

UGANDA / JUDGMENT

Uganda v Aloyo (Criminal Confirmation 1 of 2023) [2024] UGHC 89 (19 March 2024)

[2024] UGHC 89

COURT

High Court of Uganda

BEFORE

Okello, J

CASE / FILE NUMBER

Criminal Confirmation 1 of 2023

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THE REPUBLIC OF UGANDA

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IN THE HIGH COURT OF UGANDA AT GULU

HCT-02-CR-CF-0001-2023

(ARISING FROM CRIMINAL CASE NO. 592 OF 2021 MAGISTRATE GRADE 1, GULU CHIEF
MAGISTRATES COURT)

10 UGANDA.....

VERSUS

ALOYO BRIDGET

BEFORE HON. MR. JUSTICE GEORGE OKELLO

ORDER IN CONFIRMATION OF SENTENCE PROCEEDINGS

This matter was placed before this court pursuant to Section 173 (1) & (2) (a) of the Magistrates Courts Act Cap. 16 for confirmation of a sentence of 4 years passed by Her Worship Amoro Miriam, Magistrate Grade 1 of Gulu Chief Magistrates Court.

The back ground facts are that on 22/07/2021, Aloyo Bridget, the accused 20 (convict), was charged with the offence of theft, contrary to Section 254 (1) and 261 of the Penal Code Act. The prosecution case was that, during the month of May 2021, at West Acholi Co-operative Financial Services Limited, Gulu City Council, the convict stole Ugx 56,146,500, being the property of West Acholi

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- Cooperative Financial Services Ltd. The accused denied the charges and was $\mathbf{S}$ subjected to full trial. Judgment was passed on 19/07/2023 in which the accused was convicted of theft and was sentenced to 4 years' imprisonment. She was ordered to pay compensation of Ugx 56,146,500 to the complainant within 1 (one) year after serving the sentence.
- 10 The question before me is whether the sentence of 4 years' imprisonment imposed by the Magistrate Grade 1 against the convict ought to be confirmed or not.

I have perused the case file and the record of the proceedings, the judgement, and sentencing orders of the learned Magistrate Grade 1. The law on confirmation of sentences under Section 173 of the Magistrates Courts Act Cap 16 requires sentences of 2 (two) years or more imposed by a Magistrate Grade I to be confirmed by the High Court. The provision of confirmation of sentence was intended to ensure compliance with the judicial process by the trial magistrate. (See Turyatunga Vs. Uanda (Criminal Appeal No. 16 of 2016) [2017]

UGHCCD 130 (22 SEPTEMBER 2017) followed in HCT-00-CR-CF-0031-2023

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Uganda Vs. Kiyaga Buruhani) (Gadenya, J.)

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- This court enjoys the same powers of revision while confirming sentences but of $\mathbf{S}$ course subject to complying with the mandatory provision of Section 50 (2) of the Criminal Procedure Code Act Cap 116 especially where the order prejudices the convict. In my opinion, where a sentence is simply confirmed by the High Court, no hearing is envisaged.
- In the instant matter, section 261 of the Penal Code Act Cap 120 imposes a 10 sentence not exceeding 10 years for the offence of theft. Whereas under Section 161 (1) (b) and Section 162 (1) (b) of Magistrates Courts Act Cap 16, a Magistrate Grade 1 has jurisdiction to try the offence of theft, and hand down a sentence not exceeding 10 years, as emboldened by Section 261 of the Penal Code Act Cap 120, section 173 (1) and (2) of the Magistrates Courts Act Cap 16 (MCA) requires 15 that any sentence of imprisonment for two years or more be subjected to confirmation by the High Court.

Having perused the record of the proceedings before the learned trial Magistrate Grade 1, which include the sentencing record, I note that both the State counsel and the complainant submitted on aggravating factors, and the convict submitted in mitigation of sentence, in her allocutus. It was argued by the State counsel that the maximum punishment for theft is 10 years; and the convict

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stole a huge sum of money, being Ugx 56,146,500, being money for an S association, that is, West Acholi Co-operative Financial Services Ltd. The complainant in agreeing with the State submission, submitted that the money stolen was for business and would have earned interest. In his allocatus, the convict submitted that she suffers from Tuberculosis (TB) of the bone, pneumonia, and cervical cancer. She prayed for community service order. 10

The trial court found, inter alia, that, the convict was not remorseful, she wasted court's time without admitting guilt after the theft, the money was not recovered, and that the stolen money was for a union owned by farmers to sustain living.

I note that the learned Magistrate Grade 1 did not take into account the fact that 15 the convict is a first offender, in mitigation of the sentence. The learned Magistrate Grade 1 also took into account, erroneously in my view, the fact that the convict wasted courts time by not admitting her guilt. With due respect, the sentencing court ought to have known that it was the accused's constitutional right to be subjected to full trial while enjoying the right of presumption of innocence. So the claim that she wasted court's time and thus, aggravating the 20 sentence, was an error. In the circumstances, having considered the matter holistically, especially the fact that the trial court did not take into account the

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fact that the convict was a first offender, and took into account an erroneous \$5\$ consideration in sentencing the convict to 4 years imprisonment, and given that the convict would still need to pay back the money stolen after serving sentence, I would, in the exercise of my powers as a confirming court, reduce the sentence to 3 years imprisonment, running from \$19/07/2023\$ the date the convict was sentenced by the learned Magistrate Grade 1. I would also, for the avoidance of 10 doubt, state that the order that the convict pays compensation in the sum of Ugx 56, 146,500 to the complainant, West Acholi Co-operative Financial Services Ltd, remains undisturbed, as it is not within the powers of this court under Section 173 of the Magistrate's Courts Act to question it in any way. I thus clarify that 15 the stated compensation amount shall be paid by the convict to the complainant. West Acholi Co-operative Financial Services Ltd, within one year after serving the sentence of 3 years.

It is so Ordered.

Dated and signed this 19th March, 2024.

odm. 19/03/2024 George Okello JUDGE

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