

THE REPUBLIC OF UGANDA:

IN THE HIGH COURT OF UGANDA AT FORT PORTAL.

HCT-01-CR-CF-0002-2003

(Arising from MSD-05-CC-43/2202)

UGANDA.....P
ROSECUTOR

VERSUS

BIGIRWA
GILBERT.....ACCUS
ED

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA.

REVISIONAL ORDER:

The Accused, person Bigirwa Gilbert was charged on 3rd July, 2003, with Escaping from Lawful Custody, Contrary to Section 103 of the Penal Code Act. He pleaded guilty and was sentenced to do Community Service for 6 (six) months i.e. 1114 hours”.

The file was brought to my notice by the Chief Magistrate Masindi, through the Deputy Registrar Fort Portal Circuit, with remarks that the Community Service Guideline provide for a maximum sentence of 960 hours, which is equivalent to 24 months but that the trial magistrate had sentenced the Accused person to 1440 hours.

Section 233 of the Magistrates Court’s Act 1970 makes Provision, similar to Section 340 of the Criminal Procedure Code Act, empowering the Chief Magistrate to call and examine the record

of any proceedings before a Magistrate’s Court inferior to his and within his local limits of jurisdiction for the purposes of satisfying himself as to the correctness, legality, sentence, decision, judgment or order and as to the regularity of the proceedings of such Magistrate’s Court and if he is of the opinion that it is illegal, improper or irregular to forward the record with such remarks therein as he thinks fit to the High Court. It is under this provision of the law that these proceedings were forwarded to this Court. Section 341 of the Criminal Procedure Code Act empowers the High Court to exercise Revisional Jurisdiction where it appears that in such Proceedings an error material to the merits has occurred.

With regard to the Chief Magistrate’s remarks I must point out that the Trial Magistrate sentenced the Accused to 1140 hours not 1440hours. Secondly the maximum sentence under Section 5 (i) of the Community Service Act is six months and not twenty four months. The Sub-section provides:-

“The Community service Order shall be performed for a period of not more than six months and the offender shall not work for more than eight hours a day”.

The Accused was sentenced to do community Service for 6 (six) months i.e. 1140 hours”. He was therefore sentenced to the maximum period of Community service of six months under Section 5 (1) above and supposed not to work for more than eight hours a day.

Regulation 14 of the community Service Regulations S.I, 55 of 2001 provides for guideline in Part A of the Second Schedule thereto to assist Courts and Judicial officers in the performance of their functions regarding the making and operation of Community Service Orders under the Act. Guideline 13 of the Schedule Provides:-

“The basic grid is founded on the following facts:-

.....
.....

(k) 960 equal 6 months Community Service 24 months in prison.

Going by the grid which is founded on 8 hours per day for 5 working days a week the 1140 total hours to which the Accused was sentenced would mean 91/2 hours work per day. Yet section 5(1) of the Act provides that the offender shall not work for more than eight hours a day. Thus the sentence to 1140 hours of Community Service would in excess of the maximum Community Service period of 960 hours equal to 6 months.

However going by the Calendar seven days in a week, where the Accused was sentenced to a total of 1140 hours in 6 months the Accused would work for 6.78 hours a day.

That is to say:

1140 hours divide by 6 months

= 190 hours per month divide by 4 weeks in a month.

= 47.5 Hours per week divide by 7 Calendar days in a week.

=6.78 Hours of community Service a day.

Going by this approach the Accused would work less than the maximum working hours of eight hours under Section 5 of the Act.

When addressing this Court, under the Provisions of Section 341 (2) of the Criminal Procedure Code Act, Ms. Tumuheise Rose, the Resident State Attorney going by the seven days in a week and relying on Regulation 19 of statutory Instrument No.55 of 2001 which provides that the guideline specified in the Second Schedule to the Regulations are not binding but only intended to assist Court's Officers in the exercise of their functions under the Act, submitted that the Trial Magistrate had sentenced the Accused for 6 months working for not more than eight hours a day or 1140 hours which according to her the Accused could still serve within 6 months working for not more than eight hours a day. She therefore contended that there was no error and the sentence by the Trial Magistrate should be upheld.

As already discussed above if the Accused is sentenced to Community Service in a total of 1140 hours to be executed within the provisions of Section 5 (1) of the Act, that is to say within 6

months at a rate of eight hours a day, such sentence would amount to working more than five days in a week.

With all due respect to Counsel, the grid, though not binding, is founded on five days a week, Guideline 13 provides:-

“The basic grid is founded on the following facts:-

- (a) 8 hours per day for 5 days a week totaling to 40 hours of work per Week.

.....

.....

In Uganda the normal working days are Monday to Friday, that is 5 working days a Week. It is my considered opinion that though a convict, an Accused sentenced to Community Service must work 5 days a week. I therefore find that the total of 1140 hours was an error. The maximum total hours of Community Service pursuant to Section 5 of the Act must be 960 hours, though the Trial Magistrate is not bound to that maximum. He could sentence to a total of hours less than 960 hours to be served within the maximum period of 6 months. That is to say working less than 8 hours a day.

I note that there is nothing in the record before the Magistrate’s Court to show that the Accused consented to Community Service before he was sentenced to it. Section 3 of the Act defines “Community Service” to mean:-

“Non-Custodial punishment by which after conviction the Court with the consent of the offender makes an order for the offender to serve the Community rather than undergo imprisonment.”

Therefore an order for Community Service is subject to the consent of the offender. However from the circumstances of this case, I find that such failure to obtain the expressed consent of the Accused was not a fundamental irregularity and did not occasion any miscarriage of Justice. Before sentencing the Accused to Community Service as opposed to imprisonment the Trial

Magistrate took into consideration the Accused health concerns as raised by the Accused in mitigation.

In the final result I find that the total of 1140 hours was an error. I accordingly alter the sentence to a total of 960 hours work in a period of 6 months of Community Service. I therefore order that the accused shall serve a total of 960 hours of Community Service within a period of 6 months working hours a day, five working days a week. I so order.

Sgd: (LAMECK N. MUKASA)

AG. JUDGE.

15/10/2003