

UGANDA / JUDGMENT

Uganda v Tarakwe (Criminal Revision 27 of 1993) [1996] UGHC 37 (2 January 1996)

[1996] UGHC 37

COURT

High Court of Uganda

BEFORE

GM OKELLO, J

CASE / FILE NUMBER

Criminal Revision 27 of 1993

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA - HOLDEIT AT GULU CRIMINAL REVISION NO. 27/93 (Original Cr. Case No. MM 224 of 1991)

Uganda versus Margaret Tarakwe. Before: The Honourable Mr. Justice G. M. Okello.

ORDER: -

The accused was convicted on her own plea of assault, occasioning actual bodily harm contrary to section 228 of the P. C. A. She was subsequently sentenced to a fine of shs. 14,000/= or in default to 6 weeks imprisonment. She was on the date of her sentence committed to prison for ⁶ weeks.

The file was apparently -called for inspection and was subsequently placed before me. On perusal, I found that though the plea of "I admit it" upon which the accused was convicted was vague, it could be cured by the narrated facts which corroborated the accused admitted. The facts revealed the commission of the offence charged. I therefore had no problem with the conviction. I also had no problem with the sentence as it is within the law.

However, my concern is about the commitment warrant by which the accused was committed to prison in default of payment of the fine. The Commitment Warrant is to reflect the sentence imposed by the court.

In the instant case, the Commitment Warrant was in disparity with the sentence actually imposed by the trial Magistrate. Whereas the court ordered the accused to a fine of 14,000/= or in default to imprisonment of ⁶ weeks, the Commitment Warrant indicated that the accused was,

"sentenced to a fine of shs. 4,000/= or ⁶ weeks imprisonment in default (fine not paid)".

Sheila Nkwasiwe, the State Attorney who wrote the opinion for the DPP when the latter's opinion was sought expressed concern

in a letter ref DPP/04/9 of 11/7/95 that "The warrant of commitment on sentence of imprisonment therefore does not tally with the sentence".

Commitment Warrants are clearly to tally with the sentence imposed by the trial magistrate. I take this disparity as a "slip of the pen" because the Commitment Warrant stated correctly the default sentence imposed by the trial magistrate. That "slip of the pen" therefore did not cause any miscarriage of justice.

The State Attorney who wrote the opinion for the DPP further expressed concern over the failure of the trial magistrate to comply with section 193 of the MCA. This section requires the court on imposing a sentence of a fine, to allow the accused at least thirty days within which to pay the fine. Where court ordered immediate committal in default of payment of the fine. sub-section 2 of this section requires the Commitment Warrant to reflect reasons justifying the immediate committal.

In the instant case, the accused was not allowed time within which to pay the fine as required by law nor did the Commitment Warrant -reflect any reason to justify the immediate committal. That section is mandatory. The general theme of that section is to afford an accused opportunity to pay the fine so imposed even by instalment if necessary. Imprisonment in default should be as the last resort when it become clear that the accused could not pay the fine.

The Commitment in this case was issued on 29/10/91 and there is no doubt that the accused must have now served the full default sentence of six weeks. That fault can not now be reversed It is important however, that the relevant Magistrate should in future have regard to this section when dealing with a similar case. This also applies to Cr. Revision No. 22/93 where the same magistrate also failed to comply with section 193 of the MCA.

No further action would now be taken.

Bukuno G. M. Ckello Resident Judge Gulu. 2/1/96\$.

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