

COURT OF APPEAL OF
OUAGADOUGOU

CRIMINAL
DIVISION

Case No. 412/2024

JUDGMENT No. 007-3
of 01/19/2026

CASE:

PUBLIC PROSECUTOR
MABUCIG V.

CIVIL PARTY

NATURE OF THE OFFENSE
Illegal tobacco advertising and
illegal promotion of tobacco

DECISION OF THE COURT
See operative part of the judgment

COMPOSITION OF THE COURT

PRESIDING JUDGE:
B. Sébastien DAILA

COUNSEL:
Florence
KOLOGO/DANGO
Maïmounata SANOGO

PROSECUTOR
B. Simon GNANOU

CLERK:
Abdoul Yassir KINDA



BURKINA FASO
Unity - Progress - Justice

HEARING OF JANUARY 19, 2026

The Criminal Division of the Court of Appeal of Ouagadougou (BURKINA FASO), sitting in ordinary public hearing at the Court of Appeal of Ouagadougou on January 19, 2026, with the following present:

Mr. B. Sébastien DAILA, Presiding Judge of the Court of Appeal of Ouagadougou;

PRESIDENT

Ms. Florence KOLOGO/DANGO* and Ms. Maïmounata SANOGO, both Counsellors to the Court;

MEMBERS

In the presence of Mr. B. Simon GNANOU, Deputy Attorney General at the Court of Appeal, acting on behalf of the Public Prosecutor's Office;

PUBLIC PROSECUTOR'S OFFICE

With the assistance of Mr. Abdoul Yassir KINDA, Clerk of the said Court;

CLERK

Has rendered the following judgment in the case between the Public Prosecutor;

On the one hand

And:

La Manufacture Burkinabé de Cigarettes (MABUCIG), a corporation with a capital stock of nine hundred thirty-five million three hundred ninety-six thousand (935,396,000) CFA francs, having its principal place of business in Bobo-Dioulasso, Rue 19-14ZI, Konsa District, P.O. Box 94, IFU No. 793 00 591, Tel: 20 97 21 62, represented by its managing director;

Represented by SCPA TRUST WAY

Charged with unlawful promotion of tobacco and unlawful tobacco advertising;
Acts prohibited and punishable under Articles 1, 2, 3, 16, 18, 36, and 38 of Law No. 40-2010/AN of November 25, 2010, on tobacco control in Burkina Faso;

Appellant on the other hand;

THE COURT

I. FACTS AND PROCEDURE

Following the proceedings initiated by the Public Prosecutor of Burkina Faso before the High Court of Manga against MABUCIG, the court, by judgment No. 10 of January 20, 202 ruled as follows:

“Ruling publicly, after hearing both sides, in a criminal matter and at first instance:

- Dismisses the objections raised by counsel for the Manufacture Burkinabè de Cigarettes (MABUCIG) regarding, on the one hand, the invalidity of the summons and, on the other hand, the presence at the hearing and the filing of a civil claim by the ‘ASSOCIATION AFRIQUE CONTRE LE TABAC,’ abbreviated as ‘ACONTA’;
- Finds the Manufacture Burkinabè de Cigarettes (MABUCIG) guilty of the charges of illegal advertising in favor of tobacco and tobacco products brought against it;
 - As punishment, sentences it to a fine of one million (1,000,000) CFA francs;
 - Takes note of the “ASSOCIATION AFRIQUE CONTRE LE TABAC,” abbreviated as “ACONTA,” not filing a civil claim;
 - Orders the forfeiture of the seized item No. 010, registered by the clerk’s office of this court under No. 28 on August 10, 2020, consisting of a YAMAHA YBR motorcycle, to the Public Treasury, and the destruction of the motorcycle’s trunk;
 - Orders the Manufacture Burkinabè de Cigarettes (MABUCIG) to pay the costs.”;

By letter dated January 21, 2021, SCPA TRUST WAY filed an appeal against this judgment, specifying that its appeal concerns all of its provisions; this appeal was registered with the clerk’s office of the Manga District Court on January 26, 2021, under No. 01;

The case was duly entered on the docket of the Criminal Chamber of the Court of Appeal, and the case was first called for a hearing on January 20, 2025;

The Court, by an interlocutory judgment dated July 21, 2025, dismissed the statute of limitations defense raised by MABUCIG;



MINISTRY OF JUSTICE



After several postponements, the case was finally heard on January 5, 2026;

At the hearing, the appellant explained that although the material elements of the offense were established against her, there was no intent to advertise, but rather the intent to be easily identified to avoid any confusion;

