

UGANDA / JUDGMENT

Muwonge v Uganda (Criminal Appeal 60 of 2022) [2025] UGHCCRD 12 (8 March 2025)

[2025] UGHCCRD 12

COURT

HC: Criminal Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Criminal Appeal 60 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CRIMINAL DIVISION)

CRIMINAL APPEAL NO. 060 OF 2022

(Arising from Criminal Case No. 1025 of 2020 of Buganda Road Chief Magistrates Court)

MUWONGE MOSES APPELLANT

Versus

UGANDA RESPONDENT

BEFORE: HON. MR. JUSTICE MICHAEL ELUBU RULING

The Appellant, **Muwonge Moses**, filed this appeal against the sentence handed down by **HW Kamasanyu Gladys**, Chief Magistrate Buganda Road Chief Magistrate's Court.

Background

On the 29th of October 2020, the Appellant appeared before the Chief Magistrate's Court of Buganda Road and was charged with the offence of Obtaining Money by False Pretences c/s 305 of the **Penal Code Act (PCA)**. On the 11th of February 2021, the charge sheet was amended, adding one Kulamba Anthony, as a co-accused. The Amended charge sheet contained 11 Counts namely: 1 Count of Obtaining Money by False Pretences c/s 305 of the **PCA (PCA)**; 5 Counts of Forgery c/ss 347 and 348 (1) of the **PCA**; 4 Counts of Uttering False Documents c/s 351 of the **PCA**; and finally 1 Count of Conspiracy to Commit a Felony c/s 390 of the **PCA**.

The Appellant pleaded 'Not Guilty' on all the 11 Counts of the amended charge sheet. On the 26th of May 2022, after the prosecution had led six witnesses with the seventh on the stand, the appellant informed the trial Court that he intended to change his plea and admit the charges. The trial court read back the 11 Counts to the Appellant and he pleaded 'Guilty' to all of them.

The Court read the brief facts of the offences to the appellant and he confirmed them to be true and correct. The appellant was accordingly convicted on his own plea of 'Guilty' on all the 11 Counts. The court then conducted a sentencing hearing before sentencing the appellant.

The Appellant being dissatisfied with the sentence of the Learned Trial Chief Magistrate lodged this Appeal with two grounds of appeal.

Grounds of Appeal

- 1. The Learned Judicial officer erred in both law and fact when she sentenced the Appellant to a harsh sentence disregarding the fact that he was a first time offender.
- 2. The Learned Judicial Officer erred in both law and fact when she sentenced the Appellant while biased when he changed his plea.

The appellant's prayers were that:

- a. The Appeal be allowed;
- b. The sentence be quashed; and
- c. The sentence be substituted with a lenient sentence.

Submissions

The Appellant filed written submissions through his Advocates Nansubuga, Awelo & Co. Advocates. The Respondent did not file written submissions. This appeal has therefore, been determined without the benefit of submissions from the respondent.

The Appellant made a joint submission on all grounds and contended that it is a rule of practice that first offenders do not ordinarily receive the maximum sentences when convicted. That sentencing the appellant to the maximum term on Counts 3, 5, 6, 7, 8, 9, and 10 was harsh. That the Trial Chief Magistrate was biased in sentencing the Appellant. That the proof of bias can be traced to the proceedings at line 10 of page 35 of the record. That an accused person can change plea at any stage of proceedings. The appellant relied on **Livingstone Kakooza v Uganda* SC Criminal Appeal No. 17 of 1993*; **Ainobushobozi venancio v Uganda* Court of Appeal Criminal Appeal No. 242 of 2014*; **Marvin Baryaruha v AG* Miscellaneous Cause No. 149 of 2016* and **Obiga Mario Kania v Electoral Commission* EPA No. 04 of 2011*.

Resolution

This Appeal arose from a plea of guilty and is lodged against sentence only. Section 204 (3) of the *Magistrates Court Act* regulates appeals arising from pleas of guilty.

Section 204 (3) of the *Magistrates Act Cap. 16 (*as it then was) 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.

In such circumstances, the law limits the extent to which any modifications can be made to the findings of the trial court.

In **Livingstone Kakooza v Uganda* Supreme Court Criminal Appeal No. 17 of 1993*, the Supreme Court held:

An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration.

The appellant was convicted and sentenced on 11 counts for diverse offences. In Count 1 the charge was obtaining money, (60,000,000/-) by false pretences, c/s 305 of PCA. This offence carries a maximum sentence of 5 years and he was sentenced to 5 years which indeed is the maximum sentence.

