**Uganda v Odura**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 19 August 1974

**Case Number:** 228/1974 (28/75)

**Before:** Wambuzi CJ

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Reconciliation – Felony – Reconciliation may not be promoted –*

*Magistrates’ Courts Act, s.* 156 (*U*.).

*[2] Criminal Practice and Procedure – Reconciliation – Terms must be recorded and order of stay made – Magistrates’ Courts Act, s.* 156 (*U*.).Reconciliation the terms of it must be recorded and an order made staying the proceedings.

**Judgment**

**Wambuzi CJ:** The accused was charged with threatening violence contrary to s. 76 (*a*) of the Penal

Code. The record reads as follows:

“The accused and complainant have reconciled s. 156, M.C.A. 1970 complied with.”

The chief magistrate Kabale referred the record to this court with a view to a revisional order being made on the ground that threatening violence is a felony and could not be compounded. In her letter, a senior state attorney for the D.P.P. agreed with the view of the chief magistrate.

S. 76 (*a*) of the Penal Code provides:

“(*a*) Any person who, with intent to intimidate or annoy any person, threatens to injure, assault, shoot or kill any person, or to burn, break or injure any property is guilty of an offence, and is liable to imprisonment for a period not exceeding four years.”

S. 156 of the Magistrates’ Courts Act under which the trial magistrate purported to act provides:

“156. In criminal cases, a magistrate’s court may promote reconciliation, and encourage and facilitate the

settlement in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature, not amounting to felony and not aggravated in degree in terms of payment of compensation or other terms approved by such court, and may, thereupon, order the proceedings to be stayed.”

A felony is defined in s. 4 of the Penal Code as “an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more”. The offence with which the accused was charged is not declared to be a misdemeanour and is punishable with imprisonment for four years. It follows therefore that the offence is a felony within the meaning of s. 4 of the Penal Code. It was therefore not legal to promote reconciliation in respect thereof. The proceedings relating to the reconciliation are accordingly set aside and it is directed that the charge shall be proceeded with in the normal way unless otherwise withdrawn. It is also pointed out that when a reconciliation is promoted, the terms thereof must be recorded and an order made staying the proceedings. It is not enough to say as in this case that s. 156 has been complied with.

*Order accordingly.*

No appearance for the parties.