THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

Coram: Egonda-Ntende, Bamugemereire & Mulyagonja, JJA

CONSOLIDATED CRIMINAL APPEALS NO. 400 OF 2019 AND NO. 291 OF 2021

BETWEEN

1. OPIO WILFRED
2. AROP CHARLES
3. OCAYA O. THOMAS
4. OPIRA SAUL (Also known as OCAI) } **::::::::APPELLANTS**

AND

UGANDA **:::::::::::::::::::::::::::::: RESPONDENT**

Appeal from the decisions of Mubiru, J, dated 26th September 2019 and Ajiji, J, dated 26th November 2021 in Criminal Session Case No 138 of 2011.

JUDGMENT OF THE COURT

Introduction

The appellants were indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. They were tried in a full trial before Owinyi-Dollo, J. (as he then was) in which judgment was delivered on 19th August 2013. Opiyo Wilfred and Arop Charles were convicted of murder, while Ocaya Thomas and Opira Saul (the 3rd and 4th appellants in this appeal) and Okot Festo, the 3rd accused person at the trial who is not a party to this appeal, were acquitted.

On the same day, the trial judge sentenced Arop Charles, now the 2nd appellant, to 38 years' imprisonment. However, there was doubt as to the age of Opiyo Wilfred who claimed to have been 17 years old when he committed the offence. There being no medical examination report on the record to prove his age at the time he was arrested, the trial judge ordered that a medical examination be carried out to establish his age at the time he committed the offence before a sentence could be imposed upon him.

Upon a medical examination done at Gulu Regional Referral Hospital on 23rd August 2013, it was established that at the time he committed the offence Opiyo Wilfred was above 18 years of age. He was therefore on 2nd October 2015 sentenced to imprisonment for 38 years by Mutonyi, J, Owinyi-Dollo, J, having been elevated to the Court of Appeal.

Background to the appeal

The facts from which the appeal arose, as they were stated in the judgment of Mubiru, J, were that the appellants, together with Okot Festo who is not a party to this appeal, were tried in a full trial by Owinyi-Dollo, J (as he then was). Opiyo Wilfred and Arop Charles, the 1st and 2nd appellants in this appeal were convicted of murder and sentenced as stated above, Opira Saul and Ocaya Thomas, the 3rd and 4th appellants, and Okot Festo were acquitted and set free.

Being dissatisfied with both conviction and sentence, the 1st and 2nd appellants appealed to the Court of Appeal in **Criminal Appeal No. 337 of 2014, Arop Charles & Opiyo Wilfred v Uganda**. When the appeal came up for hearing on 27th November 2018, the judgment of the trial court, Owinyi-Dollo, J. was not on the court record. For that reason, the

court allowed the appeal because the absence of the judgment was prejudicial to the appellants. The court further quashed the convictions and set aside the sentences, as well as the acquittal of Opio Saul, Ocaya Thomas and Okot Festo. Court further directed that a warrant of arrest issues against Opira Saul, Okot Festo and Ocaya O. Thomas, for the purpose of producing them before the trial court for delivery of the judgment. The file was remitted to Gulu for the Senior Resident Judge to write and deliver a judgment on the basis of the evidence that was adduced before the trial judge.

The resident judge, then Stephen Mubiru, wrote and delivered judgment on 26th September 2018 in which he found that *"Opiyo Alfred, Opira Saulo, Festo Okot, Ocaya Martin and Arop Joseph"* were guilty of the murder of Obol Joseph. Interestingly, only Festo Okot was properly named by the judge as having been convicted of the offence. Mubiru J then sentenced Ocaya Martin and Arop Joseph to 17 years and 3 months' imprisonment each to be served from the 4th December 2019. Opiyo Wilfred was sentenced to 21 years and 2 months' imprisonment to be served from 4th December 2019. Court extended warrants of arrest that had previously been issued against Opira Saul and Okot Festo.

On 23rd November 2021, Opira Saul was produced in court to be sentenced. He appeared before Ajiji, J. in the absence of Mubiru, J who wrote the judgment as ordered by the Court of Appeal. Although it was a mitigating factor advanced on his behalf by Mr Walter Ladwar who represented him at the sentencing that he had since the acquittal suffered a disability as a result of an injury from a bomb blast, Ajiji, J sentenced Opira Saul to 16 years, one month and 10 days' imprisonment. It is evident from the record that Okot Festo, the 3rd accused at the trial was never re-arrested. He was therefore never

sentenced, but the warrant of arrest that was extended against him on 4th December 2019 still hangs over his head.

