

## CHAPTER 116

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## CHAPTER 116

### THE CRIMINAL PROCEDURE CODE ACT.

*Commencement:* 15 June, 1950.

**An Act to make provision for the procedure to be followed in criminal cases.**

#### PART I—INTERPRETATION.

##### 1. Interpretation.

In this Code, unless the context otherwise requires—

- (a) “chief magistrate” means any person whose appointment to be, or to act as, a chief magistrate has been published in the Gazette;
- (b) “cognisable offence” means any offence—
  - (i) which on conviction may be punished by a term of imprisonment for one year or more; or
  - (ii) which on conviction may be punished by a fine exceeding four thousand shillings;
- (c) “complaint” means an allegation that some person known or unknown has committed or is guilty of an offence;
- (d) “officer in charge of a police station” includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station house, or unable from illness or other cause to perform his or her duties, the police officer present at the station house who is next in rank to that officer, and is above the rank of constable, or, when the Minister so directs, any other police officer so present;
- (e) “police officer” includes any member of a police force established under the Constitution or the Police Act;
- (f) “police station” means a post or place appointed by the Inspector General of Police to be a police station, and includes any local area policed from the station.

PART II—GENERAL PROVISIONS.

*Arrest, escape and retaking.*

**2. Arrest.**

(1) In making an arrest the police officer or other person making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If a person forcibly resists the endeavour to arrest him or her, or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect the arrest.

(3) Nothing in this section shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

**3. Search of place entered by person sought to be arrested.**

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of that place shall, on demand of the person acting under the warrant or such police officer, allow him or her free ingress to the place and afford all reasonable facilities for a search in it.

(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter the place and search in it, and in order to effect an entrance into the place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his or her authority and purpose, and demand of admittance duly made, he or she cannot otherwise obtain admittance.

**4. Power to break out for purposes of liberation.**

Any police officer or other person authorised to make an arrest may break out of any house or place in order to liberate himself or herself or any other person who, having lawfully entered for the purpose of making an arrest, is

detained there.

**5. No unnecessary restraint.**

The person arrested shall not be subjected to more restraint than is necessary to prevent his or her escape.

**6. Search of person arrested.**

- (1) Whenever a person is arrested—
  - (a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or
  - (b) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he or she makes over the person arrested, may search that person and place in safe custody all articles, other than necessary wearing apparel, found upon him or her.

(2) Notwithstanding subsection (1), a police officer may search any person who has been arrested and may take possession of anything found on the person which might reasonably be used as evidence in any criminal proceedings.

**7. Power of police officer to detain and search vehicles and persons.**

(1) Any police officer may stop, search or detain any vessel, boat, aircraft or vehicle in or upon which there is reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having in his or her possession or conveying in any manner anything stolen or unlawfully obtained, and may seize any such thing.

(2) Any police officer searching any building, vessel, carriage, box, receptacle or place under section 70 of the Magistrates Courts Act who finds in that building, vessel, carriage, box, receptacle or place anything which he or she reasonably suspects to have been stolen or unlawfully obtained may seize that thing, notwithstanding that it is not anything for which he or she is searching by virtue of the warrant.

## **8. Mode of searching women.**

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

## **9. Power to seize offensive weapons.**

A police officer or other person making any arrest may take from the person arrested any offensive weapons which he or she has about his or her person, and shall deliver all weapons so taken to the court or officer before which or whom the police officer or person making the arrest is required by law to produce the person arrested.

## **10. Arrest without warrant.**

Any police officer may, without an order from a magistrate and without a warrant, arrest—

