

UGANDA / JUDGMENT

Uganda v Namugenyi (Criminal Appeal No. 046 of 2014) [2015] UGHCCRD 26 (25 May 2015)

[2015] UGHCCRD 26

COURT

HC: Criminal Division (Uganda)

BEFORE

Namundi, j

CASE / FILE NUMBER

Criminal Appeal No. 046 of 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL APPEAL NO. 046 OF 2014

(Arising from Mukono Criminal Case No. 419 of 2014)

UGANDA :: PROSECUTOR

VERSUS

JOYCE NAMUGENYI KIZITO MUTASIGA :::: RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

This is an Appeal against the sentences meted out to the Respondent who pleaded guilty to three Counts namely:

1. Obtaining money by False Pretences contrary to section 312 of the Penal Code Act.
2. Making false declarations relating to land contrary to Section 92 (1) (b) and (3) of the Land Act and
3. Uttering cancelled or exhausted documents contrary to Sections 352 and 349 of the Penal Code Act.

The trial Magistrate sentenced the Respondent to a Caution on each of the Counts.

According to the record of Proceedings, the Respondent is a widow of Mutasiga who died and left properties at Nakisunga and other places. The Respondent, using Letters of Administration which had been revoked by the High Court, registered herself on the Certificate of Title for Kyaggwe Block 253 Plot 148. On 12/5/2010, she sold land on the same Plot. She pleaded guilty and was convicted and sentenced.

On sentencing, the prosecution cited aggravating factors that the Respondent had abused the fiduciary position she held as the official wife of the deceased and converted all the property in her names.

Further that she was a first offender with no previous records.

In mitigation, the Respondent only claimed she was diabetic and prayed for leniency.

The Magistrate on sentencing found that the Respondent had pleaded guilty to all the charges. She had also secured a settlement with all the beneficiaries of her husband's Estate. She accordingly cautioned her on each of the Counts.

The prosecution has appealed against sentence and only one ground was cited:

1. That the learned trial Magistrate erred when she imposed a manifestly low sentence on all three Counts without carefully considering the nature of the offences.

It is the submission of the Appellant/DPP that the Magistrate based her discretion and sentence on the wrong principles and factors and in the process considered factors outside the evidence presented, she consequently reached a wrong conclusion and meted out a manifestly low sentence. Reference was made to the cases of:

1. **Kiwalabye Bernard Vrs. Uganda (Criminal Appeal No. 1143/2001)** and
2. **Kyalimpa Edward Vrs. Uganda (Criminal Appeal No. 10/2005)**

Where the discretion of the trial Judge in sentencing was discussed. In **Johnson Wavamuno Vrs. Uganda**, it was held that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise a discretion or failure to take into account a material consideration, or an error in principle was made.

It is submitted that the Magistrate based her sentence on promises made by the Respondent to make reparations. That the sentence does not meet the ends of justice as there was no deterrence to discourage future culprits. Further that the sentence meted out is reserved for misdemeanours and not felonies.

It is also submitted that the sentences are out of time with current Judicial decisions and the Sentencing Guidelines of 2013. Reference was made to **Mumywero Vrs. Uganda - High Court Criminal Appeal No. 9/2011**, where the Court in upholding a 4 year sentence on a charge of Uttering false documents noted that a sentence needs to be effective to deter others, while reprimanding the culprit.

In the instant case, it was submitted that a punitive custodial sentence was called for. It should have been 4 years imprisonment. That the Court must strike a balance between deterrence, retribution, prevention and reformation.

For the Respondent, it has been submitted that the Court of Appeal will not interfere with the exercise of discretion in sentencing unless there has been a failure to exercise discretion or failure to take into account a material consideration, or an error in principle was made. That it is not sufficient that the Court would have exercised the discretion differently. Refer: **R. V. Havilland (1983) 5 Criminal Appeal on (5) 109**.

It is submitted that the Magistrate considered both the aggravating and mitigating factors and that there was nothing to show that the sentence was illegal, manifestly low and unjust to the victims who had reconciled with the Respondent.

That she was alive to the provisions of Article 126 (2) of the Constitution as well as the principles of reconciliation between the parties.

It was further submitted that on the authority of **Uganda Vrs. S. Kawesa & Another (1984) HCB 13**, a Magistrate's Court which convicts an accused person is empowered and has discretion to inflict any sentence ranging from a caution up to imprisonment on the terms specified in law.

That the Sentencing Guidelines were not meant to usurp the discretion of the sentencing Judge or Magistrate.

It has been also submitted that in the alternative and without prejudice the sentence could be substituted with a fine and not a custodial one.

I have considered the submissions by both Counsel. The principles of sentencing have been dealt with by various Courts and also in the authorities cited and I need not reproduce them here. Suffice it to say that a sentence meted out by Court must meet the ends of justice having taken into account both the aggravating and mitigating factors, the gravity of the offence and the circumstances of the said case.

The instant case had three Counts each with a different sentence. An offence under Section 312 of the Penal Code Act carries a maximum sentence of one year imprisonment. Section 92 (1) (b) and (3) of the Land Act carries a sentence of a fine of 25, currency points or 12 months imprisonment or both.

Finally an offence under Section 352 and 349 of the Penal Code Act carries a maximum sentence of 10 years.

The Magistrate in her wisdom, regardless of the gravity and difference in the sentences for each of the 3 Counts meted out a uniform sentence.

The record only shows that the prosecutor of the day said more in mitigating the accused than the accused herself who only stated that she was diabetic.

Even then, the prosecution had nothing to show that any reparation or settlement had been reached by the complainants and the accused so as to justify the sentences of caution.

The Respondent had nothing to show that she is sickly and her condition called for lenient sentences.

It is my view that even where the prosecution is agreeable to lenient sentences (as in this case), the Judge or Magistrate must be furnished with sufficient information to enable the Court to make an informed decision.

In the instant case the prosecutor made a submission from the bar that the parties had resolved their differences.

The accused had no medical evidence of her health condition. The other consideration is that even then, much as caution is a legal and lawful sentence, there must be reason to justify such a sentence.

In the instant case the Magistrate only acted on the scanty information from both the prosecution and the accused.

It is my finding that in the circumstances, the sentences given out by the Magistrate were arbitrarily arrived at and do not serve the interests of justice.

A Court should consider all circumstances of the case, and give reasons for the sentences that it finally arrives at.

In the instant case the trial Magistrate fell short of the above requirement. I accordingly set aside the sentences by the trial Court and substitute them with the following.

The offences charged are grave in nature and also impact on the way the Courts function and dispense justice.

Forgery or tampering with Judicial documents in whatever form e.g. Letters of Administration should not be looked at kindly. The consequences for such acts lead to loss of property and sometimes even lives. Much as the Respondent pleaded guilty and hence saved the Court's time, she should be punished so that this acts as a deterrence to other would be offenders.

Accordingly she is sentenced as follows:

Count No. 1: 3 months imprisonment.

Count No. 2: A Fine of Shs.500,000/= or in default, 12 months imprisonment.

Count No.3: 3 years imprisonment.

It is ordered that all sentences are served concurrently.

Godfrey Namundi

JUDGE

25/05/2015

Right of Appeal explained.

Godfrey Namundi

JUDGE

25/05/2015

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Prepared on 14 October 2026 · Esheria