

UGANDA / JUDGMENT

Kyarisima v Uganda (Civil Revision 7 of 2009) [2024] UGHC 1111 (16 December 2024)

[2024] UGHC 1111

COURT

High Court of Uganda

BEFORE

Tweyanze, J

CASE / FILE NUMBER

Civil Revision 7 of 2009

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA
CRIMINAL REVISION NO.0007 OF 2024 [ARISING FROM CHIEF MAGISTRATE
COURT OF SEMBABULE] AT NTUSI CRIMINAL CASE NO. 010 OF 2024**

CRB/NTS/PP/010 OF 2024

KYARISIMA EDITA:.....

VERSUS

.....RESPONDENT UGANDA

RULING

- This matter was placed before me by the Deputy Registrar following \$[1]\$ a letter dated 15/10/2024, by the Chief Magistrate Sembabule for purposes of revision and further advice.
- The brief background of this matter is that the accused person \$[2]\$ herein obtained a loan from the complainant amounting to UGX. \$1,000,000/\$ = at an interest rate of 15% payable within 30 days. The accused person defaulted and was charged with the offence of obtaining credit by false presences contrary to Section 308(a) of the Penal Code Act Cap 120. It was alleged that Kyarisima Edita on the 05/09/2023 incurred a debt or liability and obtained UGX. 1,000,000/= by means of fraud from Arete Financial Services Limited at Ntusi Town Council in Sembabule District.

When the accused person was arraigned before Court on 02/02/2024, she pleaded guilty to the charges and was convicted and sentenced to a compensation of UGX. \$1,000,000/= \$ or 12 months' imprisonment in default. The convict could not pay the said compensation and she was accordingly committed to prison per the

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warrant of commitment dated 02/02/2024. On 18/09/2024 a complaint was lodged with the Chief Magistrate at Sembabule and upon perusal of the same, the files were forwarded to me through the Deputy Registrar for purposes of revision and advice.

\$[3]\$ Having carefully perused the lower Court record. I found that the trial Magistrate violated and flouted the basic principles known in criminal law. For ease of reference I will reproduce the said lower Court proceedings.

02/02/2024

Accused before Court Manyigamukama Fred

Jude clerk

Court: Charge read explained fully to the accused

Accused: Yes, it is true I took that money

Court: PGE

Prosecution: Facts are as the particulars of the charge sheet.

Accused: Facts true

Court: You have been convicted on your own plea of guilty

Antecedents and character: I pray for a deterrent sentence and imprisonment

Allocutus: I pray for a light sentence

Sentence

In pursuance of S.199 of the MCA Cap 16 the accused shall pay compensation of UGX. 1,000,000/ \$=\$ in default to spend 12 months in prison.

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From the above extract of the proceedings, it is clear that the \$[4]\$ language in which the proceedings were interpreted or translated to the accused person to follow was not indicated. Further, it was not shown on Court record whether the accused person understood the English language before she took plea. This was in total violation of Article 28(3) (b) of the Constitution which provides that;

"Every person who is charged with a criminal offence shall be informed immediately, in a language that the person understands, of the nature of the offence"

It is desirable that a trial Court should indicate the language in which \$[5]\$ the charge has been read and explained, and the proceedings interpreted to the accused. It assists the Appellate Courts in discerning whether the Appellant/Accused person fully understood the nature and consequences of the proceedings against her. See *Sebuliba Siraji Vs Uganda CACA No. 0319 of 2009*.

In the circumstances of this case, the failure by the trial Court to explain the charges in a language the accused person understood was fatal as it could not be established whether the accused person understood the nature and the consequences of the proceedings.

Secondly, the lower Court proceedings show that when the accused \$[6]\$ person admitted the charge, a plea of guilty was entered. The Court record indicates facts are as the particulars of the charge sheet. The prosecution did not state the facts as required which was contrary to the proper procedure as set out in *Adan Vs. Republic [1970] EA*

Samuel

It is the duty of the Court to record in detail the facts as narrated by the prosecutor where a plea of guilty is entered. See *Uganda Vs. Kefa Jelala [1979] HCB 88*.

The implication of the failure to record the facts is that the plea of guilty was equivocal, defective, irregular and unlawful as the facts were never read to the convict/accused. It is mandatory that the facts as recorded be narrated to the offender before conviction in order to indicate his or her agreement to the facts constituting the offence. This was a fatal lapse in the proceedings leading to the conviction and sentence. See the case *Lagum Cony Vs Uganda Criminal Appeal No.003 of 2019*.

Lastly, from the above proceedings, the accused person was \$[7]\$ sentenced to a compensation of UGX. 1,000,000/= in default to spend 12 months in prison. According to The Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, paragraph 10 provides for the sentencing options which include death penalty, imprisonment for life, imprisonment for a specified period of time, a fine, community service, probation, a caution and discharge without punishment and any other lawful sentence option.

Under Section 197 of the Magistrates Courts Act (MCA), a compensational order is in addition to any other lawful punishment. Thus the power of Court to award compensation to victims under Section 197 of the MCA is not ancillary to other sentences but is in addition thereto.

Therefore under the law, a compensation order is not a punishment [8] and it is not a sentencing option. I have not been able to find any provision of the law that suggest otherwise. My attention has been drawn to the provisions of **Section 198 of the MCA** that provides

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for recovery of costs and compensation and imprisonment in default, however the said provision relates to recovery of costs or compensation where a distress may be issued under Section 182 of MCA and in default the provision of Sections 183 or 186 and 181 of the MCA relating to sentences of imprisonment in default come into effect.

Further I have looked at Section 199 of the MCA that the trial Court relied on which empowers Court to award expenses or compensation out of a fine. It provides that;

"Whenever any Magistrate's Court imposes a fine or a sentence of which a fine forms part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

- (a) In defraying expenses properly incurred in the prosecution;
- (b) In the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by civil suit."
- The above provision clearly confers a discretion on Court to order [9] as to how the whole or any part of fine is to be applied. The application of the above provision is a statutory requirement that a fine is imposed and thereupon make further orders as to the disbursement of the said fine in the manner envisaged therein. If no fine is imposed Subsection (1) of Section 199 of the MCA has no application (emphasis mine).

This brings us to the most crucial question as to whether there was a sentence passed by the Magistrate Grade 2 at Ntusi. My answer to this question is that there was no sentence passed and if the impugned orders passed as a sentence they were illegal. This is so because a compensational order is not a sentence and

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imprisonment in default of payment of a compensation is not a punishment prescribed under the law.

- [10] To make matters worse, the charges against the accused person emanated from a loan agreement entered into with the complainant in which she was to pay the principal and the interest within 30 days. Further there was a penalty interest upon default. This was clearly a civil transaction which ought to have been governed by the civil laws. This Court has on several occasions held that criminalizing civil disputes is an abuse of court process and perverts the course of justice. See *Okello Oris Atana Vs Uganda HCCA No. 0035 of 2013*
- [11] In the premises, I find the proceedings, the conviction and the sentence passed by the Magistrate Grade 2 at Ntusi to be a nullity, irregular and illegal. The conviction and the sentence passed are quashed and set aside. Given the circumstances, a retrial of this matter is not possible for the injustice meted out on the accused person by the lower Court. The accused person is therefore released immediately.

I so order

Ruling signed and delivered at Masaka this 16th day of December, 2024

LAWRENCE TWEYANZE **IUDGE**. 16th December, 2024.

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