- (a) any person whom he or she suspects upon reasonable grounds of having committed a cognisable offence, an offence under any of the provisions of Chapter XVI of the Penal Code Act or any offence for which under any law provision is made for arrest without warrant;
- (b) any person who commits a breach of the peace in his or her presence;
- (c) any person who obstructs a police officer while in the execution of his or her duty, or who has escaped or attempts to escape from lawful custody;
- (d) any person whom he or she suspects upon reasonable grounds of being a deserter from the Uganda Peoples' Defence Forces;
- (e) any person whom he or she finds in any highway, yard or other place during the night and whom he or she suspects upon reasonable grounds of having committed or being about to commit a felony;
- (f) any person whom he or she suspects upon reasonable grounds of having been concerned in any act committed at any place out of Uganda which, if committed in Uganda, would have been punishable as an offence, and for which he or she is, under the provisions of any written law, liable to be apprehended and detained in Uganda;
- (g) any person having in his or her possession without lawful excuse, the burden of proving which excuse shall lie on that person, any implement of housebreaking;

- (h) any person for whom he or she has reasonable cause to believe a warrant of arrest has been issued;
- (i) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to that thing.

#### **11. Arrest of vagabonds, habitual robbers, etc.**

Any officer in charge of a police station may in like manner arrest or cause to be arrested—

- (a) any person found taking precautions to conceal his or her presence within the limits of that station under circumstances which afford reason to believe that he or she is taking the precautions with a view to committing a cognisable offence;
- (b) any person within the limits of that station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself or herself;
- (c) any person who is by repute an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury.

#### **12. Procedure when police officer deposes subordinate to arrest without warrant.**

When any officer in charge of a police station requires any officer subordinate to him or her to arrest without a warrant (otherwise than in his or her presence) any person who may lawfully be arrested without a warrant, he or she shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

#### **13. Refusal to give name and residence.**

(1) When any person who in the presence of a police officer has committed or has been accused of committing a noncognisable offence refuses on the demand of the officer to give his or her name and residence, or gives a name or residence which the officer has reason to believe to be false, he or she may be arrested by the officer in order that his or her name or residence may be ascertained.

(2) When the true name and residence of that person have been ascertained, he or she shall be released on his or her executing a bond, with or without sureties, to appear before a magistrate if so required; except that if that person is not resident in Uganda, the bond shall be secured by a surety or sureties resident in Uganda.

(3) If the true name and residence of the person are not ascertained within twenty-four hours from the time of arrest, or if he or she fails to execute the bond or, if so required, to furnish sufficient sureties, he or she shall forthwith be brought before the nearest magistrate having jurisdiction.

#### **14. Disposal of persons arrested.**

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

#### **15. Arrest by private person.**

(1) Any private person may arrest any person who in his or her view commits a cognisable offence, or whom he or she reasonably suspects of having committed a felony.

(2) Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his or her servants or persons authorised by him or her.

#### **16. Disposal of person arrested by private person.**

(1) Any private person who arrests any person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take the person to the nearest police station.

(2) If there is reason to believe that the person arrested comes under section 10 of this Code, a police officer shall rearrest the person.

(3) If there is reason to believe that the person arrested has committed a noncognisable offence, and he or she refuses on the demand of a police officer to give his or her name and residence, or gives a name or residence

which the officer has reason to believe to be false, he or she shall be dealt with under section 13.

(4) If there is no sufficient reason to believe that he or she has committed any offence, he or she shall be released at once.

#### **17. Detention of persons arrested without warrant.**

(1) When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought may in any case and shall, if it does not appear practicable to bring the person before an appropriate magistrate's court within twenty-four hours after he or she was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his or her executing a bond, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the bond; but where any person is retained in custody, he or she shall be brought before a magistrate's court as soon as practicable.

(2) An officer in charge of a police station may discharge a person arrested on suspicion on any charge when, after due police inquiry, insufficient evidence is, in his or her opinion, disclosed on which to proceed with a charge.

(3) Where, on a person's being taken into custody in the circumstances mentioned in subsection (1) it appears to the police officer in charge of the police station to which the person is brought that the inquiry into the case cannot be completed forthwith, he or she may release that person on his or her executing a bond, with or without sureties, for a reasonable amount to appear at such a police station and at such a time as is named in the bond unless he or she previously receives a notice in writing from the officer in charge of that police station that his or her attendance is not required; and any such bond may be enforced as if it were conditioned for the appearance of that person before the magistrate's court having jurisdiction in the area in which the police station named in the bond is situated.

