THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO 150 OF 2018

(Coram: Egonda-Ntende, Bamugemereire, Madrama, JJA)

SSENTEZA MOHAMMED} ..... APPELLANT

VERSUS

UGANDA} .....RESPONDENT

(Appeal from the decision of the High Court at Kampala in Criminal Appeal No 14 of 2015 before Hon. Lady Justice Frances Abodo delivered on the 24th of October, 2018)

JUDGMENT OF COURT

The appellant with others was charged before a Magistrate Grade 1 of Buganda road magistrates court on 10th February, 2016 for *inter alia* on the first count of obtaining money by false pretence contrary to section 305 of the Penal Code Act. On the second up to eleventh counts he was charged with being in possession of forged currency notes contrary to sections 357 of the Penal Code Act. Lastly in count 12 he was charged with conspiracy to commit a felony contrary to section 390 of the Penal Code Act.

The appellant was found guilty as charged and convicted in count 1 for the offence of obtaining money by false pretence contrary to section 305 of the Penal Code Act. Secondly, the appellant was convicted as charged in counts 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 for being in possession of a forged currency notes contrary to section 357 of the Penal Code Act. Last but not least, the appellant was also convicted of conspiracy to commit a felony in count 12 contrary to section 390 of the Penal Code Act.

For obtaining money by false pretence in count 1 the appellant was convicted and sentenced to 3 years and 9 months' imprisonment. Secondly,

the appellant was sentenced to 1 year's imprisonment on each of the counts 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. Last but not least on count 12 the appellant was sentenced to one year's imprisonment.

A trial magistrate ordered that the sentences in counts 2, 3, 4, 5, 6, 7, and 8 will be served consecutively and the sentences on counts 9, 10 and 11 will be served concurrently. It was further ordered that count 12 for each of the convicts would be served as an independent sentence of one year.

The appellant was aggrieved and appealed to the High Court in Criminal Appeal No 0014 of 2016 on 6 grounds of appeal. Of particular mentioned are grounds of 5 and 6 of the memorandum of appeal where the appellant contended that:

> **5.The learned trial magistrate erred in law and fact when she failed to consider the period of 26 months already spent on remand thereby occasioning a miscarriage of justice.**
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> **6. The sentence of 11 years' imprisonment is too harsh in the circumstances of serving it consecutively after serving the first 7 years in the file 222/2014.**

The learned first appellate court judge held that the learned trial magistrate had taken note of the 15 months the appellant had spent on remand. The appellant had spent on remand a period with effect from 24th of November 2014 and completed one year, 2 months and 14 days before sentencing the appellant. Secondly, on whether the term of imprisonment was too harsh considering that the appellant also had a seven-year imprisonment term in Criminal Case No 222 of 2014, the learned trial judge found that the case involved 12 counts each with a different sentence. That the maximum sentence for obtaining money by false pretence is 5 years' imprisonment and the learned the trial magistrate only sentenced the appellant to 3 years' imprisonment. With regard to the offence of being in possession of forged currency notes, it attracts imprisonment for 7 years but the learned trial judge gave a sentence of one-year imprisonment for each of the counts to run consecutively and counter 9 – 11 to be served concurrently. Lastly, for

the offence of conspiracy to commit a felony, the learned trial magistrate sentenced the appellant to one year's imprisonment. The learned first appellate court judge found that the sentences in Criminal Case No 222 of 2014 had no bearing on the current sentences in this appeal. The final result is that the first appellate court upheld the conviction and sentences imposed by the learned trial magistrate.

The appellant was aggrieved and filed a notice of appeal against sentence. The appellant represented himself in the proceedings before this court and had filed written submissions though there is no memorandum of appeal.

At the hearing of the appeal, the appellant appeared through video link from Luzira prison due to the Covid 19 pandemic regulations. The respondent was represented by Sharifah Nalwanga, Chief State Attorney. The appellant adopted his written submissions on court record and prayed that the court considers before arriving at a decision. Similarly, the respondents counsel relied on her written submissions filed on court record.

Resolution of appeal

We have carefully considered the written submissions of the appellant as well as the written reply of the respondent. From the submissions of the appellant, we discern that the issue raised is whether the sentence in Criminal Case No 222 of 2014 has a bearing on the sentence in Criminal Case No 785 of 2014. This is related to the contention that the sentence in a Criminal Case No 785 of 2014 from which this appeal emanates is unlawful and when computed is excessive and unjust.

