

UGANDA / JUDGMENT

Kavuma v Uganda (Criminal Appeal 59 of 2022) [2024] UGHCCRD 32 (31 March 2024)

[2024] UGHCCRD 32

COURT

HC: Criminal Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Criminal Appeal 59 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 59 OF 2022

(Arising from Buganda Road Chief Magistrates' Court Criminal Case No. 0230 of 2021)\$

KAVUMA IBRAHIM

APPELLANT

Versus

UGANDA

RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU JUDGMENT

The Appellant, Kavuma Ibrahim, brings this Appeal against sentence. He pleaded guilty to two counts. The first was Obtaining Money By False Pretences c/s 305. The second count was Uttering A False Document c/ss 351 and 347 all of The Penal Code Act. On the 31st of May, 2022 the appellant pleaded guilty and HW Kamasanyu Gladys, Chief Magistrate, Buganda Road Chief Magistrates' Court sentenced him on the 1st count to two years and ten months. On the second count he was sentenced to ten months. The sentences were to run concurrently. An additional order of compensation where the appellant was directed to pay the victim fifty eight million shillings \$(58,000,000/-)\$ was made.

Background

When the appellant was first arraigned before the court on the 11th of March 2021, he pleaded 'not guilty'. The Prosecution then called the evidence of PW 1, the complainant called Mugoye Denis. The case then suffered several adjournments. On the 29th of September, 2021, the appellant made a prayer seeking to enter into a plea bargain. The Court was informed by the prosecution that the complainant was not willing to negotiate a plea bargain. The matter was then adjourned for further hearing. Unfortunately, several other adjournments followed.

On the 13th of January, 2022, the Appellant offered to change his plea on both Counts. The charges were read to him however he disputed the facts prompting the Court enter a plea of 'not guilty' on both counts. The matter was then adjourned to the 27th of July, 2022 for further hearing.

On the 23rd of May, 2022, the Appellant offered to change his plea for a second time. On the 24th of May, 2022, the charges were read to him. This time he pleaded guilty and confirmed the facts as correct. A plea of guilty was entered and the appellant was convicted on both counts. All the parties were heard on sentencing and the appellant made his allocutus. The trial magistrate adjourned the hearing to the 31st of May 2022 for sentencing.

On the 31st of May, 2022, the appellant was sentenced as stated before

The Appellant being dissatisfied with the orders of the Trial Magistrate lodged this Appeal against sentence with the following grounds of Appeal.

1. Whether the learned Trial Magistrate erred in law and fact when she passed an excessively harsh sentence against the Appellant thereby occasioning a miscarriage of justice.
- 2. Whether the learned Trial Magistrate erred in law and fact when she ignored the prevailing mitigating factors of sentencing hence occasioning a miscarriage of justice.
- 3. Whether the Learned Trial Magistrate erred in law and fact when she ignored the reconciliation factor hence occasioning a miscarriage of justice.

Submissions

The Court issued a schedule for the filing submissions. It is only the Appellant who filed. This appeal has therefore been determined without the benefit of the Respondent's submissions.

Determination

Whether the learned Trial Magistrate erred in law and fact when she passed an excessively harsh sentence against the Appellant thereby occasioning a miscarriage of justice.

Whether the learned Trial Magistrate erred in law and fact when she ignored the prevailing mitigating factors of sentencing hence occasioning a miscarriage of justice.

Whether the Learned Trial Magistrate erred in law and fact when she ignored the reconciliation factor hence occasioning a miscarriage of justice.

This court has treated each of these issues as a ground of appeal.

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On Ground 1, it was submitted for the Appellant that the sentence of 2 years and 10 months is manifestly harsh considering the maximum sentence was five years. That the trial magistrate did not compute the time spent on remand and consider in the sentence. It was argued that the other factors like the remorsefulness of the appellant, the plea of guilty, reconciliation with the complainant, the fact that he was a first offender and the sole bread winner were not taken into account.