#### **18. Police to report arrests.**

Officers in charge of police stations shall report to the nearest magistrate within twenty-four hours the cases of all persons arrested without warrant

within the limits of their respective stations, whether the persons have been admitted to bail or otherwise.

**19. Offence committed in magistrate's presence.**

When any offence is committed in the presence of a magistrate within the local limits of his or her jurisdiction, he or she may arrest or order any person to arrest the offender, and may upon the arrest, subject to the provisions of this Code as to bail, commit the offender to custody.

**20. Arrest by magistrate.**

Any magistrate may at any time arrest or direct the arrest in his or her presence, within the local limits of his or her jurisdiction, of any person for whose arrest he or she is competent at the time and in the circumstances to issue a warrant.

**21. Recapture of person escaping.**

If a person in lawful custody escapes or is rescued, the person from whose custody he or she escapes or is rescued may immediately pursue and arrest him or her in any place in Uganda.

**22. Sections 3 and 4 to apply to arrests under section 21.**

Sections 3 and 4 shall apply to arrests under section 21, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

**23. Assistance to magistrate or police officer.**

Every person is bound to assist a magistrate or police officer reasonably demanding his or her aid—

- (a) in the taking or preventing the escape of any other person whom that magistrate or police officer is authorised to arrest;
- (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

*Preventive action of the police.*

**24. Police to prevent cognisable offences.**

Every police officer may interpose for the purpose of preventing, and shall to the best of his or her ability prevent, the commission of any cognisable offence.

**25. Information of design to commit offences.**

Every police officer receiving information of a design to commit any cognisable offence shall communicate the information to the police officer to whom he or she is subordinate and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

**26. Arrest to prevent offences.**

A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.

**27. Prevention of injury to public property.**

A police officer may of his or her own authority interpose to prevent any injury attempted to be committed in his or her view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

PART III—APPEALS.

*Appeals from courts.*

**28. Notice of appeal.**

(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.

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

- (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.

(3) If the appellant or an advocate on his or her behalf indicates at the time of filing a notice of appeal that he or she wishes to peruse the judgment or order appealed against before formulating the grounds of appeal, he or she shall be provided with a copy of the judgment or order, free of charge, and the grounds of appeal shall be lodged with the registrar within fourteen days of the date of the service on him or her of the copy of the judgment or order.

(4) Where the appellant is represented by an advocate or the appeal is preferred by the Director of Public Prosecutions, the grounds of appeal shall include particulars of the matters of law or of fact in regard to which the court appealed from is alleged to have erred.

(5) Where an appellant who is not represented has not availed himself or herself of the provisions of subsection (3), nothing in this section shall be read as preventing the appellate court from permitting the appellant from raising any proper ground of appeal orally at the hearing of the appeal.

(6) The appellate court may, for good cause shown, extend the periods mentioned in subsection (1) or (3).

### **29. Fee on appeal.**

Except insofar as it is waived or reduced, the fee prescribed for filing the notice of appeal shall be paid at the time of lodging the notice and if the fee, if any, is not paid the notice shall not be received.

### **30. Appellant in prison.**

If the appellant is in prison he or she may present any document relating to his or her appeal to the officer in charge of the prison who shall then forward the document to the registrar, and for the purpose of section 28 on the date of the presentation, any such document shall be deemed to have been lodged with the registrar.

**31. Application for extension of time; abandonment of appeal.**

(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.

(2) Except in the case of the Court of Appeal or the Supreme Court, the appellate court may summarily reject an application of the kind mentioned in subsection (1) without hearing the applicant or his or her advocate if, on perusing the supporting affidavit, it is of the opinion that no grounds for granting the application are disclosed.

(3) An appellant may, at any time before the hearing of the appeal, abandon his or her appeal by giving notice in writing of the abandonment to the registrar of the appellate court, and upon the notice being given the appeal shall be deemed to have been dismissed by the appellate court.

**32. Summary dismissal of appeal.**

(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—

- (a) in the case of an appeal against sentence only, where it considers that the sentence is not excessive; or
- (b) 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.

