
NGABIRANO FRANK :::::::::::::::::::::::::::::::::::APPELLANT

10 VERSUS

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

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

JUDGMENT

15 **Brief Facts:**

In this case, the appellant was charged with the offence of threatening violence with intent to annoy or intimidate Fredrick Rufunsi c/s 81(a) of the Penal Code Act. Appellant was convicted by the learned Grade I Magistrate, His Worship Rukundo Isaac on January 6, 2025. In his memorandum of appeal filed with this
20 court, he appeals against conviction and sentence.

At trial, it was alleged that on January 14th, 2024, the appellant invaded the complainant's home, banged the door, threatening he wanted to kill him if he didn't give him money. Frederick Rufunsi, (the "complainant") was in his house with his wife, Lydia Nyakambuka. The couple peeped through the door and saw
25 the appellant with a panga. The appellant vowed to find the complainant in the house and cut him to pieces. When the complainant made an alarm, the accused left the house.

The background of the case appears to be a domestic family dispute between the appellant and both his father and his father's wife over sale of a parcel of family
30 land. The appellant expected UGX 100,000/= from the sale of a parcel of land sold at 600,000/=. The father of the appellant took 500,000/= and then demanded the balance of 100,000/= which was supposed to compensate the



5 appellant for trees cut on his land by the appellant's brother and his brother's wife.

The trial magistrate upon testimony found that the evidence on the record supported the following ingredients of the offence as follows:

(i) **Intention to intimidate or annoy or harm any person.**

10 PW1, the complainant testified that on the fateful day, when he was at home at around 9 pm, the appellant came to his home, banged the door and told him he wanted to kill him if he did not give him money. According to PW1, the appellant had a panga. With regard to identification of the appellant, PW1, stated he saw him because there was moonlight, at page 4 of the judgment. Further that the
15 accused threatened to cut him to pieces, upon which PW1 made an alarm and when people came, they found him going back with a panga. His testimony was corroborated by 3 witnesses. PW2, testified he heard an alarm from the complainant saying the appellant had invaded his home, and when he went to see what had had happened, he found other people, and the appellant moving
20 away with a panga. PW3, the LC 1 Chairperson, Kyafurwe cell testified he had received a report from the complainant that the appellant wanted to cut him, and told court the appellant was in the habit of threatening the father/complainant with violence. Pw4 the complainant [PW1's] wife testified that the appellant came to their home and banged the door stating he was going
25 to kill him because of his money. Essentially, PW1 and PW4, the spouse's testimony was the same.

In defence, the appellant told court he had disagreements with his young brother over the cutting of his trees to provide shade over his beans. He testified about the agreement to sell land and share the proceeds, and that when the
30 father/complainant reneged on his agreement to give him 100,000/= from the sale, he raised an alarm stating the appellant wanted to kill him. All other defence witnesses, DW2, DW3, DW4 corroborated the dispute about money and the corollary land dispute. In summing the evidence, at page 6 of his judgment, the learned Trial Magistrate found the prosecution's evidence to have been
35 corroborated by the appellant, DW1. DW2 and DW3 also acknowledged they found the appellant quarreling with his father the complainant over money. The

5 learned trial magistrate found that the prosecution had proved the appellant went to the complainant's home, banged the door and threatened to kill the complainant over the 100,000/= balance from the buyer of family land. He also found at page 7, that the action of banging the door and uttering menacing words threatening to kill him if he did not give him the same money showed the
10 intention to injure accompanied by the intention to intimidate the complainant.

(ii) **Participation by the accused.**

The learned Trial Magistrate at page 7, found that PW1, PW3 and PW4' evidence showed that the appellant went to the complainant's home, banged the door
15 asking for the money and threatened to kill him if he did not pay the said money. He also found that DW1, did not deny going to the complainant's home to ask for money, and while there the complainant made an alarm. In conclusion he found that the appellant's participation was not contested even by the appellant himself. He accordingly concluded the prosecution had proved the two
20 ingredients of the offence of threatening violence beyond a reasonable doubt, found the accused guilty and convicted him.

Appellant was sentenced to 2 years imprisonment, on grounds of lack of remorse. Reference was made in the allocutus that the appellant wanted to forcefully take his father's properties, and use them by force.

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Representation:

The appellant was represented by M/S Elgon and Co. Advocates. Respondent was represented by the learned Director of Public Prosecutions. The appeal proceeded by way of written submissions, which the parties complied with.

