

UGANDA / JUDGMENT

Nabirye v Uganda (Criminal Revision 50 of 2024) [2025] UGHCCRD 14 (13 March 2025)

[2025] UGHCCRD 14

COURT

HC: Criminal Division (Uganda)

BEFORE

Mutonyi, J

CASE / FILE NUMBER

Criminal Revision 50 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(THE CRIMINAL DIVISION)****CRIMINAL REVISION CASE NO. 050 OF 2024****NABIRYE RACHEAL=====APPLICANT****VERSUS****UGANDA=====RESPONDENT****RULING****BEFORE HON. LADY JUSTICE MARGARET MUTONYI**

This application was brought by way of a Notice of Motion under **Sections 17 and 33 of the Judicature Act** as it then was and **Sections 48 and 50 of the Criminal Procedure Code Act** as it then was.

The applicant seeks the following orders;

1. That this honorable court calls and revises the sentence in criminal case no. CO-113 of 2024 that was before the Chief Magistrates Court of Makindye at Makindye for purposes of examining the propriety of the sentence passed by the trial court against the applicant.

Background

The applicant in this case was charged and convicted on her own plea of guilty for the offence of theft contrary to Sections 254(1) and 261 of the Penal Code Act as it was then and sentenced to pay a fine of 4,000,000/= Ug. Shs. which was to be paid to the complainant as compensation in default of which the convict was to serve 18 months' imprisonment.

The applicant believes the sentence was erroneous, hence this revision application.

The grounds of the application, are set out in the application and further expounded in the supporting affidavit of the applicant but briefly, are as follows: 1. That the learned trial magistrate erred in law and fact by not considering the time the applicant spent on remand while arriving at the sentence.

2. That the learned trial magistrate erred in law and fact by passing a harsh and excessive sentence.

Representation

The Applicant was represented by learned Counsel Ssebyala Hassan, while the learned State Attorney Caroline Tabaro, represented the Respondent.

Submissions

Submissions by Counsel for the applicant and the respondent were both made orally;

Counsel for the applicant submitted that the sentence was erroneous as it provided for a fine and at the same time compensation. He went on to submit that the court reduces the sentence and the applicant be sentenced to the period she spent on remand on the grounds that it was harsh and excessive.

In reply the learned Senior State Attorney Caroline Tabaro submitted that the sentence of 18 months' imprisonment was not irregular or illegal, however, she noted that the trial magistrate irregularly compounded a fine with a compensation order by sentencing her to a fine of 4 million which would be compensation at the same time and in default serve the 18 months in prison. She prayed that the sentence be revised for the applicant to know her actual sentence, which would either be a fine and in default a prison term. She also prayed that the court orders the applicant to compensate the complainant the 4 million shs. she stole from her.

In rejoinder counsel for the applicant submitted that the applicant was unemployed at the moment and unable to pay the compensation.

Issues.

The only issue for the court's determination is **whether the sentence was erroneous?**

Evaluation and decision of court.

Section 48 of the Criminal Procedure Code Act Cap 122 provides for *the powers of the High Court to call for and examine the record of any criminal proceedings before any Magistrates' court for the purpose of satisfying itself as to the*

correctness, legality, or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any Magistrates Court.

Any application brought under the above section dictates the High Court to examine the lower record with the view of establishing any or all of the following:

- 1. Is the decision complained of correct and legal under the law?
- 2. Was the decision arrived at following the conventionally accepted standards or morals/ was it in conformity with the law?
- 3. Are the proceedings regular, that is in conformity with the known practice?
- 4. Is the whole process fair and just?

The accused person pleaded guilty and is not questioning the conviction but the sentence of the trial magistrate as stated in their application and affidavit in support.

The observation of this court on perusing the proceedings of the lower court is that the trial Magistrate sentenced the Applicant to pay a fine of 4,000,000/= four million Uganda shillings which fine was to be paid to the complainant in form of compensation and in default, the convict was to serve a sentence of 18 months imprisonment.

The applicant's application is to have this sentence reviewed, as according to the submission of her counsel, it is illegal or erroneous.

Section 178 (2) of the Magistrates Courts Act Cap 19 provides that:

"A person liable to imprisonment may be sentenced to pay a fine in addition or instead of imprisonment".

The Applicant was charged with theft contrary to Sections 254 (1) and 261 of the Penal Code Act, laws of Uganda Cap 120 now Sections 237(1) and 244 under the revised Penal Code Act, Cap 128. It was alleged that she stole Uganda shillings 4,384,000/= belonging to the complainant a one Nabikolo Patricia.

She pleaded guilty to the charge and was convicted accordingly.

She is not complaining about the conviction but the propriety of the sentence.

Theft is punishable under Section 244 of the Penal Code Act by a maximum sentence of 10 years' imprisonment but depending on the mitigating factors, a convict can be sentenced for any shorter term, Section 178(1) of the Magistrates Courts Act refers.