(2) Notwithstanding subsection (1)—

- (a) nothing in this section shall be read as preventing the appellate court, or a judge of that court, from dismissing an appeal summarily where subsection(1)(b) applies with regard to conviction, and directing that it be heard as regards sentence only; and
- (b) no appeal shall be summarily dismissed where the notice or grounds of appeal has been signed by an advocate, unless the advocate has had an opportunity of being heard in support of the notice or grounds of appeal.

(3) Except where a judgment or order has been copied for the purpose of section 28(3), no part of the proceedings of the court in respect of which an appeal has been preferred shall be copied unless the appellate court makes a direction to that effect after perusing the record in accordance with subsection (1).

(4) This section does not apply to appeals to the Court of Appeal or the Supreme Court.

### **33. Notice of hearing.**

(1) If the appellate court does not dismiss an appeal summarily, it shall cause notice to be given to the appellant and to the respondent or to their advocates, if any, of the time and place at which the appeal will be heard and shall furnish the respondent with a copy of the proceedings and of the grounds of appeal.

(2) At the hearing of an appeal the appellate court shall hear the appellant and the respondent or their advocates.

### **34. Powers of appellate court on appeals from convictions.**

(1) The appellate court on any appeal against conviction shall allow the appeal if it thinks that the judgment should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that it should be set aside on the ground of a wrong decision on any question of law if the decision has in fact caused a miscarriage of justice, or on any other ground if the court is satisfied that there has been a miscarriage of justice, and in any other case shall dismiss the appeal; except that the court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to subsection (1), the appellate court on any appeal may—

- (a) reverse the finding and sentence, and acquit or discharge the appellant, or order him or her to be tried or retried by a court of competent jurisdiction;
- (b) alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence by imposing any sentence

- provided by law for the offence; or
- (c) with or without any reduction or increase and with or without altering the finding, alter the nature of the sentence.

(3) Where the appellate court maintains or imposes a sentence of imprisonment not exceeding three years in the exercise of its powers under subsection (1) or (2), if the appellant satisfies the court that there are special reasons, having regard to the nature of the offence for which he or she was convicted, his or her age or antecedents that the sentence should be suspended, the court may order that it be suspended and shall record its reasons for making the order.

(4) An order suspending a sentence under subsection (3) is referred to in this Code as a “suspension order” and the period during which any of the sentence remains suspended as the “suspension period”.

(5) Where a suspension order is made, the sentence to which the order relates shall not continue to have effect unless the appellant commits another offence punishable by a substantive sentence or imprisonment without the alternative of a fine within the period of two years next following the date upon which the sentence would have expired, calculated without remission.

(6) Before making a suspension order the appellate court shall explain to the appellant in ordinary language his or her liability under subsection (5).

(7) If it appears to a court that a person in respect of whom a suspension order has been made has been convicted of an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period, the court shall—

- (a) issue a summons requiring the person to appear at the time and place specified in the summons;
- (b) issue a warrant for his or her arrest; or
- (c) if he or she is in custody, issue a warrant requiring his or her production before the court,

as the circumstances shall require.

(8) Where a person appears before the court in obedience to a summons or warrant issued under subsection (7) and it is proved to the satisfaction of the court that the person—

- (a) is an offender in respect of whom a suspension order was made;

and

- (b) has been convicted on an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period,

the court shall, subject to subsection (9) by warrant under its hand, order that the offender be committed to prison to serve the sentence to which the suspension order relates, and any such sentence shall be deemed to commence from the date on which the commitment warrant was issued; except that—

- (c) if the offender is already serving a sentence of imprisonment, the warrant of commitment shall direct that the sentence shall be executed after the expiration of the total period of imprisonment to which the offender is already subject; and
- (d) if the offender had served any period of a sentence before the suspension order was made, in addition to any remission to which he or she is entitled under the Prisons Act, he or she shall be granted remission equivalent to any such period.

(9) Notwithstanding subsection (8), if the court before which an offender appears under the provisions of subsection (8) is of the opinion, having regard to all the circumstances (including the trivial nature of the offence committed during the suspension period), that it would be inexpedient to make an order committing the offender to prison, it may direct that the offender be discharged; and if the suspension period has not expired the suspension order shall continue to have effect for the remainder of that period.