The appellant represented himself and there is no memorandum of appeal. Under section 28 of the Criminal Procedure Code Act, cap 116, every appeal shall be commenced by notice in writing signed by the appellant or an advocate on his or her behalf. In this case the appellant lodged a notice of appeal indicating that he intended to appeal against the whole judgment of the High Court. It shows that the decision of the High Court was delivered on 24th October 2018 and notice of appeal was received in the registry of the Court of Appeal on 7th November 2018. This was within 14 days from the date

of the decision. Further, the notice of appeal does not indicate the grounds of the appeal. However, section 28 (5) of the Criminal Procedure Code Act provides that where an appellant who is not represented has not availed himself or herself of the provisions of subsection (3), for purposes of perusing the record before formulating grounds of appeal, he or she may be permitted to raise any proper ground of appeal orally at the hearing of the appeal. Further, the appellate court may for good cause shown extend period within which to lodge the appeal. The appellant filed his submissions on 20th May 2021 from which the grounds of appeal can be discerned. We accordingly extend the time within which to raise the grounds of appeal and validate the grounds that can be discerned from the written submissions filed in the court registry on 20th May 2021 and shall proceed to determine the appeal on the basis of the written submissions.

We further note that this is a second appeal from the decision of the High Court sitting as a first appellate court considering a decision of a grade 1 magistrate who sentenced the appellant.

Section 45 of the Criminal Procedure Code Act (CPC) provides that:

> **45. Second appeals.**
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> **(1) Either party to an appeal from a magistrate's court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.**

In other words, the appellant is precluded from appealing against the severity of sentence and no appeal may be lodged on a matter of mixed fact or law. It may only be lodged on a point of law.

The appellant submitted that the sentence computed by the prison authorities amount to an aggregate sentence of 16 years' imprisonment. This is because the appellant would first serve sentence in Criminal Case No 222 of 2014 amounting to 7 years' imprisonment. He had been sentenced to 4 years and 3 years' imprisonment respectively to run consecutively.

Secondly, after completing the sentence in Criminal Case No 222 of 2014, he would have to serve sentence in Criminal Case No 785 of 2014. Counts 2, 3, 4, 5, 6, 7 and 8 are to run consecutively totalling to 7 years' imprisonment. Counts 9, 10 and 11 run concurrently and totalled 1 year's imprisonment. Lastly, on count 12 he was sentenced to 1 years' imprisonment. In total the appellant was informed by prison authorities that he would serve 9 years in Criminal Case No 785 of 2014. This coupled with the sentence in Criminal Case No 222 of 2014, he would end up serving 16 years' imprisonment. The appellant contends that the sentence was unlawful. He objected to sentences being served consecutively and stated that every sentence must commence from the date of sentence.

He prayed that this court finds that the sentence passed against him was harsh and excessive and that it should be set aside. Alternatively, the court should sentence him to an appropriate sentence and take into account the sentence in Criminal Case No 222 of 2014. He contends that the continuous holding of the appellant in prison custody is illegal and unlawful and prays to be released immediately.

In reply, the respondent's counsel relied on **Magara Ramathan v Uganda; Supreme Court Criminal Appeal No 01 of 2014** for the proposition that sentences of imprisonment running concurrently is the exception while the general rule is that sentences run consecutively. Secondly, the respondent's counsel supported the decision of the first appellate court that the sentence in Criminal Case No 222 of 2014 had no bearing on the criminal appeal before this court. She prayed that the appeal is dismissed.

From the submissions, the appellants appeal relates to 2 grounds which we reduce into two issues, namely;

1. **Whether the sentence in the Criminal Case No 222 of 2014 has a bearing on the sentence in the current appeal.**
2. **Whether the sentence in the current appeal is an illegal sentence in that the computation meant that the appellant would serve 16 years' imprisonment.**

From the two issues above, the appellant's appeal is not against the severity of sentence but the legality of the sentence and we have jurisdiction to consider his appeal.

On the first issue of whether the sentences passed in Criminal Case No 222 of 2014 has a bearing on the sentences passed in this matter, the law is fairly straightforward. Section 175 of the Magistrates Courts Act cap 16 (MCA) clearly provides that sentences are passed for each trial. The court does not consider the sentences passed in another trial but we note that the court may take into account aggravating factors such as not being a first offender but being a convict with a previous record of conviction. A person may be convicted of several offences at one trial. However, the trial of a person for another offence in another trial is not a material factor for purposes of sentencing for the particular offence in which he or she is facing trial at the time of passing sentence. It may only be a relevant factor in considering the conduct of the appellant as a repeat offender and in assessment of appropriate sentence.