The 1st, 2nd and 3rd appellants were dissatisfied with the judgment and sentence imposed against them. They appealed to this court in Criminal Appeal No. 400 of 2019 upon the following grounds:

1. The learned trial judge erred in Law and fact when he convicted the first appellant and sentenced him to 21 years which is excessive and manifestly hash in the circumstance hence occasioning a miscarriage of justice.
2. The learned trial Judge erred in law and fact when he failed to deduct the whole period the 2nd appellant spent on remand in determining his sentence and imposed an illegal and excessively hash sentence leading to a miscarriage of Justice.
3. That the trial judge erred in law and fact when he convicted and sentenced the 3rd appellant to a manifestly hash sentence occasioning a miscarriage of justice.
4. The learned trial judge erred in law and fact when he failed to properly evaluate the evidence on record and solely relied on the evidence of the prosecution and convicted the 2nd and 3rd appellants occasioning a miscarriage of justice.

The 1st appellant prayed that his sentence be reduced, while the 2nd and 3rd appellant's prayer was that their convictions and sentences be quashed or set aside and that they be set free. In the alternative, that their sentences of imprisonment be substituted with rehabilitative sentences.

Due to the fact that he was sentenced in November 2021, the 4th appellant filed a separate appeal as Criminal Appeal No. 291 of 2021. He advanced 5 grounds of appeal as follows:

1. The learned trial judge erred in law in exercising jurisdiction vested in him to write and deliver judgement on the basis of evidence adduced at the trial before another judge hence leading to a miscarriage of justice.
2. In the alternative, but without prejudice to the above, the learned trial judge erred in law and fact when he made a finding that A2 Opira Saulo stabbed the deceased thereby leading to a miscarriage of justice.
3. The learned trial judge erred in law and fact when he relied entirely on evidence of witnesses who had a grudge against the appellant hence leading to a miscarriage of justice.
4. The learned trial judge erred in law and fact in holding that the appellant's *alibi* was disproved by the prosecution thereby leading to a miscarriage of justice.
5. The learned trial judge erred in law and fact in sentencing the appellant to 18 years which sentence was harsh and excessive in the circumstances of the case.

The 4th appellant prayed that his conviction be quashed and his sentence be set aside or that he be acquitted of the offence.

The respondent opposed both appeals.

The appeals were both set before us for hearing but before hearing commenced, we observed that there was a disparity in the numbering of the appeals because we had two separate memoranda of appeal before us in two different appeals both numbered as No 400 of 2019. On inquiry, the Registrar explained that though they were two different appeals before the court they arose from the same judgement. That an administrative decision was therefore taken to place them before us at the same time for disposal. With that

explanation the court ordered that the two appeals be consolidated and heard together. We therefore disposed of both appeals at the same time and this is the judgement of the court.

Representation

At the hearing of the appeals, Ms Akello Alice Latigo, on State brief represented the 1st 2nd and 3rd appellants. The 4th appellant was represented by Mr Caleb Alaka also on State brief. Ms Deborah Etau, from the Office of the Director of Public Prosecutions (DPP) represented the respondent in both appeals.

Counsel for the 1st, 2nd and 3rd appellants filed written submissions as directed by court before the hearing of the appeal. Counsel for the respondent filed a reply thereto. Mr Alaka explained that due to short notice about the hearing he was unable to file written submissions. Counsel for the 1st, 2nd and 3rd appellants and counsel for the respondent prayed that their written submissions be considered by the court in the disposal of the appeal and their prayer was granted.

Mr Alaka made an application to validate the notice of appeal which was filed out of time, under rule 5 of the Rules of this court. He made a further application for extension of time to validate the memorandum of appeal in **CACA No 291 of 2921**, which was filed on the day that the appeal was called on for hearing. Though she resisted the application, Ms Etau finally conceded to it and court allowed the validation of the appeal.

Duty of the Court

The duty of this Court as a first appellate court, is stated in rule 30 (1) of the Rules of this Court (SI 10-13). It is to re-evaluate the whole evidence adduced before the trial court and reach its own conclusions

on the facts and the law. But in so doing the court should be cautious that it did not observe the witnesses testify.

We have therefore considered the whole of the record that was set before us, the submissions of counsel and the authorities cited and those not cited that were relevant to the appeal in order to reach our decision.