(10) Jurisdiction under subsections (7), (8) and (9) shall be exercised—

- (a) in the case of a suspension order made on an appeal to the High Court, by a judge of that court;
- (b) in the case of a suspension order made on an appeal to a court presided over by a chief magistrate, by the chief magistrate having jurisdiction over the area within which the offender happens to be.

### **35. Powers of appellate court on appeals from acquittals.**

The appellate court may, on an appeal from an acquittal or dismissal, enter such decision or judgment on the matter as may be authorised by law and make such order or orders as may be necessary.

**36. Powers of appellate court on appeals from other orders.**

The appellate court may on any appeal from any order other than a conviction, acquittal or dismissal alter or reverse the order.

**37. Appellant's right to be present at appeal.**

(1) An appellant who is in custody shall be entitled to be present at the hearing of the appeal.

(2) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his or her paying all expenses incidental to his or her transfer to and from the place where the court sits for the determination of the appeal; except that the court may direct that the appellant be brought before the court in any case where in the opinion of the court his or her presence is advisable for the due determination of the appeal, in which case the expenses shall be defrayed out of the Consolidated Fund.

**38. Delivery of judgment.**

(1) On the termination of the hearing of an appeal, the court shall, either at once or at some future date which shall either then be appointed or of which notice shall subsequently be given, deliver judgment in open court; except that—

- (a) in the case of an appeal against a conviction, if the court is of the opinion that the appeal shall be allowed and the appellant discharged, it may on the termination of the hearing of the appeal order the release of the appellant if he or she is in custody; and
- (b) if it is inconvenient for the judge or any of the judges who heard the appeal to deliver the judgment, the judgment may be read in open court by another judge or by the registrar at the time and place appointed or fixed.

(2) In this section, “judge” occurring in subsection (1)(b) includes a magistrate.

**39. Appellate court to make orders conformable with judgment.**

When a case is decided on appeal by the appellate court, it shall thereupon make such orders as are conformable to the judgment or order and shall if necessary cause the record of the lower court to be amended in accordance with that judgment or order.

#### **40. Admission of appellant to bail and custody pending appeal.**

(1) A convicted appellant who is not admitted to bail shall, pending the determination of his or her appeal, be treated as an appellant prisoner for the purposes of the Prisons Act.

(2) The appellate court may, if it sees fit, admit an appellant to bail pending the determination of his or her appeal; but when a magistrate's court refuses to release a person on bail, that person may apply for bail to the appellate court.

(3) The time during which an appellant, pending the determination of his or her appeal, is admitted to bail, and subject to any directions which the appellate court may give to the contrary on the appeal, the time during which the appellant, if in custody, is treated as an appellant prisoner under this section, shall not count as part of any term of imprisonment under his or her sentence; and the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the appellate court on appeal, shall, subject to any directions which may be given by the court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he or she is not in custody, as from the day on which he or she is received into prison under the sentence.

(4) Notwithstanding subsection (3), when an appellant has been in custody pending the determination of his or her appeal for a period longer than six weeks then, unless the appellate court otherwise orders, his or her sentence shall begin to run so soon as he or she has been in custody for a total period of six weeks.

(5) Notwithstanding subsection (1), a convicted appellant may, at the time of lodging notice of appeal, elect to be treated pending the determination of his or her appeal as a convicted criminal prisoner for the purposes of the Prisons Act.

(6) Where a convicted appellant elects in accordance with subsection (5) to be treated as a convicted criminal prisoner, the sentence of that convicted appellant, whether it is the sentence passed by the court of trial or the sentence passed by the appellate court on appeal, shall, subject to any directions by the appellate court to the contrary, commence from the date of the original sentence.

(7) Where a court convicts any person and sentences him or her to a term of imprisonment, it shall inform the person of his or her right of election under subsection (5).

