

UGANDA / JUDGMENT

Matovu v Uganda (Criminal Appeal 31 of 2018) [2021] UGHCCRD 100 (23 September 2021)

[2021] UGHCCRD 100

COURT

HC: Criminal Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Criminal Appeal 31 of 2018

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA

Criminal Appeal No. 31 of 2018 (Arising from Entebbe Court Criminal Case No.185 of 2018)

| MATOVU HAMZA | :::::::::::::::::::: | APPELLANT |

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| | VERSUS | |

| UGANDA | :::::::::::::::::::: | RESPONDENT |

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The Appellant **Matovu Hamza** brings this Appeal against sentence. HW Mulondo Mastula Magistrate Grade I sitting at Entebbe found him guilty and sentenced him on three counts of Theft contrary to Section 254 (1) and 261 of **The Penal Code Act Cap 120**. He was sentenced to 2 years on each Count to run consecutively.

The background to this matter is that on the 23rd day of February 2018 the appellant was arraigned for plea on three counts of theft as stated above. On the first count it was alleged that the appellant stole a computer - laptop, valued at 1,300,000/ belonging to one Sengendo Bruno. The second count was that he stole a Techno phone - W3 worth 180,000/- belonging to a Birungyi Jonah. The third count was that the appellant also stole cash, 250,000/-, from Bugembe Namutebi Harriet. All offences are alleged to have been committed on the 27th of January 2018 at Kitala in Katabi Trading Centre in Wakiso District.

The brief facts of the incident was that a graduation party was organised for three children in Kitale. The appellant walked into the host's house with the clergy officiating at the function. It was assumed by the he had come with the clergy while the clergy thought he was a member of the household. The appellant then stole the items outlined above and escaped. He was later arrested at another function where he was said to be stealing in the same manner and charged on these counts.

As stated earlier, this is an appeal solely against sentence and the appellant is selfrepresented. He filed written submissions stating that the sentence was 'too severe' given the circumstances of the case. That he had shown remorse and did not waste the Courts time. That he is reformed and ready to reintegrate into society. That he has now served almost three of the six year sentence.

In reply, the learned State Attorney submitted that the sentence was legal and within the powers of the magistrate to pass. That given the maximum sentence is 10 years, then a sentence of 2 years was very lenient and ought to be enhanced.

In determining this matter, this court is mindful that ordinarily sentences run cumulatively unless the court orders otherwise. Section 192 (1) of **the Magistrates Courts Act** stipulates that a sentence of imprisonment which is passed upon a subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently.

It is clear therefore that the default is for sentences to run consecutively.

Secondly sentencing is by its nature discretionary and a court sentencing is exercising that discretion. That being so, the position is that a court will not interfere with a sentence unless it is shown to be unlawful or manifestly harsh or excessively lenient.

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

Although this is an appeal from the Magistrates Court, I shall take guidance from Section 2 (3) of **the Trial on Indictments Act** regarding appeals against consecutive sentences. The section stipulates that:

For the purposes of appeal, the aggregate of consecutive sentences imposed under this section, in the case of convictions for several offences at one trial, shall be deemed to be a single sentence.

In the same way, the sentence on appeal in this case shall be deemed to be six years.

Therefore considering the circumstances of this matter, the question would be was the sentenced imposed excessive? I am mindful that the appellant pleaded guilty. It appears he was considered to be a first time offender. I also take into account the value of the items stolen. In view of these circumstances I take the view the cumulative sentence was excessive and amounted to a miscarriage of justice.

It is therefore the decision of this court, that the sentences are revised as follows:

- i. The sentence of two years for the theft of the computer is confirmed.
- ii. The sentence for the theft of the phone is revised to 1 year and six months
- iii. The sentence for the theft of cash worth 250,000/= is revised to one year and six months.

All sentences shall run consecutively as earlier ordered by the trial magistrate.

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Michael Elubu

Judge

23.9.2021

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