In Counts 2 and 4, the appellant was charged with the forgery of land titles, c/s 348 (1) of **the PCA**. The offence carries a maximum of life imprisonment. The trial court sentenced him to 7 years.

In counts 3 and 5 the appellant was charged with the offence of uttering forged land titles c/s 351 of **the PCA**. These offences carry a maximum sentence of life imprisonment but he was sentenced to three years in prison.

The charges in Counts 6 and 8 are the forgery of passports. In count 10 it is the forgery of a national identity card. These offences each carry a maximum sentence of three years. The trial court sentenced the appellant to the maximum which is three years in prison for each count.

Counts 7 and 9 relate to uttering the passports. These carry a maximum sentence of three years and the appellant was sentenced to the maximum which is three years in prison.

In count 11 the appellant was charged with conspiracy to commit the felony of forgery which carries a maximum sentence of three years. The trial court sentenced him to two years.

The sentencing process is at pages 35 and 36 of the record of proceedings. The learned trial magistrate gave reasons for arriving at the sentences as she did. For avoidance of doubt the proceedings are reproduced here:

The Convict pleaded guilty after one year and seven months. By the time he pleaded guilty, six witnesses had testified. The seventh witness was on the stand. The convict is said to be a first time offender as no criminal record is known on him. The Convict in his mitigation prayed for a chance to go and work then pay the complainant.

However, offences of forgery, uttering false documents and obtaining money by false pretence are so rampant in this country. Unsuspecting Ugandans have continued to lose huge sums of money to those who don't want to work but earn from where they did not sow. In this case 60,000,000/= (Shillings Sixty Million Only) was obtained from the complainant after two forged land titles, National identity cards and other documents were uttered to him and his witnesses. He paid believing that he was paying for land. He genuinely believed that what the convict and another staged before him were the genuine registered owners of the land but which was unfortunately not true. The Complainant as a result suffered a loss.

There is hence need to curb the offences down. This can be achieved by sentencing offenders to deterrent sentences. The best solution is to keep offenders out of circulation for some time and enable those who work hard to enjoy fruits of their sweat. The convict hence deserves a sentence that will help him reform and those he operates with never to commit similar offences again.

In the circumstances, On Count 1, I find an imprisonment term of five (5) years to be the most appropriate sentence. However, the convict has been on remand for one (1) year and seven (7) months. The said period will be deducted on Count 1. On Count 1, the convict is hence sentenced to an imprisonment term of three (3) years and five months.

On Counts 2 and 4 for forging certificates of title, I find an imprisonment term of seven (7) years most appropriate. However, the period of one year and seven months that the convict has spent on remand will be deducted. On each of the Counts 2 and 4, the convict is hereby sentenced to an imprisonment term of five (5) years and five months.

On Counts 3, 5, 7 and 9, I find an imprisonment term of three years most appropriate. The period convict spent on remand shall be deducted. Hence on each Counts 3, 5, 7 and 9, the convict is sentenced to an imprisonment term of one year and five months.

On Counts 6, 8 and 10, I find an imprisonment term of three (3) years most appropriate. However, the period the convict spent on remand shall be deducted. Hence, on each of counts 6, 8 and 10, the convict is sentenced to an imprisonment term of one year and five months.

On Count 11, I find an imprisonment term of two years appropriate. The period the convict has spent on remand shall be deducted. On Count 11, the Convict is hereby sentenced to an imprisonment term of five months.

It is ordered that the convict pays the complainant 60, 000,000/= (sixty million shillings) which he took from him. All sentences will run concurrently.

Sentencing is done at the discretion of the trial Court which ordinarily considers a number of factors before making a decision. Paragraph 6 of *the Constitution (sentencing guidelines for Courts of Judicature) (Practice) Directions 2013* gives the general sentencing principles to be taken into account by every Court at sentencing. They are:

The gravity of the offence, including the degree of culpability of the offender; the nature of the offence; the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances; any information provided to the court concerning the effect of the offence on the victim or the community, including victim impact statement or community impact statement; the offender's personal, family, community, or cultural background; any outcomes of restorative justice processes that have occurred, or are likely to occur, in relation to the particular case; the circumstances prevailing at the time the offence was committed up to the time of sentencing; any previous convictions of the offender; and, any other circumstances court considers relevant.

In Counts 1, 6, 7, 8, 9 and 10 the trial court sentenced the appellant to the maximum sentence provided for. It was argued for the appellant that sentencing him to the maximum sentence was harsh. The Court of Appeal in **Ainobushobozi Venancio vs Uganda Criminal Appeal No. 242 of 2014** emphasised that it is a rule of practice that first offenders do not ordinarily receive the maximum sentence for the offence for which they have been convicted.

