

UGANDA / JUDGMENT

Naigaga v Uganda (Criminal Appeal No. 12/94) [1994]

UGHCCRD 5 (7 September 1994)

[1994] UGHCCRD 5

COURT

HC: Criminal Division (Uganda)

BEFORE

Kato, J

CASE / FILE NUMBER

Criminal Appeal No. 12/94

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

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CRIMINAL CASE NO. MJ. 212/94)

The Hon Justice Tsekooko

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trata \$UGANDA :::::::::::::::\$ RESPONDENT BEFORE: THE
HONOURABLE JUSTICE C. M. KATO CON It of within bebasng. the amount involved was only
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scattence than what is imposed.

This is an appeal by the appellant Irene Naigaga against the office sentence imposed upon her by the Grade I Magistrate at Iganga. The appellant was charged with the offence of obtaining goods by false retences contrary to section 289 of the Penal Code Act. She pleaded guilty to the offence and she was sentenced to 12 months imprisonment.

She gave five grounds of appeal which may be summarized into only one ground which is that the sentence of 12 months was excessive.

At the hearing of the appeal the appellant was represented by Mr. Magelani Olubwe from Legal Aid Project (LAP) and the respondent was represented by the Senior State Attorney Mr. Vincent Okwanga. Mr. Olubwe submitted that the sentence was not only excessive but was also illegal because the appellant did not plead guilty to the offence and if at all she did so it was because she had been forced by the prosecutor to do so. On his part Mr. Okwanga argued that the sentence was not excessive and the plea was properly recorded.

Starting with the first point raised by Mr. Olubwe I would say that the plea by the appellant was materially properly recorded although when the appellant was asked to plead to the charge her words were not recorded as stipulated under the provisions of section 122(2) of the Magistrates Courts' Act which requires the exact words to be recorded. That irregularity was however cured by the appellant's acceptance of the facts of the case as being correct.

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The question of the plea having been illegally recorded does not arise. (OSICINAL IGANCA OSIMINAL CASH NO. MJ. 212/94)

As for the real ground of this appeal I would say from the very start that the sentence meted upon the appellant was excessive considering the fact that the appellant was a first offender, she had pleaded guilty to the offence thus saving court's time and expense. the amount involved was only 70,000/- and the appellant appeared repentant. It would appear the learnt trial magistrate did not address his mind to all these mitigating factors, had he done so he would possibly have imposed a lesser sentence than what he imposed. The learned magistrate's statement that this kind of crime is prevalent in the area was speculative as there was no evidence before him to the establish that the crime was common in that part of the country.

Considering all the circumstances of this case I do allow this appeal and set aside the sentence of 12 months imprisonment imposed upon the appellant and I replace that sentence with a sentence of 3 months imprisonment. DEDILUOIR So I order. one ground which is that bie son

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