

UGANDA / JUDGMENT

Okeny & 2 Others v Uganda (Criminal Revision 28 of 1991) [1991] UGHC 58 (3 May 1991)

[1991] UGHC 58

COURT

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Criminal Revision 28 of 1991

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The Hon. Mr. Justice F. M. S. Enganda Altoule

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA CRIMINAL REVISION ORDER NO. 28/91

OKENY JUSTINE :::::::::::::::::::: ACCUSED & 2 OTHERS VERSUS

UGANDA :::::::::::::::::::: BEFORE: The Hon, Mr. Justice G. M. Okello:

REVISIONTORDER:

The Accused and two others were jointly charged with assault occasioning actual bodily harm contrary to section 228 of the Penal Code Act. They were alleged to have jointly assaulted LamtonOkwir and others not named and that they thereby caused the victims actual bodily harm contrary to section 228 of the Penal Code Act.

The accused Okeny Justine pleaded guilty to the charge and he was convicted on his own plea. The other two accuseds pleaded not guilty and the charge against them was withdrawn under section 119(a) of the MCA'70. Okeny Justine was subsequently sentenced to a fine of Shs. 2000/= or to one month imprisonment in default of payment of the fine.

The Chief Magistrate of Gulu forwarded the relevant case file to this court for a possible revision order on the ground that the conviction is bad in law because the plea on which it is based is equivocal. Secondly that the default sentence of one month for a fine of Shs. 2000/= is illegal as it violates section 192(d) of the NCA'70 as amended by Act 4 of 1985. The file was placed before me.

In order for a conviction to be properly based on a plea of guilty, the plea must unequivocally admit all the essential ingredients of the offence alleged. Authority for this proposition is ADAN - vs- REPUBLIC (1973) EA 445.

In the instant case, the plea on which the conviction was based is recorded thus:

...../2

"Yes I assaulted Lumton Okwir and Others. I know I did wrong."

The above plea is clearly equivocal as to the charge of Assault occasioning actual bodily harm contrary to section ²²⁸ of the Penal Code Act, It does not admit all the essential ingredients of the offence charged.

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When the file was sent to the DPP for his views, Mauroen Owor a state attorney writing for the DPP, expressed the view that the plea was equivocal and that the resultant conviction is bad in law. She raised the point of the charge as being bad for duplicity because it refers to assault on others as well in the same count. The learned state Attorney did not wish to be heard in the event of a revision or order being made. 1/

I fully agree with the learned Chief Magistrate that the plea in which the accused was convicted is equivocal. It does not admit causing the victim actual bodily harm. It only admits assaulting them. In the premises the resultant conviction for assault occasioning actual bodily harm is bad in law. It is accordingly quashed.

The charge is clearly bad for duplicity. Section 84(2) of the MCA⁷⁰ demands that where more than one offence is alleged in a charge, a description of each offence so charged must be set out in a separate paragraph of the charge called a count. For further authority see Mwaitigo v R (¹⁹⁶¹ EA 470).

In Uganda v Patiriso Efceu IJB. 71/65 the court found duplicity in a charge alleging in a single count that the accused had obtained credit by fraud C/S 292 of the Penal Code from four different persons at different times. Such instance of obtaining should have been alleged in separate count.

In the instant case, allegations were made in single count of assault on three different persons causing each one of them actual bodily harm. On the principle stated above, this is bad for duplicity. Assault on each person should have been alleged in a separate count. This is a ground sufficient to quash the conviction.

The accused was sentence to a fine of Shs.2000/= or in default to one month imprisonment. This default sentence is clearly illegal. Section 192(d) of the MCA* 70 as amended by Act 4 of 1985 sets the maximum default sentence

for a fine of not exceeding 2000/= to only ⁷ days imprisonment.. Imposing a default sentence of one pjonth imprisonment for a fine of Shs*2000/= is clearly illegal* As the conviction is quashed on othe ground of illegality, the resultant sentence must also be set aside* So it is ordered*

Order ;

In case any payment is made by the accused as fine in this regard, it should be refunded forthwith*

CT. Okello

JUDGE* 3/5/91

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Prepared on 13 October 2026 · Esheria