

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-CV-0002-2002

UGANDA..... APPLICANT

-VS-

MATSIKO SAMMYRESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

This is an application brought by the State. It seeks for a revision of the sentences passed by the Chief Magistrate, Rukungiri, whereby the Chief Magistrate imposed sentences of a fine instead of the mandatory custodial sentences provided for under S.257 of the Penal Code Act.

At the hearing of the application Mr. Waninda, State Attorney, appeared for the Director of Public Prosecutions. The respondent was neither in court nor was he represented. The learned State Attorney casually stated that the respondent has absconded without indicating what efforts had been made to look for him. S.341 (2) of the Criminal Procedure Code Act provides that no order shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence. The application would not succeed in the absence of this vital requirement, just as is the case here.

Secondly, S.34 1 (8) of the Criminal Procedure Code Act provides:

‘Where an application is made by the Director of Public Prosecutions under the provisions of subsection (1) of this section to make an order to the prejudice of an accused person, such application shall be lodged with the Registrar within thirty days of the imposition of such sentence unless, for good cause shown, the High Court extends the time.’

The sentence in issue was imposed on 16th May 2002. This application was lodged with the Registrar on 30th July 2002, clearly beyond the time limit provided for such application. No good cause was shown for extension of time.

I find the application is not properly before this court.

Nevertheless this court would invoke S.4 1 (2) of the Judicature Statute which provides:

‘Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion adopt a procedure justifiable by the circumstances of the case.’

I find S.257 of the Penal Code provides that on conviction a term of imprisonment for not less than three years and not more than fourteen years is the only punishment provided for. Any sentence must be within the parameters. I can’t close my eyes to the fact that by imposing sentences of a fine the Chief magistrate erred. I would therefore order that this file be sent back to the Chief Magistrate in order that he may impose sentences of imprisonment as contained under S.257 of the Penal Code Act. The earlier sentences are to be set aside.

P.K. Mugamba
Judge

13th August 2002

Mr. Murumba for the State

Applicant absent

Ms Tushemereirwe court clerk

Court: Ruling delivered.

P.K. Mugamba
Judge