It is the contention that while passing sentence a court is under obligation to take into account every period spent in custody. In this case the trial court should have deducted the 14 months and 11 days the appellant had spent in custody.

On Grounds 2 and 3, it was submitted that if the trial Magistrate had considered the mitigating circumstances in the case she would have come to a different conclusion.

That the appellant was entitled to receive some credit in form of a discount on the sentence because he had pleaded guilty.

Determination

This court shall determine all the three grounds argued above jointly.

This is an Appeal against sentence only. In any event Section 204 (3) of the Magistrates Act regulates appeals where pleas of guilty have been entered. It stipulates:

No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate's court except as to the legality of the plea or to the extent or legality of the sentence.

The principle on appeal against sentence has been stated as follows:

The Supreme Court in *Kiwalabye versus Uganda* (Criminal Appeal No. 143 of 2001) stated:

The appellate court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where the trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is *wrong in principle.*

It was also held by the Supreme Court in **Kamya Johnson Wavamuno vs. Uganda** Criminal Appeal No. 16 of 2000,

It is well settled that the Court of Appeal will not interfere with the exercise of the discretion unless there has been a failure to exercise discretion, or a *failure to take into account a material consideration or an error in principle* was made. It is not sufficient that members of the court would have exercised their discretion differently before passing sentence.

The submissions have outlined the nature of the complaints levels by the appellant. In view of that there is utility in reproducing the considerations made by the trial court before handing down the sentence.

The Convict pleaded guilty after one year and two months had elapsed. Hearing of the case had also commenced. He is also said to be a first offender. The Convict submitted that he is a family man who needs to go back home to provide for his family. He also submitted that he is hypertensive and HIV positive. He sought for lenience in sentencing.

However, as submitted by the learned state attorney, offences of obtaining money by false pretence and uttering false documents which lure victims to believe their tormentors are rampant in this nation. Unsuspecting members of

the public have continued to fall victim to people like the Convict. Many people have suffered huge losses as a result of these kinds of offences. In this case, the complainant lost a whole \$58,000,000/= (Shillings fifty-eight million only) which is so bad. There is need to curb the offences down in order to protect those who work hard to enable them enjoy their property. This can be achieved by sentencing offenders to deterrent sentences. Such sentences should enable offenders to reform and deter offenders not yet brought to court from committing similar offences.

In this case, the convict hence deserves a deterrent sentence that will enable him work and not cheat people through fake land transactions like he did to the complainant in this case. The convict should be punished in order to enable him be a good example to his own children. In this case, I find an imprisonment term of four (4) years to be most appropriate on count 1. However, the convict has been on remand for one (1) year and two months. The period he has spent on remand shall be deducted from his punishment. The convict is hence sentenced to an imprisonment term of two (2) years and ten months on Count 1.

On Count 2, I find a sentence of an imprisonment term of two (2) years to be most appropriate. However, the period the convict has spent on remand shall also be deducted. On Count 2, the convict is hence sentenced to an imprisonment term of ten (10 months). Sentences to run concurrently.

In this case, the complainant paid a whole sum of \$58,000,000/= to the convict believing that he was paying for land. He neither got the land nor did he have the money refunded to him. He suffered a loss. I accordingly order that the convict pays back to the complainant Shs. 58,000,000/= which he cheated from him.

I so order. Right of appeal explained.

It is clear that the learned trial magistrate properly considered the aggregate period spent on remand which it deducted from the sentence.

Reasons for the sentence where court took into account several factors including those outlined by the appellant were stated. A sentence is a matter within the discretion of the court. The court will only interfere with the exercise of that discretion within the narrow latitude for reasons I have already stated above.

I have carefully considered the factors in this case. There was no injustice visited on the appellant in this matter.

In light of the factors stated, the sentence was neither illegal nor harsh in the circumstances.

For that reason, this Appeal is without merit and stands dismissed.

The sentence and orders of the trial court are confirmed.

Michael Elubu Judge 31.3.2024

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Prepared on 14 October 2026 · Esheria