Determination of the appeal

Before the hearing of the appeal commenced, the court enquired from counsel whether it was proper for the trial judge to try people that had been acquitted where the evidence of such acquittal was available. The court further enquired whether the trial judge convicted and sentenced them when there was evidence available on the record that they were previously acquitted by the same court. Ms Etau for the respondent adverted to the principles of *autrefois convict* and *autrefois acquit* but was not clear about whether the trial was proper. She intimated that it was possible to have such a situation where there is an appeal by the DPP against acquittal.

The court then enquired why the appellants that had been acquitted before were now before the court when the DPP did not appeal against their acquittal. As to whether these 3 persons that had been acquitted were present before the Court of Appeal when their acquittal was set aside, counsel for the respondent explained that they were not and that there was no fresh hearing accorded to them. Taken to task whether she supported the subsequent conviction by the High Court, Ms Etau stated that in the light of Article 28 of the Constitution and the fact that the DPP did not appeal against the acquittal, she could not support the conviction. She had no objection to a declaration being made by court

that the 3 persons whose acquittal was set aside by the Court of Appeal should be declared free and released, forthwith.

The court then delivered a ruling in which it was declared that Opira Soul alias Ocai, Okot Festo and Ocaya O Thomas should be set free and released unless they were held on any other charges. The three convicts were thus released on on 27th March 2023.

We undertook to deliver a comprehensive judgement on the matter, taking into consideration that before court we had the two prisoners who were convicted anew after Mubiru, J delivered his judgment. We now hereby do so. And in doing so we shall render a comprehensive answer to the question whether the convictions and subsequent sentences that were imposed against all of the appellants in this appeal arising from the judgment of Mubiru, J delivered on 26th September 2019, were lawful.

Basis of the judgement appealed from

Before he set about evaluating the evidence and preparing his judgment, Mubiru, J. (also herein referred as *"the second judge"* to distinguish him from the trial judge) reasoned with himself extensively in order to justify what the order of the Court of Appeal required him to do. He considered the right to a fair trial at page 2 of his judgment and observed that:

> *"This court proceeds alive to the fact that fair trial guarantees are not merely concerned with the institutional dimension of the administration of justice but there is also strong emphasis on the procedural aspects. There are certain requirements pertaining to the proceedings themselves that ought to be met in order to comply with the principles of a fair trial. These guarantees are numerous and diverse. Where prejudicial events occur during a trial, for an appellate court to direct retrial, the proceedings must have fallen below an objective standard of reasonableness. It must*

be shown firstly that the trial was so deficient or wrought with errors so serious that it fell below the standard of fairness and secondly, that the deficiency complained of occasioned a miscarriage of justice."

He then enumerated the components of the right to fair trial and concluded his analysis of the principle and discarded of its importance in the circumstances as follows:

"It is important to note that these rights, although fundamental, are not absolute. This relativity was confirmed in Snyder v Massachusetts (1931) 291 U.S. 97, 116-117, where the Court unanimously stated: 'Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept ... What is fair in one set of circumstances may be an act of tyranny in others.' The challenge underlying compliance with the requirements of the right to a fair trial is finding the balance between access to the courts and effective protection of individual rights on one hand and the right to be heard, on the other."

The judge then went on and considered his task from the perspective that he did not have the opportunity to see and hear the witnesses testify as follows:

"As plainly understood there is a danger of not having a fair trial in a matter in which the judicial officer is required to decide the case on the basis of evidence he or she has not heard in court. This is because the judicial officer's ability to evaluate credibility is believed to be influenced by the demeanour of the witnesses. Failure of court to which a case is assigned at first instance to handle it to completion may in some situations have a prejudicial effect on the proceedings and result into an ineffective trial. But for the trial to be found to have been ineffective based on such a procedural irregularity, it should be demonstrated that the error made it impossible to ensure that a fair decision is reason. (sic) Whether an order should be made for a criminal case to be tried de novo depends on the circumstances of each case."

However, the judge was not ordered to try the case *de novo*, rather, he was directed to write another judgment to replace one that was missing from the record of the court, on the basis of evidence that was taken by another judge who, as the record indicated had already handed down

judgment and convicted and sentenced some of the suspects and acquitted others. The judge then reasoned that though there was no provision in the Trial on Indictments Act (TIA) for taking over criminal proceedings by a successor judge, there were provisions in the Magistrates Courts Act (section 144 (1) and in the Civil Procedure Rules (Order 18 rule 1) which enable a judge to take over a matter where the previous judge is prevented from completing the trial of a suit from the stage at which the predecessor judge left it.