**41. Further evidence.**

(1) In dealing with an appeal from a lower court, the appellate court, if it thinks additional evidence is necessary, may record its reasons and may take that evidence itself or may direct it to be taken by the lower court.

(2) When the additional evidence is taken by a lower court, that court shall certify the evidence to the appellate court which issued the direction which shall thereupon proceed to dispose of the appeal.

(3) Unless the appellate court otherwise directs, the accused person or his or her advocate shall be present when the additional evidence is taken.

(4) Evidence taken under this section shall be taken as if it were evidence at a trial before the lower court.

(5) In dealing with an appeal from a lower court, the appellate court may, if it thinks fit, call for and receive from the lower court a report on any matter connected with the appeal.

**42. Number of judges on an appeal.**

(1) Appeals from magistrates courts shall be heard by one or more judges as the Chief Justice shall direct.

(2) The direction referred to in subsection (1) may be given before the hearing of the appeal or at any time before judgment is delivered.

(3) If on the hearing of an appeal the court is equally divided in opinion, the appeal shall be dismissed.

**43. Abatement of appeal.**

(1) Every appeal from a magistrate's court, except an appeal from a sentence of a fine, shall finally abate on the death of the appellant.

(2) If, after diligent search, any document relevant to an appeal

cannot be served upon an appellant, the appellate court may order that the appeal be deemed to be abated or may give such other directions as it thinks fit.

#### **44. Dismissal of appeal for want of prosecution.**

(1) The appellate court may dismiss an appeal for want of prosecution—

- (a) if the appellant, at any time before the appeal is determined, escapes from custody or fails to appear after he or she has been released on bail; or
- (b) if the appellant fails to take any necessary step in prosecuting his or her appeal within the time allowed and has not made an application for extension of time.

(2) Notwithstanding subsection (1), the appellate court may consider and determine an appeal in the absence of the appellant and may make such other order as it thinks fit.

(3) Where on the dismissal of an appeal under section 42 or this section any sentence of imprisonment or of a fine remains to be served or paid, the appellate court may issue a warrant of arrest or make such other order as it deems necessary to enforce the execution of the sentence.

#### **45. Second appeals.**

(1) Either party to an appeal from a magistrate's court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the magistrate's court or of the High Court should be set aside or varied, make any order which the magistrate's court or the High Court could have made, or may remit the case, together with its judgment or order on it, to the High Court or to the magistrate's court for determination, whether or not by way of rehearing, with such directions as the Court of Appeal may think necessary.

(3) Notwithstanding subsection (2), in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not, except as provided in subsection

(4), increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the magistrate's court or by the High Court, unless the Court of Appeal thinks that the sentence was an unlawful one, in which case it may impose such sentence in substitution for it as it thinks proper.

(4) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the Court of Appeal may, in respect of the count on which the court considers that the appellant has been properly convicted, either affirm the sentence passed by the magistrate's court or by the High Court, or pass such other sentence, whether more or less severe, in substitution for it as it thinks proper.

(5) Where a party to an appeal has been convicted of an offence and the magistrates court or the High Court could lawfully have found him or her guilty of some other offence and, on the finding of the magistrate's court or of the High Court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved him or her guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the magistrate's court or by the High Court a conviction of that other offence, and pass such sentence in substitution for the sentence passed by the magistrate's court or by the High Court as may be warranted in law for that other offence.

(6) On any appeal brought under this section the Court of Appeal may, notwithstanding that it may be of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(7) For the purposes of this section, the proceedings of the High Court on revision shall be deemed to be an appeal.

(8) The provisions of section 40 other than subsection (2) of that section shall apply to a convicted appellant appealing under this section.

#### **46. Third appeals.**

Where an appeal emanates from a judgment of a magistrate grade II, and either the accused person or the Director of Public Prosecutions has appealed to the chief magistrate, and from there to the High Court, either the accused or the Director of Public Prosecutions may lodge a third and final appeal to

the Court of Appeal with the certificate of the High Court that the matter raises a question of law of great public or general importance or if the Court of Appeal in its overall duty to see that justice is done, considers that the appeal should be heard; except that in such a third appeal by the Director of Public Prosecutions, the Court of Appeal shall only give a declaratory judgment.

