

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA.

CR-CN-68 OF 2001

UGANDA:..... PROSECUTION

Versus

SENINDE PAUL :..... ACCUSED

BEFORE: HON. MR. JUSTICE V.A.R. RWAMISAZI-KAGABA

R U L I N G

The appellant was charged with Attempted murder contrary to section 197 of the Penal Code Act. It was alleged that on the 8/12/2000 at Navubya village, Lukungudde Parish Wakiso District, the accused/appellant attempted to unlawfully to cause the death of Nsumba Ronald:

After hearing the evidence for both the prosecution and defence, the Chief Magistrate acquitted the accused on the 16/8/2001 and set him free.

The State appealed to the High Court against the Chief Magistrate's Order of acquittal. The appeal was called for hearing on a number of times but the appellant failed to secure the attendance of the respondent/accused.

On the 4/4/2003, the appeal came for hearing and Mrs. Tumuhekyi Justine, the State Attorney told court that she was withdrawing the appeal because the State had failed to trace the respondent.

Section 328A(3) of the Criminal Procedure Code Act deals with the abandonment of appeals by appellant (any) in the following words:-

(3) "An appellant may, at any time before the hearing of the appeal, abandon his appeal by giving notice in writing of such abandonment to the Registrar of the appellate court, and upon such notice being given, the appeal shall be deemed to have been dismissed by the appellate Court." The appellant in this court by her statement from the bar, has stated that she is withdrawing the appeal. By so stating she has or is deemed to have abandoned the appeal. This appeal, therefore, stands dismissed.

In *Siriste Luyombya vs. Uganda - Criminal Appeal No. 552/1964, (Case No. 153-M. B. 59/65 - Cases on Criminal Procedure - P.108)* the appellant filed a notice of the abandonment of his appeal. Later he made an application to withdraw the notice. Sir Udo Udoma C. J. (RIP) held: That the application was incompetent and was an abuse of the legal process. The appeal was deemed to have been dismissed under section 328A(3) of the C.P.C. and the court was functus officio. (Practice in the U.K. followed).

Dealing with section **328A(3) of the C.P.C. -Justice Fuad - in Criminal Appeal 552/1964 - Case No. 151 M. B. 47/65 -** (^{Siriste} Sensite Luyombya vs. Uganda-Criminal Case No. 151 - Cases on Criminal Procedure page 107). Section 328A (3) of the Criminal Procedure Code made it clear that when such notice (notice of abandonment of his appeal to the Registrar) reached the Registrar, the appeal is deemed to have been dismissed by the High Court. The subsequent letter by the appellant, (prisoner) that he wished to proceed with the appeal was of no legal effect. The appeal is incompetent. It is struck out.

However, **Rule 65(1)** of the Supreme Court Rules (1966) also provides:

(1) An appeal may be withdrawn at any time before hearing by notice in writing to the Registrar signed by the appellant, and upon the notice being given, the appeal shall be taken to have been dismissed.

This provision has the same effect at section 328A (3) of the C.P.C. and the appeal terminates by the application of any of these provisions of the Statutes above cited.

Even if the court did not act under section 328A(3) of the C.P.C. or Rule 65 above cited, it would still be entitled to terminate the appeal by invoking section 19 of the Judicature Statute (1996) as amended by Act 3/2002 where it is provided:

"(2) with regard to its own procedures, and those of the Magistrate's Courts, the High Court shall exercise its inherent powers -

- (a) to prevent abuse of process of court by curtailing delays, in trial and delivery of judgment including the power to limit and discontinue delayed prosecution
- (b) to make orders for expeditions trials
- (c) to ensure that substantial justice shall be administered without undue regard to technicalities.

In ***Criminal Revision 5/1999 - (MASAKA) Shabahuria Matiya vs. Uganda.***

Justice Egonda - Ntende wrote interesting observations on the Court's inherent powers to prevent abuse of process of the Court and quoted from the case of ***Mills vs. Cooper (1967) 2Q.B.D. 459 at P.467 where Lord Parker C. J.*** - held:

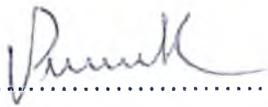
"Every court has undoubtedly a right in its discretion to decline to hear proceedings on the ground that they are oppressive and abuse of the process of the Court." This matter received some consideration in the case of ***Connelly vs. D. P. P. (1964) A. C. 1254*** - where ***Lord Morris of Borth-y-Gest*** stated:-

"The power (which is inherent to the Court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused from oppression or prejudice"

See also: Regina vs. Humphreys [1977) AC 1.

I entirely agree with the views and pronouncements made by the learned Judges in the above-cited cases.

Consequently, the appeal is dismissed in the exercise of the powers vested in this court under section 328A(A)(3) of the Penal Code Act and section 19 of the Judicature Statute (as amended) by Act 3/2002.



.....
V. A. R. RWAMISAZI-KAGABA

J U D G E

7/4/2002