

UGANDA / JUDGMENT

Uganda v Kasumba (Criminal Confirmation 1 of 2024) [2025]

UGHC 54 (10 February 2025)

[2025] UGHC 54

COURT

High Court of Uganda

BEFORE

Karemani Jamson K, J

CASE / FILE NUMBER

Criminal Confirmation 1 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KIBOGA

CRIMINAL CONFIRMATION CASE NO.001 OF 2024

(ARISING FROM CRIMINAL CASE NO.083 OF 2022 OF CHIEF MAGISTRATES COURT OF KIBOGA AT KIBOGA)

UGANDA

VERSUS

KASUMBA LAWRENCE ACCUSED

BEFORE: HON. MR JUSTICE KAREMANI JAMSON. K**RULING****Introduction**

The accused person was charged with the offence of Stealing Cattle contrary to Sections 254(1) and 264 of the Penal Code Act. He pleaded not guilty. He was tried and convicted. He was sentenced to a fine of shillings four million or to serve imprisonment of three years in default by the magistrate Grade one at Kiboga court.

The fine was to turn into compensation.

The file was forwarded by the Chief Magistrate Kiboga for revision of the sentence and the conviction on the ground that the sentence handed down was improper and irregular under section 221 (3) of MCA.

The convict was released on bail pending the decision of this court.

Background

It was alleged that on 21st January 2022 at Kalagi LC1 in the District of Kyankwazi, the accused person stole two (2) heads of cattle valued at shillings three million (shs.3.000.000=) the property of Matama Janet.

Issues

The only issue for determination is whether the sentence imposed was proper or irregular

Under Section 221 (3) of the Magistrate's Court Act it is provided that where under subsection (2) if the Chief magistrate is of the opinion that any finding, sentence, decision judgment or order is illegal or improper, or that any proceedings are irregular,

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he or she shall forward the record with such remarks therein as he or she thinks fit to the High Court.

Sub-section (4) of the above section provides for the release of the person serving the sentence as a result of these proceedings on bail pending determination of the High Court.

Under Section 50(2) of Criminal Procedure Code Act the Director of Public Prosecutions has to be given an opportunity to be heard. The Learned State Attorney of Kiboga was given an opportunity and gave his input.

The learned Chief Magistrate in her communication did not expound on what was irregular with the sentence or proceedings therein.

I have looked at the proceedings in this matter and I do find that the plea was properly taken. Hearing commenced, the prosecution presented witnesses who were all crossexamined and the prosecution closed their case. Court found the accused to have a case to answer. The accused presented his defence and did not present any witness after being given an opportunity. Judgment was delivered and the accused convicted.

I would like to state the sentencing proceedings complied with the law. The sentence passed was of a fine of shillings four million or serve three years in default.

Section 254 of the Penal Code Act defined theft and provides the general punishment for theft.

Section 264 of the Penal Code Act provides that if the thing stolen is a horse, mare, ass, mule gelding, camel bull, cow, ox ram ewe, wether goat or pig or any young of any such animal, the offender is liable on conviction for the first offence to imprisonment for seven years and for subsequent offence to imprisonment for fifteen years.

In the instant case the convict was sentenced to a fine of shillings four million or imprisonment for three years in default.

According to **Section 179 (a) of Magistrates Court Act** where no sum is expressed to which a fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive.

The above connotes that where the Act does not provide for a minimum and maximum amounts for the fine sentence, court has the discretion to impose any amount as long as it is not excessive.

In the instant case the fine of four million shillings was not excessive given the fact that two heads of cattle had been stolen.

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However, under **Section 179 (d) of Magistrates Court Act** where the period ordered by 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.

According to the scale laid down in the section cited above, where the court passes a sentence of a fine that exceeds six currency points which according to the **Schedule 1 of the Magistrates Act** is equivalent to shillings one hundred and twenty thousand \$(120,000=)\$, the maximum default imprisonment sentence is one year.

It therefore follows that under the above cited provisions of the law, while sentencing an accused if the law does not expressly provide for the minimum and maximum fine amounts and at the same time does not provide the minimum and maximum default imprisonment periods, the court has the discretion to impose any amount of fine but the default period cannot exceed one year.

My own comprehension of the intention of the legislature behind this provision is that once the court opts to impose a fine sentence it has already deemed fit not to imprison the accused. Therefore, the default to imprisonment sentence which was not the primary intention should not be excessive.

In the instant case the default imprisonment sentence of three years is illegal and it is revised accordingly.

In as far as the order for payment of the fine in lieu of compensation is concerned it is legal since it is provided under the law.

Section 196 of the Magistrates Court Act provides for compensation in criminal matters in addition to other penalties.

All in all, I the sentencing proceedings of the trial magistrate are set aside and the accused is sentenced as follows:

- 1. The accused is sentenced to a fine of \$shs.4.000.000=\$ and in default to serve a term of imprisonment for one year.
- 2. The fine of shs.4.000.000= if paid shall act as compensation to the complainant for the two cows stolen.
- 3. The period for the default sentence of one year shall run from the date of recommitment into prison.
- 4. Before sentence the convict had been on bail and the bail was cancelled after conviction. By the time he was released on bail pending these proceeding he had

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served 20 days in prison. It is deducted from one-year default sentence and he remains with a default period of eleven months (11) and ten (10) days to serve.

- 5. In case the fine is not paid in lieu of the compensation ordered, execution proceedings shall ensue to recover the same.
- 6. The convict's bail granted by the Chief Magistrate pending these proceedings is hereby cancelled and the convict is ordered to pay the fine or shall serve the sentence as above directed.

I so order

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KAREMANI JAMSON. K JUDGE 10.02.2025

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