He concluded his musings with observations that the need to observe the demeanour of witnesses is no longer respected and settled it in his mind that he could re-evaluate the evidence and write a judgment as directed by the Court of Appeal as follows:

> *"**Since the law does not clothe the trial Judicial officer with a divine insight into the hearts and minds of the witnesses, it is now well settled that the right to a fair trial is not violated when the case is decided by a judicial officer who never recorded or partly recorded the evidence in the case.** It is on that basis and in the light of the directions given by the Court of Appeal that I proceed to write this judgment based on the record of trial."*

Clearly, the decision to go on and implement the order of the Court of Appeal was not based on any law in the books. Neither was it based on any known legal precedent of this court or of the Supreme Court. The judge then went ahead to prepare a judgment which he delivered, as has already been stated, on the basis of an order issued by the Court of Appeal.

We note that the delivery of the second judgment led to the creation of a record that has a major contradiction. While the record, at page 90, shows that the court convicted Opiyo Wilfred and Arop Charles and acquitted Opira Saul alias Ocai, Okot Festo and Ocaya O. Thomas, at

page 132 thereof, the same record shows that all five accused persons in the case were several years later convicted of the same offence.

We are therefore of the firm opinion that the writing and delivery of a second judgment in a case where the verdict and sentences had been pronounced by the trial judge after a full trial placed the convicts in this appeal in double jeopardy.

Double jeopardy

Black's Law Dictionary, 9th Edition by West, defines *"double jeopardy"* as, *"the fact of being prosecuted or sentenced twice for the same offence."* While the court in this case did not order a retrial, it ordered that the appellants be subjected to evaluation of evidence adduced at their trial by another judge after the trial had been concluded with their conviction and acquittal, which was followed by the sentencing of two convicts and release of the three that were acquitted. This, in our opinion, amounted to being subjected to another trial because the trial process not only includes the indictment and the taking of evidence; the ultimate purpose of a criminal trial is the delivery of a decision against the suspects which is followed either with an acquittal and discharge or punishment for the offence. Therefore, although the appellants were not subjected to a full re-trial, we are of the firm opinion that the conviction and subsequent sentencing of the convicts brought the principles in Article 28 (9) of the Constitution to bear. Article 28 (9) provides as follows:

> **(9) A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, *except upon the***

order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

In the instant case, the 3rd, 4th and 5th appellant were not before the Court of Appeal in Criminal Appeal No 337 of 2014 in which the order for a fresh judgment was made because the DPP did not appeal against their acquittal. No appeal was heard and no review proceedings took place because there was no judgment on the record of the court. The 3rd and 4th appellants were free men going on with their lives but on 27th November 2017, a warrant was issued for their arrest for them to await the delivery of another judgment in a trial that they were confident was concluded 4 years before, on 19th August 2013.

The rationale for the principles that arise from Article 28 (9) of the Constitution, *autrefoir acquit* and *autrefoir convict* have been applied in many court decisions in this jurisdiction. However, we found none where a comprehensive rationale for the principles was laid down. We therefore had recourse to an article on the subject in the Journal of Criminal Law by Claire de Than & Edward Shorts, in which they summarised the principles that are the basis of the two defences or rules as follows:

> *"The underlying rationale behind the twin rules of autrefois acquit and autrefois convict, 'nemo debet bis puniri pro uno delicto' – no man shall be placed in peril of legal penalties more than once upon the same accusation – stems from numerous public policy and public interest considerations. Amongst these include the proposition that once the accused has been found guilty or innocent of an offence he should not have to again go through the oppressive ordeal of trial, or live under the continual threat of trial for the same offence. Apart from the resulting psychological stress and physical torment, other important residual harmful effects are evident if such a rule were not present. In particular, the on-going risk of damage to one's career and home life, the financial harm and social stigma which may result – if there was no end to the possible repetition of a case ad infinitum. Other arguments put forward*

for maintaining this rule include the general notion that the public should have complete confidence and trust in the administration of justice. ***One method of achieving this confidence is the avoidance of the creation and application of contradictory decisions.*** *In the absence of the autrefois safeguards there is a real possibility that the public might view judicial decisions with a high degree of suspicion since verdicts would not finally dispose of the matter. This danger would remain in spite of the discovery of new evidence incriminating the accused or a later admission of guilt by a person already acquitted. Allied to the above discussion is the danger that if the prosecution were permitted to repeatedly bring proceedings against an accused for the same offence covering the same matter, then eventually he might be convicted of a crime he did not commit. In recent times it has been forcibly suggested that if the autrefois rule did not exist the police might not investigate a crime fully, knowing that they would be able to get a 'second bite of the cherry.'"*[1]