**47. Admission to bail pending second appeal.**

A judge of the High Court may in his or her discretion, in any case in which an appeal from a decision of the High Court in its appellate jurisdiction to the Court of Appeal is filed, grant bail pending the hearing of the appeal.

*Revision.*

**48. Power of courts to call for records.**

The High Court may call for and examine the record of any criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate's court.

**49. Power of magistrates to call for records of inferior courts and to report to High Court.**

(1) Any magistrate may call for and examine the record of any criminal proceedings before a magistrate's court inferior to the court which he or she is empowered to hold, and situate within the local limits of his or her jurisdiction, for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the inferior magistrate's court.

(2) If any magistrate acting under subsection (1) considers that any finding, sentence or order of the inferior magistrate's court is illegal or improper, or that any such proceedings are irregular, he or she shall forward the record, with such remarks on it as he or she thinks fit, to the High Court.

(3) In accordance with subsection (2), where a chief magistrate forwards to the High Court the record of a case in which a convicted person is undergoing a sentence of imprisonment which the chief magistrate

considers to be illegal or improper, he or she may release that person on bail pending the determination of the High Court.

**50. Power of High Court on revision.**

(1) In the case of any proceedings in a magistrate's court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may—

- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence;
- (b) in the case of any other order, other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made unless the Director of Public Prosecutions has had an opportunity of being heard, and no order shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by an advocate in his or her own defence.

(3) Where the sentence dealt with under this section has been passed by a magistrate's court, the High Court may inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorise the High Court to convert a finding of acquittal into one of conviction; except that when any person is acquitted of the offence with which he or she was charged but is convicted of another offence, whether charged with that other offence or not, the High Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

(5) Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its powers of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed.

(6) In dealing with a case under this section, the High Court may

pending the final determination of the case release any convicted person on bail; but if the convicted person is ultimately sentenced to imprisonment, the time he or she has spent on bail shall be excluded in computing the period for which he or she is sentenced.

(7) In dealing with a case under this section, the High Court may, if it thinks fit, call for and receive from the magistrate's court before which the case was heard a report on any matter connected with the case.

(8) Where an application is made by the Director of Public Prosecutions under subsection (1) to make an order to the prejudice of an accused person, the application shall be lodged with the registrar within thirty days of the imposition of the sentence unless, for good cause shown, the High Court extends the time.

#### **51. Discretion of court as to hearing parties.**

Except as provided in section 50, no party has any right to be heard either personally or by advocate before the High Court when exercising its powers of revision; but that court may, if it thinks fit, when exercising those powers hear any party either personally or by advocate, and nothing in this section shall be deemed to affect section 50(2).

#### **52. Number of judges in revision.**

All proceedings before the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order on the proceedings may be made or passed by one judge; but when the court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the magistrates court shall be upheld.

#### **53. High Court order to be certified to lower court.**

When a case is revised by the High Court, it shall certify its decision or order to the court by which the sentence or order revised was recorded or passed, and the court to which the decision or order is certified shall then make such orders as are conformable to the decision certified, and, if necessary, the record shall be amended in accordance with the decision or order.

#### **54. Authority to sign on behalf of Director of Public Prosecutions.**

Where an appeal or an application for revision is made by the Director of

Public Prosecutions, the notice or application, as the case may be, shall be signed by him or her or by such other person as he or she may authorise either generally or specifically for that purpose.

**History:** Cap. 107; Act 20/1966; Act 11/1967, s. 48; Act 13/1968; S.I. 135/1968; Act 23/1969; Act 35/1969; Act 13/1970, s. 243; Decree 12/1971; Decree 17/1971, s. 2; Decree 25/1971, s. 2; Decree 26/1971, s. 142; Statute 13/1996, s. 49; Act 6/2000.

### **Cross References**

Constitution of 1995.  
Magistrates Courts Act, Cap. 16.  
Penal Code Act, Cap. 120.  
Police Act, Cap. 303.  
Prisons Act, Cap. 304.

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