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Grounds of Appeal:

Appellant in his memorandum of appeal framed two grounds of appeal; namely:



- 5 1. The learned Trial Magistrate erred in law and fact when he reached a
decision without properly evaluating the evidence on record, thereby
occasioning a miscarriage of justice;
- 10 2. The learned Trial Magistrate erred in law and fact when he harshly
sentenced the appellant to 2 years imprisonment thereby occasioning a
miscarriage of justice.

The respondent opposed the appeal and in addition raised a preliminary objection that the appeal is incompetent since it had not been brought before the Honourable Court as required by law:

Resolution of the Appeal:

15 I will turn to the preliminary objection first as it challenges the competence of the appeal. In support of their objection, counsel for the respondent cites the provisions of **Section 28 of the Criminal Procedure Code, Cap 122**, which is couched in mandatory terms to the effect that:

- 20 (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.”

I have perused the court record, and wish to make the following observations. The file jacket notes, that a memorandum of appeal was filed on February 25th, 25 . 2025. A perusal of the filing of the memorandum of appeal shows it was filed on January 24th, 2025 according to the date stamp, even though the placement of the actual stamp by the Court Registry leaves a lot to be desired.

On January 14th, 2025, a request by Counsel for the appellant to call for certified proceedings of the lower court referencing the lower court proceedings, and 30 was received by the High Court. A clear date stamp shows this.

The Notice of Appeal, however, has its’ prescribed contents, in Section 28, further provides:

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

5 (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.

10 Counsel for the respondent relied on the decision of my brother, Gadenya Paul Wolimbwa J., in **Habib Buwembo v Uganda, Criminal Appeal No. 49 of 2023, reported at 2024 UGHCCRD 4**; that emphasizes, that provisions of Section 28 above are couched in mandatory terms; He states the position of the law in Uganda as follows:

15 “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
20 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.”

I have no reason to depart from this statement of the law. He further adds:

25 “ 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.”

Section 31(1) of the Criminal Procedure Act provides for extension of time, and references Section 28, as follows:

30 (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 of the appellate court and shall be supported by an affidavit specifying the grounds for the application.

Whereas at the hearing of the appeal, court was predisposed to the appeal being disposed of, court cannot overlook a point of law that renders the appeal incompetent.

35 The record before me, does not have a notice of appeal. This is the only way to

5 commence an appeal under the Criminal Procedure Code. The long title of the Act, states its purpose as an Act to provide for procedure to be followed in criminal cases.

An appeal is a creation of statute, as held by the East African Court of Appeal in **Attorney General v Shah, No. 4, 1971 EA 50** cited with approval by the Court of Appeal of Uganda in **Uganda v Augustin Nkalubo, Criminal Appeal No. 130 of 2021**,
10 at page 6 of their judgment, the Court of Appeal, notes as follows:

“There is no inherent right of appeal, We therefore have to consider the provisions of the Criminal Procedure Code Act...”

The absence of a notice of appeal, leads to one conclusion, that appeal was improperly commenced. While court at the oral argument on May 20, 2025, was favorably disposed
15 to hearing the appeal, that point of view was erroneous and cannot stand. It would create an illegality on the face of the record. The appellate jurisdiction of the High Court is prescribed by **Article 139(1) of the Constitution** and **Section 16 of the Judicature Act, Cap 16, (the “Judicature Act”)**. **Article 139(1) of the Constitution** states as follows:

20 “The High Court shall subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate jurisdiction as may be conferred on it by this Constitution or other law.”

Section 16 of the Judicature Act, provides as follows:

25 “Subject to the Constitution, this Act and any other law, the High Court shall have jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrates courts and other subordinate courts in the exercise of their original or appellate jurisdiction.”

Any appeal must properly cite the proper provision of the statute that empowers them to file an appeal. In the instant case, the Criminal Procedure Code provides for the
30 appellate jurisdiction of the High Court. Both Article 139(1) and Section 16 (op cit) codify the position in **Attorney General v Shah (op cit)**.

The appeal is hereby dismissed as incompetent for failure to follow the mandatory provisions of the law.

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I SO ORDER

DATED AT KABALE, THIS 13th day of JUNE 2025,

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A handwritten signature in blue ink, appearing to read "K. Lwanga Ssemogerere", written over a horizontal line.

SSEMOGERERE, KAROLI LWANGA,
JUDGE.

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