

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 021 OF 2018**

SSEGUYA JOHN:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Kabanda, J. dated 2nd March 2018 in Criminal Appeal No. 207 of 2016)

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHRISTOHER GASHIRABAKE, JA
HON. LADY JUSTICE EVA K. LUSWATA, JA**

JUDGMENT OF THE COURT

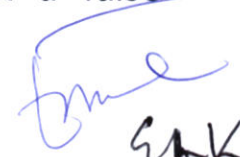
This is a second appeal arising from the decision of the High Court (Kabanda, J.) wherein the appellant's appeal against the decision of the Chief Magistrates' Court of Kampala at City Hall was dismissed and the conviction and sentence upheld.

Background

The facts as found by the first appellate Court are that on 25th April 2016, the appellant was charged with the offence of personation under section 38(1) of the Penal Code Act in count one, uttering a false document under section 351 of the Penal Code Act in count two, and obtaining money by false pretense contrary to section 305 of the Penal Act in count three.

The offences were committed at Lumumba Avenue, Nakasero in Kampala District. It was alleged in count one that on 16th May 2015 with intent to defraud or deceive, the appellant falsely presented himself to be Ssempagala Allan Masembe and thereafter sold land in Kyadondo Block 195/1536 at Kyanja the property of Ssempagala Allan Masembe.

Furthermore, in count two, it is alleged that on 16th May 2015, the appellant knowingly and fraudulently uttered to Kituma Magala Patrick a false


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document of a certificate of title for land in Kyadondo Block 195 Plot 1536 land at Kyanja purporting the same to be genuine whereas not.

In count three, it was alleged that at the offices of Kituma – Magala & Co Advocates in Kampala District, with intent to defraud or deceive, the appellant obtained UGX 120,000,000/= (shillings one hundred & twenty Million) from Magala Oketch Eva by falsely pretending that the land comprised in Kyadondo Block 195 Plot 1536, Kyanja belonged to him (Seguya John) whereas not. The prosecution adduced evidence to prove that on 16th May 2015, the appellant introduced himself to Eva Magala Oketch (PWI) as Ssempagala Allan Masembe. The appellant along with PW1 and Kituuma Magala Patrick Grace (PW3) visited and inspected land known as Kyadondo Block 195/1536, at Kyanja. Consequently, the appellant posing as Ssempagala Allan Masembe entered into a sale agreement of the land with PW1. Prior to that, PW3 conducted a search at the land registry and established that the land was in the names of Ssempagala Allan Masembe. He made the sale agreement on behalf of PW1. At the time of the transaction, the appellant presented an identification document in names of Ssempagala Allan Masembe bearing a photo of the appellant along with a title deed in the same name of Ssempagala Allan Masembe. Consequently, PW1 paid UGX 120,000,000/= under the sale agreement.

When PW1 proceeded to clear the land, she met Ssempagala Masembe (not being the appellant). The real Ssempagala Masembe had sold the land to Mark. Title deed in names of the complainant was later canceled on account of being forged. Subsequently the appellant was charged with the three counts above. In defense the appellant denied the charges. After a full trial, the trial Magistrate sentenced the appellant to 2 (two) years imprisonment on count one, 3 (three) years imprisonment on count two and to 5 (five) years imprisonment on count three.

Being dissatisfied with the decision of the Chief Magistrates Court, the appellant appealed to the High Court at Kampala against both conviction and sentence. The High Court disallowed the appeal and upheld both the conviction and sentence.


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The appellant has now appealed to this Court against the decision of the High Court in upholding the sentence in one ground of appeal as follows:

- "1. The Learned Trial Judge erred in law and fact when she upheld a sentence of 10 years imprisonment, a sentence which was illegal, manifestly harsh and excessive in the circumstances, thus occasioning a miscarriage of justice to the appellant."**

The respondent opposed the appeal.

Representation

At the hearing of the appeal, the appellant was represented by Mr. Emmanuel Muwonge on State brief, and the respondent was represented by Ms. Nakafeero Fatinah, Chief State Attorney.

Written submissions were filed only for the appellant.

Appellant's submissions

Counsel for the appellant submitted that the first appellate Court did not give the evidence adduced at trial a fresh scrutiny and thus failed in its duty as laid out in ***Kifamunte Henry Versus Uganda (Court of Appeal Criminal Appeal No. 128 of 2020)***.

Counsel relied on ***Kiwalabye Bernard Versus Uganda, Supreme Court Criminal Appeal No. 143 of 2001***, for the submission that the appellate court was not supposed to interfere with the sentence imposed by the trial Court which had exercised its discretion unless the exercise of such discretion resulted into a harsh and excessive sentence or where the sentence imposed is so low as to amount to a miscarriage of justice, or where the sentence was based on a wrong principle.