{Emphasis added}

Ironically, in this case it is not the police that got a second bite of the cherry; rather it is the prosecution, through no effort at all on their part, that got that *"second bite."*

In **Haynes v Davis, [1914-15] All ER Rep Ext 1368,** Lush, LJ at page 1373-1374, dissenting from the majority decision of the court in that particular case that the defence applied, recognised that there are three conditions upon which an accused person may rely upon the *autrefois* defence as follows:

> *It has been constantly laid down, though in somewhat different terms, that there are three conditions that must be fulfilled before the plea of autrefois acquit can be successfully applied. Reading from Russell on Crimes (7th ed, pp 1982-3), under the heading 'Autrefois Acquit,' the*

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[1] *Double Jeopardy-Double Trouble,* JCL 2000, Volume 64, Issue 6, https://journals.sagepub.com/doi/abs/10.1177/002201830006400610

three conditions are there stated thus: The author, after saying that "at common law a man who has once been tried and acquitted for a crime may not be tried again for the same offence if he was 'in jeopardy' on the first trial," then proceeds as follows: "He was so 'in jeopardy' if (1) the court was competent to try him for the offence; (2) the trial was upon a good indictment on which a valid judgment of conviction could be entered; and (3) the acquittal was on the merits, that is, by verdict on the trial, or in summary cases by dismissal on the merits, followed by a judgment or order of acquittal." I quite agree that an "acquittal on the merits" does not necessarily mean that the jury or the magistrate must find as a matter of fact that the person charged was innocent; it is just as much an "acquittal on the merits" if the judge or the magistrate were to rule, upon the construction of an Act of Parliament, that the accused was in law entitled to be acquitted as in law he was not guilty, and to that extent the expression "acquittal on the merits" must be modified. But I think that the expression is used by way of antithesis to a dismissal of the charge upon a technical ground which is a bar to the adjudicating upon it; and I think the antithesis is between an adjudication that the person charged is not guilty upon some matter of fact or law and a discharge of the person charged because there are reasons why the court could not proceed to find if he is guilty.

We are of the view that all three of the conditions stated above for the defence to apply were satisfied in this case. Although there was no retrial in which the appellants would have had to plead anew to the offence, re-writing the judgment after one had already been delivered and conviction and sentences, as well as acquittal pronounced would have entitled the appellants to the defences of both *autrefoir acquit* and *autrefoir convict.*

The right to be heard

It is important to note that the 3rd and 4th appellants had no opportunity to contest or challenge the order of the Court of Appeal to have them re-arrested. Neither did they have the opportunity to contest the order that another judge who was not the trial judge in their case re-writes the

judgment. This is of course because the DPP did not appeal against their acquittal to this court.

The 1st and 2nd appellants were before the Court of Appeal when their conviction and sentences were set aside. They were therefore aware that a new judgment would be written. However, it appears that the second judge did not make any effort to inform the 3rd and 4th appellants that he was to deliver another judgment in a case where they had already been acquitted. They must have been very surprised when they learnt that they were to be re-arrested, or when they were re-arrested pursuant to the issue of warrants of arrest against them to attend court and receive judgment. We are of the view that, at the very least, the court ought to have informed the 3rd and 4th appellants, as well as Festo Okot that there was an order that was issued by this court setting aside their acquittal and that a fresh judgment was to be written in the matter. They would have then had an opportunity to challenge the writing of the second judgment in a matter where they had already been acquitted. We do not think that it was sufficient for the court to simply write a judgment and then issue warrants to have them arrested to deliver it, even if this Court ordered so.

Article 44 (c) of the Constitution provides that the right to fair hearing is non derogable. The order that was made by this court in Criminal Appeal No 337 of 2014 on the 27th November 2012 was as follows:

> *"We find that the trial was not concluded as required by law. Be that as it may, the proceedings on (the) trial court record up to the point the assessors gave their opinion are valid.*
>
> *However, this leaves (the) trial process incomplete as it is without judgment. Accordingly, we order that the trial court file be returned to Gulu High Court and placed before the Senior Resident Judge.*
>
> *We direct that the said Judge proceeds to write and deliver a judgment on the basis of the evidence adduced at the trial and the opinion of the*

assessors before justice Owiny-Dollo (as he then was) as soon as possible.