Where the complainant has suffered material loss like in the instant case of cash, **Section 196 (1) of the Magistrates Court's Act, Cap 19** provides for compensation in the following words *"that when any accused person is convicted by a magistrate's court of any offense and it appears from the evidence that some other person, whether or not he or she is the prosecutor or witness in the case, has suffered material loss or personal injury in consequence of the offense committed and that substantial compensation, is in the opinion of the court, recoverable by the civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fit and reasonable."**

This section gives the court the ability to order the convicted person to compensate the victim of the crime if the court believes the loss or injury could be pursued successfully in a civil court. This order is additional to another lawful punishment.

Section 198 of the Act provides for the power of the court to award expenses or compensation out of a fine and is to the effect that:

(1*) "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 offense when substantial compensation is, in the opinion of the court, recoverable by civil suit"

This section provides a mechanism for the court to use the fine imposed on the convicted person to compensate the victim of the crime or defray prosecution costs.

In case the court intends to order for compensation of the victim of crime out of a fine, the order must be made very clear without ambiguity.

The amount of money to be paid as a fine must be within the law and the alternative sentence must also be within the law.

Whereas the magistrate can make orders to pay a fine and also compensate the victim from the fine, in default of which the convicted person serves a sentence, payment of fine where the section of the law does not provide for the fine like in the instant case, court must apply **Section 179 of the Magistrates Courts Act**.

Section 179 of the Magistrates Courts Act provides for the maximum period to be served in respect of non-payment of any sum of money adjudged to be paid by a convict. Under this section for any amount exceeding 6 currency points that is equivalent of Uganda shillings 120,000/=, the maximum period of imprisonment shall be 1 year.

The applicant was ordered to pay a fine of Ug. Shs. 4,000,000/= (Four million shillings) equivalent of 200 currency points which exceeds Ug. Shs. 120,000/= (One hundred twenty thousand) or in default serve a sentence of 18 months imprisonment.

This court is aware that the court has discretion to put any currency points as a fine where the law does not provide for it and as such the amount to be imposed is unlimited but such amount shall not be excessive as provided under section 179 (a) of the Magistrates Courts Act.

The section further provides that:

"*Where a fine is imposed by a magistrate's court under any law, in fixing the amount of the fine, the court shall take into consideration among other things, the means of the offender so far as they are known to the court and in the absence of express provisions relating to the fine in any such law, the following provisions shall apply_*

a) Where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive"

The above provisions of the law gives the magistrate discretion which must be exercised judiciously after ascertaining the ability of the convict to pay.

From the record of the proceedings, the magistrate wanted the complainant to be compensated from the fine.

However the learned trial magistrate did not establish or even attempt to establish the ability of the Applicant to pay the fine of Ug. Shs. 4,000,000/=

He did not also follow the law pertaining to fines where the prescribed penalty for the offence does not specifically provide for the fine.

Court finds this sentence erroneous, irregular and illegal as section 179 (d) of the Magistrates' Courts Act which is drafted in mandatory terms, provides the guidelines to be applied while imposing the fine and the period of imprisonment in case of default as follows:

"*the period of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale".*

The scale is very clear and in the case of a fine exceeding 6 currency points, that is Ug. Shs. 120,000/= the maximum sentence in default, had to be one year period of imprisonment not 18 months as it was in this case.

I find the sentence and order erroneous as it is in breach of the known criminal procedure laws pertaining to fines in cases where the penalty does not provide for the fine.

I find the sentence very ambiguous.

Court also observed that the applicant first appeared in court on 24/1/ 2024 and was sentenced on 10/4/2024. She had spent 2 months and 16 days in custody. This time on pretrial remand was not considered. It is trite law that pretrial remand period must be arithmetically deducted from the final sentence. The court realizing that she was a mother having been remanded and convicted while expecting a baby, who was born while serving her sentence, released her on court bond on 11/12/2024. She had therefore served 10 months and 17 days as part of her erroneous sentence which should have been 12 months subject to remission. If Court removes 1/3 of her right sentence which is 4 months, she has actually served the sentence.

She was described as unemployed and indeed exhibited that she had no capacity to pay. Otherwise no pregnant mother would wish to go to jail after being given an option of payment of a fine.

Court orders should never be made in vain.

It's a pity that the complainant lost her money. But I am afraid the applicant/convict has no capacity to compensate.

Since she pleaded guilty, which was a sign of remorse, the court is allowing the application and revising the sentence as follows.

- 1. She is sentenced to 10 months' imprisonment, which period she had already served before this court granted her court bond on 11/12/2024, which court believes is deterrent enough to a remorseful thief.
- 2. The order for compensation is set aside as she has no capacity to pay compensation of Ug. Shs. 4,000,000/=.

Right of Appeal to the State is available within 14 days from to date.

Dated at Kampala this 13th day of March 2025

Hon Lady Justice Margaret Mutonyi, JHC.

This ruling will be read and delivered by the Deputy Registrar of Court.

A copy should be served to the trial Magistrate to avoid similar errors in future

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccrd/2025/14/eng@2025-03-13>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nabirye-v-uganda-criminal-revision-50-of-2024-2025-ughccrd-14-13-march-2025-unknown-topic-unknown-court-2025>

Prepared on 13 October 2026 · Esheria