Counsel submitted that in the present case, there were many mitigating factors in favor of the appellant. He pointed out the mitigating factors as the appellant being a first offender, the appellant had children and his wife got an accident and had been admitted in hospital. Further that, the appellant had spent 4 months on remand. In counsel's view, the trial Court's failure to take into consideration the mitigating factors rendered the sentence an illegality and manifestly high in the circumstances.



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Counsel further submitted that in imposing an imprisonment sentence, the period spent on remand must be taken into account and this must be done in an arithmetic way. Counsel submitted that the trial Court failed to arithmetically address the issue of the period spent on remand by the appellant as required by law.

Counsel prayed that the appeal be allowed and that the sentence of 10 years cumulative imprisonment be set aside and substituted with a sentence that is in line with the law.

No submissions were filed for the respondent.

Court's consideration of the appeal

This is a second appeal against sentence only. **Section 45 (1)** of the **Criminal Procedure Code Act, Cap. 116** which governs second appeals to this Court provides as follows:

"45. Second appeals.

(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."

We are also alive to the duty of a second appellate Court, which is to determine whether the first appellate Court, on approaching its task, applied or failed to apply the principles as it was expected to do, namely, to reappraise all the evidence and come up with its own conclusions. If the first appellate Court failed to properly reappraise the evidence, the second appellate Court will proceed to do so and come up with its own findings.

(See: Masembe v Sugar Corporation and another [2002] 2 EA 434).

Whether the first appellate Court properly applied the principles as it was expected to do, is a matter of law.

We shall bear the above principles in mind, as we proceed to determine the sole ground of appeal which is against sentence. It is trite law that this Court can only interfere with the discretion exercised by the lower Court in imposing sentence where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice or where the court ignores to consider

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an important matter or circumstances which ought to be considered while passing sentence or where the sentence imposed is wrong in principle. (***See: Kiwalabye Bernard Versus Uganda, Supreme Court Criminal Appeal No.143 of 2001***). Considering that this is a second appeal, we shall only consider the appeal in regard to the legality of the sentence, which is a point of law. The first appellate Court was faulted for failure to take into consideration the mitigating factors which rendered the sentence an illegality. Further, that the said Court failed to arithmetically address the issue of the period spent on remand by the appellant as required by law.

In confirming the sentence passed by the trial Court, the first appellate Court stated as follows:

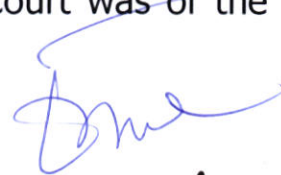
"In Mitigation, the appellant convict said,

'I know am innocent. I pray I am released. I have children. I have a wife with 4 children. My wife got an accident and she is at Mulago. I pray for mercy.'

From sentencing proceedings above, it is true appellant is first time offender. It is a case where the complainant lost money amounting to UGX 120,000,000/= and land. In this case the appellant presented the complainant with a forged title deed. The fact of the appellant being arrested within one year of the time of the offence is irrelevant. An accused is presumed innocent until he or she pleads guilty or until he or she is convicted, the trial Magistrate gave a valid reason for sentence save that the sentence is based on wrong principle in view that it runs from the date of remand as opposed to the date of conviction".

Our analysis of the above confirms that in sentencing, the first appellate Court was alive to the mitigating and aggravating factors raised and considered the same. We do not accept the submission by counsel for the appellant that the Court did not take into consideration the mitigating factors.

Further, the appellate Court also took into consideration the four (4) months period spent by the appellant on remand from 24th April 2016 until the time of conviction on 23rd August 2016, which had not been taken into consideration by the trial Court. However, the appellate Court was of the


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view that a cumulative sentence for the three counts was more appropriate in the circumstances of the case. The appellate Court stated as follows:

"Accordingly, the period spent on remand by the appellant of 4 (four) months is deducted. Furthermore, the remaining cumulative sentence of 9 years and 8 months shall commence from the date of conviction on 23^d August 2016".

We find that contrary to the submission by counsel for the appellant, the appellate Court took into consideration the 4 months the appellant had spent on remand before conviction. The Court deducted the 4 months from the 10 years imprisonment initially passed against the appellant and substituted it with 9 years and 8 months imprisonment.

In the circumstances, we find no reason to interfere with the sentence passed by the first appellate Court and resultantly dismiss the appeal.

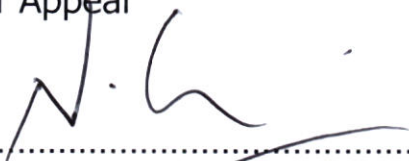
Dated at Kampala this 10th day of January 2022



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Elizabeth Musoke
Justice of Appeal



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Christopher Gashirabake
Justice of Appeal



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Eva K. Luswata
Justice of Appeal