In the meantime, the appellants are remanded in custody in Gulu Central Prison awaiting he judgment. ***We direct that a warrant of arrest issues in respect of Opira Saul, Okot Festo and Ocaya O. Thomas for the purpose of producing them before the trial court to await the delivery of the judgment.*"**

{Emphasis added}

We note that the warrant of arrest was supposed to issue before delivery of judgment for the appellants *"to wait until the judgment was ready for delivery."* Perhaps, that would have made it possible for the appellants that were acquitted to challenge the delivery of the second judgment. The record on the other hand shows that after he prepared the judgment, Mubiru, J could not deliver it because the hitherto free men that had reverted to being suspects had not been arrested yet. This was so on 28th February 2019, 1st April 2019 and 12th June 2019 when the judge noted that he could not deliver judgment in the absence of the accused persons.

We therefore find that the rights of the 3rd and 4th appellant's, as well as Festo Okot's rights to fair hearing were denied them when the judge proceeded to write a second judgment without their knowledge.

Finally, in respect of re-writing the judgment, it is necessary that we with the greatest respect, emphasise that there was no legal basis for a judge that did not try the accused persons to write a judgment in the case, as the judge himself established before the event, at pages 2 and 3 of his judgment. The judgment that he wrote had the unfortunate effect of setting aside 3 acquittals that had already been pronounced by the same court, contrary to Articles 28 (9) and 44 (c) of the Constitution.

In addition, Article 20 (2) of the Constitution provides that:

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

We therefore have the duty to uphold the Constitutional provisions that we have already set out and discussed above. This not only applies to the 3rd and 4th appellants, but also to the 1st and 2nd appellants and Festo Okot who was still at large when the judgment was delivered. Though the 1st and 2nd appellants did not appeal against the legality or propriety of the 2nd judgment they sought to challenge it on other grounds, as well as the sentence of 38 years that was imposed upon them anew after it. We found no legal basis upon which to consider their appeals because there was no legal basis for the judge to write the second judgment, as he did.

Rule 2 (2) of the Court of Appeal Rules preserves the inherent powers of this court in the following terms:

(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay.

We have deemed it necessary to employ this rule to dispose of the appeal as it seems most appropriate to do in the circumstances of this case.

But before we take leave of this appeal, it came to our attention during this Criminal Session held in Gulu, that after judgment is delivered by the court in these cases, the Office of the Director of Public Prosecution does not make any effort to ensure that their own records on the prosecution file are complete. We observed this in **Criminal Appeal No**

77 of 2020, Okello Robert v Uganda, where the appellant was convicted of the offence of aggravated robbery and sentenced to 42 years' imprisonment. He appealed against both conviction and sentence but at the hearing of his appeal, his advocate pointed out that there was no judgment on the record of appeal. Court made efforts to try and trace the judgment but it could not be found. However, the judges' notes showed that he delivered judgment and then proceeded to sentence the convict. We had to discharge the appellant in that appeal because we could not consider it without a copy of the judgment but he had already been in lawful custody since the time he was arresed for 7 years and 9 months.

This is the second case during the same session where there was no copy of the judgment on the record. We therefore deemed it necessary to point out that, similar to the court, the Office of the Director of Public Prosecutions (ODPP) has got to ensure that in every trial that they conclude, they keep a complete record of the proceedings. There is no law to compel them to collect judgments but it would be prudent for them to do so. Where judgment has been delivered by court, especially in trials for serious crimes under the TIA, the staff of the ODPP should secure and keep a copy of the judgement and sentence handed down. This would help to guard against situations like the one that we are faced with in this case and are forced, in the interests of justice, to release appellants without formally considering the substantive grievances under the law that cause them to appeal.

In conclusion, there being no legal basis for the judgment that was the subject of this appeal, and the same having occasioned a failure of justice, we quash it. As a result, the convictions against all of the appellants and Okot Festo are quashed. The sentences against all of the appellants are accordingly set aside.

We already ordered, on 27th March 2023, that Opira Saul alias Ocai, Okot Festo and Ocaya O. Thomas be set free unless they were held on other charges. We now order that Opio Wilfred (the 1st appellant) and Arop Charles (2nd appellant) be set free forthwith, unless they are being held on other charges. We also recall that a warrant of arrest still hangs over the head of Okot Festo who was not party to this appeal but whom we ordered be set free of the conviction. For the avoidance of any doubt, we hereby set the warrant aside.

Dated at Gulu this 18th day of May 2023.

Frederick Egonda-Ntende
JUSTICE OF THE COURT OF APPEAL

Catherine Bamugemereire
JUSTICE OF THE COURT OF APPEAL

Irene Mulyagonja
JUSTICE OF THE COURT OF APPEAL