

Uganda v Ntaganda & Another
(Criminal Confirmation 9 of 2024)
[2025] UGHC 53 (10 February 2025)
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BEFORE: HON. MR JUSTICE KAREMANI JAMSON. K

RULING

Introduction

The accused persons were charged with the offence of Stealing Cattle contrary to Sections 254(1) and 264 of the Penal Code Act. They pleaded not guilty. They were tried and convicted. They were each sentenced to serve a term of imprisonment for six years by A.1 and three years by A.2 respectively by the magistrate Grade one at Kyankwanzi court.

The file was forwarded by the Chief Magistrate Kiboga for confirmation of the sentences due to the fact that the sentences handed down were above two years.

Background

It was alleged that on 31st July 2023 in Ranch No.5 Kasegyere B Kyankwanzi District, the accused persons and others at large, stole eleven (11) heads of cattle valued at shillings twentyfive million (shs.25.000.000=) the property of Mutegura Phinah Alias Jane.

Issues

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

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Under Section 173 (1) of the Magistrate's Court Act it is provided that where any sentence to which this section applies is imposed by a magistrate's court other than a magistrate's court presided over by a chief magistrate, the sentence shall be subject to confirmation by High Court.

Sub-section (2) of the above section applies to a sentence of imprisonment for over two years.

Section 174 (4) of The Magistrate's Court Act provides that subject to Section 50 (2) of the Criminal Procedure Code Act, the High Court may exercise the same powers in confirmation as are conferred in revision.

I have looked at the proceedings in this matter and I do find that the plea was properly taken.

I would like to examine the sentencing proceedings and find out if it complied with the law.

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, whether 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 first convict was sentenced to imprisonment for six years and the second convict to three years which sentences are both less than the maximum sentence of seven years.

The trial magistrate explained that the first convict was not a first offender and stated the offences he was involved in before. She therefore sentenced him against fifteen years for being a subsequent offender.

The sentence of six years' imprisonment for stealing of eleven heads of cattle against the maximum sentence of fifteen years is proper and appropriate in the circumstances for A1.

The trial magistrate further explained that the second convict was a first offender but gave reason for the sentence of three years' imprisonment.

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The sentence of three years' imprisonment for stealing of eleven heads of cattle against the maximum sentence of seven years is proper and appropriate in the circumstances for A2.

I find no reason to interfere with the sentences passed.

However, the trial magistrate did not specifically state how much time the convict had spent on remand, how much time was deducted and what time was remaining to be served.

The warrants of commitment on sentence of imprisonment dated \$13/8/2024\$ state that the 1st convict was sentenced to 6 years' imprisonment less the period spent on remand and the 2nd convict was sentenced for three years' imprisonment less the period spent on remand.

From both sentences given, it is impossible to tell whether the period spent on remand was already considered and deducted or was to be deducted by the prison officials later.

According to the case **Baluku Fred V Uganda Supreme Court Criminal Appeal No.19 of 2017 at Kampala** it was held that a sentence arrived at without taking into consideration of period spent on remand is illegal for failure to comply with a constitutional mandatory provision in Article 23(8) Of the Constitution.

Article 23(8) of the 1995 Constitution of the Republic of Uganda states that where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.

Furthermore, Guideline 15(2) of the Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013 states that the court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account.

In the case of **Rwabugande Moses V Uganda; SCCA No. 025 of 2014**, the court held that;

"it is our view that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final

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sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused."

It is my considered position that the trial magistrate should have mathematically deducted the period the convict had spent on remand from the sentence given and arrived at the exact period the convict was going to serve in prison.

It is also my considered position that time spent on remand or lawful custody includes;

- (a) The period that the accused person spends on remand before he/she is granted bail if bail is ever granted,
- (b) The period spent on remand if he/she is not granted bail at all till conviction and
- (c) The period spent on remand if bail has been granted and at one time it is cancelled and the accused returns to prison before conviction.

All this period must be calculated and deducted from the sentence the court deems appropriate. It must be clearly seen deducted mathematically and not otherwise.

This deduction of the Period spent on remand is a further emphasis of the presumption of innocence under Article 28 of the Constitution of Uganda 1995 as Amended. The period being deducted is the time served by an accused before he/she is found guilty but could not be trusted to attend trial from outside prison on bail.

In the instant case and from the record of the trial court, the convicts were first remanded to prison on 04/10/2023\$.

A1 was granted bail on 27/11/2023\$ after spending one (1) month and twenty-three (23) days on remand. If this period is deducted from the sentence of six years that was later passed, he remained to serve five (5) years, ten (10) months and seven (7) days imprisonment. This is the period of imprisonment that he has to serve from the date of his sentence i.e. 13/08/2024\$.

As for A2 he remained on remand throughout the trial. He was sentenced on 13/08/2024\$. He had therefore spent ten (9)\$ months and twenty-one (21)\$ days on remand.

When the above period spent on remand is deducted from the three years' imprisonment sentence that was later passed, he remained with a period of two (2) years, two (2) month

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and nine (9) days to serve. This is the period of imprisonment he has to serve from 13/08/2024\$ when he was sentenced.

I so order

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KAREMANI JAMSON. K

JUDGE

10.02.2025

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