Section 175 of the Magistrates Courts Act Cap 16 provides that:

> 175. Sentences in cases of conviction of several offences at one trial.
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> (1) When a person is convicted at one trial of two or more distinct offences, the court may sentence him or her, for those offences, to the several punishments prescribed for them which the court is competent to impose, those punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that the punishments shall run concurrently.
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> (2) In the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.
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> (3) For the purposes of appeal or confirmation the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Clearly section 175 of the MCA deals with proceedings at one trial at the time of sentencing for various offences the convict has been convicted of, but does not concern conviction and sentence of the appellant in another trial. Secondly, a sentence at a particular trial in which the convict has been convicted of an offence is deemed to commence from the date of conviction This is the express provision of section 176 (2) of the MCA which provides that:

> 176. Warrant in case of sentence of imprisonment
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> (1) A warrant under the hand of the magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Uganda, shall be issued by the magistrate, and shall be full authority to the officer in charge of that prison and to all other persons for carrying into effect the sentence (not being a sentence of death) described in the warrant.
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> (2) Subject to the express provisions of this or any other law to the contrary, every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced.

The appellant's sentence in this appeal commences from the date of his conviction by the trial magistrate on the 9th of February 2016 and the issue of whether the sentences are consecutive or concurrent is determined from that date. The sentence in Criminal Case No 222 of 2014 has no bearing on the sentence in Criminal Case No 785 of 2014.

The remaining question is whether the sentences of the appellant on grounds 2, 3, 4, 5, 6, 7 and 8 were lawful for being consecutive sentences. On the basis of the law, we agree with the respondent that a consecutive sentence is the norm while a concurrent sentence is an exception to be determined by the court as stipulated by section 175 (1) of the MCA. Section 175 (1) of the MCA directs that where there are various sentences, the sentences shall run consecutively unless the court otherwise directs that they shall run concurrently (See also decision of the Supreme Court in **Magala Ramathan vs Uganda; Supreme Court Criminal Appeal No. 01 of 2014** for the proposition that serving more than one term of imprisonment

sentence shall be served as consecutive sentence is the norm while a serving it concurrently is the exception).

We have further carefully considered the appellant's appeal and generally as can be discerned from the submissions, the appellant's grievance is that sentence is illegal. As to the legality of the consecutive sentences, we have considered the charges and counts on which the appellant was convicted and sentenced variously.

The appellant and two others were charged on 13th of November 2014 with several counts of offences but particularly they were charged with 3 offences. The first offence was obtaining money by false pretences contrary to section 305 of the Penal Code Act. Secondly, the appellant and two others were charged with various counts of the offence of being in possession of forged currency notes contrary to section 357 of the Penal Code Act. Under the offence of being in possession of forged currently notes, the appellant was charged with 10 counts of possession of forged currency notes. Last but not least, the appellant was charged with conspiracy to commit a felony contrary to section 390 of the Penal Code Act.

From the outset the conviction and sentence for the offences of obtaining money by false pretences contrary to section 305 of the Penal Code Act and conspiracy to commit a felony contrary to section 390 of the Penal Code Act are not part of this appeal. What is in issue is the consecutive sentences in counts 2 – 8 for the offence of being in possession of forged currency notes.

Particularly the various counts for the offence of being in possession of a forged currency notes has the striking factor that the appellant was charged with the offence of being in possession of forged currency notes on the same date and place. This is because the date of the offence is 1st of March 2014. The place of the offence is at Kitale, Bulwadde in Wakiso district. The counts of the offence include various notes of United States dollars in the various denominations. Each count was separated describing the denomination of the notes and serial numbers.

In the 1st count, the appellant was charged with unlawful possession of 2 forged currency notes of US$100. On the 2nd count the appellant was charged with the possession of 3 forged US$100 notes with the same serial numbers. The 3rd count relating to possession of currency notes concerns the 3 forged US dollar currency notes bearing the same serial numbers. The 4th count relates to 4 forged currency notes of US$50 bearing the same serial numbers. The 5th count relates to possession of 3 forged US$50 currency notes bearing the same serial numbers. The 6th count relates to 3 forged currency notes of US$50 bearing the same serial numbers. The 7th count relates to 3 forged currency notes of US$50 bearing the same serial numbers. The 8 count relates to 3 currency notes of US$50 bearing the same serial numbers. The 9th count relates to 3 forged currency notes of US$50 bearing the same serial numbers. Finally, the 10th count relates to 4 currency notes of US$50 bearing the same serial numbers. 7 out of the conviction and sentence for the 10 counts of being in possession are supposed to be served consecutively while the 3 remaining counts are supposed to be served concurrently leading to a sentence of 7 years' imprisonment of one year for each count of being in possession.