From the record, the appellant was treated as a first offender (see pg 34 of the record). It should be stressed that while the practice is to avoid maximum sentences for first offenders, it is not, strictly speaking, unlawful to impose such a sentence. However, the maximum is usually reserved for particularly heinous examples of the offence. The breach of trust or the use of meticulous sophisticated plans to defraud the unsuspecting victims may also call for maximum sentences as may the impact the crime has on the victim and possibly the convict's blatant lack of remorse.

Therefore, while maximum sentences may be frowned upon, they are lawful. It is the individual merits of each case which dictate the appropriate action for the court to take when considering whether to impose a maximum sentence.

In this case, the reasons given by the trial magistrate are unassailable. The court examined the degree of the appellant's culpability and how rampant this particular variety of offences have become. It is clear that the trial court intended to send a strong message of deterrence to any co offenders or others of a like mind. Clearly, the trial court did not employ a wrong principle or ignore any material factors when it did the sentencing.

In spite of the above, the fact that the convict elected to plead guilty, on top of being a first offender, were extremely compelling factors in his favour which should have mitigated against maximum sentences.

It is pertinent that the appellant was convicted and sentenced on 11 counts. The totality principle in sentencing would be appropriate in this case. The principle is ordinarily applicable where a court is considering the aggregate of cumulative sentences. In dealing with this principle, the Court of Appeal in **Mubiru Yasin vs Uganda 034 of 2020** cited **R vs. Jamieson and Another [2008] EWCA Crim 2761** where it is stated that,

A sentencing judge should pass a total sentence which properly reflects the overall criminality of the defendant and the course and nature of the criminal conduct disclosed by the offences for which he stands to be sentenced while always have regard to the principle of totality.

In the instant case, the highest sentence meted out to the convict is 7 years. It was ordered that the sentences run concurrently. In essence it would mean that the appellant is cumulatively to serve seven years in prison for all the eleven convictions (four of which carry a maximum sentence of life imprisonment). Just as stated in **Mubiru Yasin** (supra), it is imperative that a court stands back and consider the overall criminality of an accused and pass sentence which reflects the justice of the circumstances in view of the criminal conduct of the convict. While this court finds it was improper, but not fatal, to give maximum sentences, the error is cured because the term of 7 years in prison is appropriate as an overall sentence considering the entire criminal conduct of the appellant.

Secondly, the individual sentences, where the appellant was given maximum sentences, are all far less than seven years and would not affect the total time served by the appellant. For this reason, and unique to this case, the court will not interfere with these sentences.

The other complaint by the Appellant was that the trial Magistrate was biased in sentencing. That proof of bias could be seen in the observation she made at pg 35 of the record during sentencing. The trial magistrate stated that the Appellant pleaded guilty after one year and seven months and that, by then, six witnesses had testified and the seventh witness was on the stand.

Bias according to the **9 th Edition of *Black's Law Dictionary*** is defined as inclination; prejudice; predilection. It is described further as actual bias, implied bias and judicial bias. Actual bias is genuine prejudice that a judge, juror, witness or other person has against some person or relevant subject. Implied bias is prejudice that is inferred from the experiences or relationships of a judge, juror, witness, or other person. Judicial bias is a judge's bias toward one or more of the parties to a case over which the judge presides.

The Appellant relied on the **real likelihood of bias** test. That the real bias could be seen when the judicial officer sentenced the appellant to maximum sentences. This court has stated above that the trial magistrate gave cogent reasons for finding as she did on sentence. For the reasons stated, this court cannot not fault the sentence.

Even then, it is imperative to state the current test on bias, in Uganda. In **Re Application for recusal of Hon. Justice Alfonse Chigamoy Owiny-Dollo - CJ* Miscellaneous Application 3 of 2021 [2021] UGSC 63* the test on bias in Uganda was stated to be *"whether a reasonable, objective and informed person, acting on the correct facts, would reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case"*.*

This is not a subjective test. It must be demonstrated that there is a realistic concern that the judge will not act fairly or be neutral. The sentencing in the instant case does not demonstrate, show or provide any such evidence of bias. The trial court brought an impartial mind to consider the unique circumstances of trial and exercised its discretion judiciously. The allegations of bias therefore stand unproved.

In sum, a sentence arising from a plea of guilty can only be interfered with in the margins set out in Section 204 (3) of the **Magistrates Court Act**. Having regard to all the circumstances of the instant appeal, there was no error, illegality or injustice in the sentencing of the appellant.

In the result, this Appeal is without merit and stands dismissed.

The sentences and orders of the Trial Court are confirmed.

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Michael Elubu Judge 8.3.2025

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