

APPEAL AGAINST ACQUITTALS AND SENTENCES

Memorandum By The Government Of Uganda

Generally there is no automatic right of appeal from a Judicial decision. The right of appeal is the creation of a Statute and no party, even the State, has such right unless if specifically provided for by Statute. This is the position in Uganda.

While the prosecution has a right of appeal against an order of acquittal by a Magistrate's Court, the same right is not available where the order of acquittal is that of the High Court. Again this is because of the absence of Statutory provisions for that right.

In Uganda, indictments in the High Court are in respect of very serious offences often carrying a death penalty on conviction and it may be argued, perhaps, that where an accused has escaped the gallows or a long term of imprisonment on acquittal, the dictates of moral considerations militate against subjecting him to a further possibility of doom based on an appeal against the acquittal. This may well be so in jurisdictions based on jury-trials.

In our case, like a number of other Commonwealth jurisdictions, such trials are conducted before a single High Court Judge usually aided by assessors whose advice is not binding on him. He is both a Judge of fact as well as the law. The rationale of there being no appeal against an order of acquittal from a trial by a jury cannot surely be the same as that of a decision of one person deciding both the facts and the law.

It would appear that we, like many other former English dependencies, on receiving our laws from the English common law practices, did accept or were perhaps unwittingly made to accept certain legal practices and laws which would not produce the same justice based on our local practice as it would, say in England.

In the instant practice of no appeal by the State against an order of acquittal by the High Court, it may well even cause a miscarriage of justice.

While in no way attempting to down-play the ability of a High Court Judge's ability to properly evaluate the facts in a criminal case and come to a just decision, we do not think the safeguards available in jury-trial jurisdictions approximate anywhere near a situation like ours where one person is

the sole judge of everything. We have to recognise real human failings in judging factual situations which quite often are based on personal understanding and evaluation of the facts. It is quite understandable of course, and we see the logic of no appeal from a decision by a jury, because such a decision made as it is by the unanimity of twelve persons or so is unlikely to be wrong. Clearly, an acquitted person ought not to be subjected to any further ordeal on appeal in that case. Since our trial practice is different, different considerations have to be borne in mind.

We are of the view that in deciding on a criminal trial, the rights of the accused have to be balanced with the public or community right of bringing to book those who by their conduct transgress the norms of a society or state as embodied in its criminal laws. That is why we argue that where a Judge sitting alone has misconstrued the facts and let go a criminal, the prosecution ought to have a right by way of appeal to challenge that decision. After all, our Court system is a hierachical one and we see no rationale of making an exception in acquittals in the High Court only, especially so if the case in the first place commenced in the court presided over by one Judge.

In a system like ours, therefore, we think a right of appeal against an order of acquittal on indictment is essential for a balanced and fair administration of justice.

We note of course, that even where there is a right of appeal by the prosecution, in almost all such jurisdictions, it is expressly provided that the appeal has no effect on the earlier acquittal. It is only a matter of a declaration on the issue which is always on a matter of law only and no more. On our part we think this is not sufficient as even a subsequent error disregarding or misunderstanding the court of Appeal's direction will always end up in the accused being let free with no other substantial remedy for the prosecution. We would submit that since, after all the Court of Appeal is never composed of less than three Judges, this Court should have the right of substituting its own decision or at least of ordering a retrial. As the saying goes, we also think that more often than not, "two heads are better than one".