The question is whether the 10 counts are not really particulars of being in possession of various currency notes on the same day and in the same place. Charging them as separate counts is like charging somebody for robbery on separate counts in the same transaction merely because different kinds of property were taken with each count describing the robbery of an item of property. The proper direction ought to have been that the appellant is charged with the offence of possession of various forged currency notes and the particulars of which would be the particular currency notes found in the same place on the same day in possession of the appellant. In other words, the appellant would have been convicted of one count of being in possession of various forged currency notes that are described in the particulars of the offence. Had that been the case, the appellant would have been sentenced for one offence reflected in one count of being in possession of various forged currency notes with the particulars of the notes described which offence took place on 1 March 2014 at Katale,

Bulwadde in Wakiso district. Thereafter an appropriate sentence would then be imposed.

We note that with the procedure adopted, if the appellant had been hypothetically found in possession of various forged notes amounting to 1000 severable forged notes, he would be charged with 1,000 counts and if sentenced to 1 year on each count as in this appeal, he would be liable to serve 1000 years if the court does not order otherwise that the sentences be served concurrently. It was an innovative way of multiplying the counts and was erroneous in law. The appellant was guilty of a specific offence of being in possession of several forged notes. The contents of a charge are provided for under section 85 of the MCA while joinder of counts is provided for under section 86 of the MCA which sections provide that:

> 85. Contents of charge.
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> Every charge shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.
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> 86. Joinder of counts.
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> (1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.
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> (2) Where more than one offence is charged in a charge, a description of each offence so charged shall be set out in a separate paragraph of the charge called a count.

Section 85 of the MCA requires only the statement of a specific offence the accused is charged for to be reflected in the statement of the offence and the particulars thereof stated separately. Secondly, under section 86 (1), it is only different and severable offences (i.e. under different sections of the Penal Code Act) founded on the same facts which may be charged in the same charge sheet. The appellants matter did not involve separate or different offences under different sections of the Penal Code Act founded

on the same facts. The offence of possession of forged currency notes was charged under the same section founded on the same date and place where all the items were found. Particularly section 86 (2) of the MCA provides that where more than one offence is charged, they shall be put in a separate count. If section 86 (2) is read in harmony with section 86 (1), the statement *"more than one offence"* would mean offences under different sections of the Penal Code Act or offences involving a different transaction such as murder of different people. In this case there was only one possession of forged notes though with different denominations of 100 and 50 US$ notes and different serial numbers. It therefore had to be charged in one count with the different denominations and serial numbers giving particulars of the forged notes found in possession of the appellant. We emphasise that the appellant was not charged with forgery of currency notes but possession of forged currency notes.

In the premises, the learned first appellate court judge ought to have set aside the numerous sentences for the 10 counts of the charge of being in possession of forged currency notes. We according set aside the sentences for the charges of being in possession of forged currency notes contrary to section 357 of the Penal Code Act. Exercising the jurisdiction of this court under section 11 of the Judicature Act, we shall proceed to impose an appropriate sentence,

Section 357 of the Penal Code Act provides that:

> 357. Purchasing forged bank or currency notes.
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> Any person who, without lawful authority or excuse, the proof of which lies on him or her, imports into Uganda or purchases or receives from any person, or has in his or her possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, commits a felony and is liable to imprisonment for seven years.

The maximum penalty authorised is 7 years' imprisonment. The learned trial Magistrate imposed a sentence of 1 year's imprisonment for each particular of possessed note. The aggregate period arrived at on consecutive

sentences for 7 counts was 7 years' imprisonment. The appellant was already serving a lawful sentence in a previous conviction and the period of pre-trial remand cannot in the circumstances be considered as it was a factor to be considered in the prior Criminal Case No. 222 of 2014 where the appellant had been tried, convicted and sentenced to a seven-year imprisonment term. However, in the circumstances where the appellant is a not a first offender having being convicted before, we would sentence the appellant to 5 years' imprisonment for being in possession of several forged currency notes. This sentence shall be served concurrently with the sentence for the count of obtaining money by false presentence contrary to section 305 of the Penal Code Act where the appellant was sentenced to 3 years and nine months imprisonment and the sentence of 1 years imprisonment where the appellant was sentenced in count 12 with conspiracy to commit a felony contrary to section 390 of the Penal Code Act. The various sentences imposed above shall commence on the date of the appellant's conviction on the 9th of February 2016.

Dated at Kampala the 15th day of Oct 2021

Fredrick Egonda – Ntende

Justice of Appeal

Catherine Bamugemereire

Justice of Appeal

Christopher Madrama

Justice of Appeal