In its closing arguments, the prosecution contended that the offense was sufficiently established; it therefore requested that the contested decision be upheld in its entirety;

The defendant's counsel argues for the reversal of the decision regarding her client's guilt; failing that, she argues, regarding the sentence, for the application of Law 080.... Rather than the 2010 law applied by the first judge; that the confiscation of the motorcycle belonging to them is already a penalty; that she therefore requests that the fine imposed be suspended;

On that note, the case was taken under advisement until January 19, 2026, the date on which the following decision was rendered:

II. DISCUSSION

→ On the admissibility of the appeal

Whereas it follows from Article 323-2 of the Code of Criminal Procedure that the right to appeal a criminal judgment belongs, among others, to the defendant; that Article 323-3 of the 2019 Code of Criminal Procedure, under which the appeal was filed, provides that it must be filed within fifteen (15) days of the judgment being rendered after a hearing;

Whereas, in the present case, the judgment under appeal was rendered after a hearing on January 20, 2021; whereas the appeal was filed within the required fifteen (15)-day period;

Whereas, furthermore, the appeal was filed with the clerk's office of the court that rendered the judgment, in accordance with the legal requirements of Article 323-7 of the Code of Criminal Procedure;

That this appeal complies with the legal requirements regarding form and time limits; that it is appropriate to declare it admissible;

→ On the grounds of the appeal

Whereas, pursuant to Article 323-13 of the Code of Criminal Procedure, "The case is referred to the Court of Appeal

within the limits set by the notice of appeal and by the standing of the appellant, as provided in Article 323-23"; that Article 323-22 of the same code specifies that if the court finds that the appeal, although admissible, is without merit, it shall affirm the judgment under appeal;

Whereas, in the present case, MABUCIG's appeal concerns all provisions of the judgment;

With regard to the elements of the offense, the appellant, who does not dispute the presence of the material elements of the offense, argues that there was no criminal intent; that her criminal intent is nevertheless evident from the facts; that MABUCIG was not unaware that by affixing the brand HAMILTON on the vehicle used to make deliveries as well as on the trunk attached to said vehicle, it would be advertising its products; that through this mobile advertising, it draws the public's attention to its products as effectively as possible;

That the offense is therefore fully established with respect to the appellant;

Whereas, regarding the penalty, first, MABUCIG requests the application of Law No. 080-2015 CNT of November 23, 2015, regulating advertising in Burkina Faso, to the exclusion of Law No. 040-2010 of November 25, 2010, on the fight against tobacco in Burkina Faso;

Whereas it is a principle that a specific law takes precedence over a general law; whereas the new law has not repealed the penalties provided for by the law on the fight against tobacco in Burkina Faso, the latter remains applicable, and the trial judge was correct to refer to it;

Whereas, secondly, MABUCIG seeks a stay of execution on the grounds that she is a first-time offender and has already been punished by the confiscation of her motorcycle; whereas these arguments cannot be upheld because a stay of execution is not a right for a first-time offender, and confiscation is an additional penalty that cannot supersede the principal penalty;

It is therefore appropriate to uphold the contested judgment in its entirety;

MINISTRY OF JUSTICE
BURKINA-FASO
200 FCFA
REVENUE STAMP
F D823 CHSZ 755



Costs

Whereas, pursuant to Article 323-22 of the Code of Criminal Procedure, the Court of Appeal, when upholding the contested judgment, orders the appellant to pay the costs; In the present case, MABUCIG shall be ordered to pay the costs;

FOR THESE REASONS

Ruling publicly, after hearing both sides, in a criminal matter and as the court of last resort:

- On procedural grounds;

Declares the defendant's appeal admissible;

- On the merits

Upholds the contested judgment in its entirety; Orders the appellant to pay the costs.

Thus decided, judged, and pronounced publicly by the Criminal Chamber of the Court of Appeal of Ouagadougou, on the day, month, and year set forth above.

And signed

The President

The Clerk.

-----ILLEGIBLE SIGNATURES FOLLOW-----

-----FOR A CERTIFIED COPY

CONFORMANT TO THE MINUTES

ISSUED TO "ACONTA"

OUAGADOUGOU, MARCH 13, 2026

MINISTRY OF JUSTICE
BURKINA FASO
200 FCFA
MISOA STAMP
CHIEF

F-DG23 FZCV 47303

THE CHIEF CLERK

MINISTRY OF
JUSTICE

Court of Appeal
THE CHIEF

CLERK
OUAGADOUGOU

Thierry X. Martiel
SOME
Chief Clerk