

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO 47 OF 2022

ARISING FROM CRIMINAL CASE NO.0165 OF 2021

KALUNGI DEOGRATIOUS -----APPELLANT

VERSUS

UGANDA-----RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

JUDGEMENT

The appellant being aggrieved and dissatisfied with the decision of Her Worship Gladys Kamasanyu delivered at Buganda Road Court appealed to this court on the following grounds;

1. That the learned trial magistrate erred in law when she imposed a harsh, severe and illegal sentence in the circumstances of the case thus occasioning a miscarriage of justice
2. That the learned trial magistrate erred in law and in fact when she recorded a plea of guilty without according the appellant necessary protections under the law

The applicant prayed for the appeal to be allowed, sentence set aside and in the alternative sentence be revised and substituted with a term of imprisonment already served by the appellant

The applicants proceeded by filing their written submissions which I have considered

Consideration

In the appellant's written submissions, the appellant chose to abandon ground 2 of his appeal and instead argued ground one which is challenging among others the harshness of the sentence. In light of this I will proceed to only determine ground one as per the appellant's submissions.

An appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstance which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle **See: Kyalimpa Edward v Uganda SC Criminal Appeal No.10 of 1995.**

The court would also be justified in interfering with the sentence if it was convinced that there was an irregularity in the trial court's proceedings which directly led to the imposition of the impugned sentence which if not corrected will occasion prejudice to the appellant.

Turning to the issue whether the learned trial magistrate erred in making an order for compensation and sentencing the appellant to 2 years and 8 months' imprisonment and count 2 a sentence of eight months' imprisonment. I am unable to agree with the appellant's submissions that this sentence was illegal. I say so because Section 197 of the Magistrates Courts Act gives the lower court discretion to order compensation in criminal cases in addition to or in substitution of any other sentence.

For avoidance of doubt section 197(1) of the Magistrates Courts Act provides,

**When any accused person is convicted by a magistrate's court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful**

**punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.**

From the foregoing, there cannot be any doubt that courts have jurisdiction and discretion to order, in appropriate cases, compensation in criminal cases. Such orders should be made on the basis of proven facts showing that the injury suffered by the complainant or other third party was as a result of the act constituting the offence in question and that the act was one which would give rise to civil liability in favor of the complainant or injured party against the convict. Each case must therefore be determined on its own peculiar facts and circumstances.

In the instant case, it is worth noting that before making the order, the learned trial magistrate made reference to the loss the complainant had suffered as a result of the appellant's fraudulent act of obtaining Ugsh. 72,000,000/= by falsely pretending that he would help the complainant access funds from the Prime Minister's Office to renovate St. Anne Ggoli Girls Primary School, a fact he knew to be false.

It is also clear from the evidence adduced before the trial court in the course of the trial that indeed the complainant had given the appellant a total of Ugsh. 72,000,000/= on the basis of an agreement he would help the complainant access funds from the Prime Minister's Office to renovate St. Anne Ggoli Girls Primary School, which he subsequently breached. The loss suffered by the complainant as a result of the appellants' fraudulent actions was therefore proved and was one which could be recovered by the complainant against the appellant in civil proceedings as a civil debt.

In the premises, I find no reason to interfere with the trial court's exercise of discretion in ordering the applicant to compensate the complainant for the loss he incurred as a result of the appellant's criminal actions. It is my finding that the order was justified in the circumstances of this case.

With regard to the appellant's 's complaint that the sentences were harsh and excessive, the applicant did not lay any basis to substantiate this claim. The offence of obtaining by false pretenses contrary to Section 305 of the Penal Code and personation contrary to Section 381 of the Penal Code Act which were the subject of the appellant's conviction in count 1 attract a maximum sentence of seven years' imprisonment while the punishment for the offence of personation which the appellant was convicted in count 2 is a for a period not exceeding two years.

It is also very clear from the record that the learned trial magistrate considered both the mitigating and aggravating factors, the aggravating factors clearly outweighing the mitigating factors and I cannot interfere with that decision. Given the circumstances under which the offences were committed therefore, it is my view that the sentences were not harsh and cannot be said to be harsh or excessive.

The above notwithstanding, I find that there's an error in the way the order for compensation was computed. There is evidence on the record that the appellant had refunded so far 2,700,000/=, and as submitted by the appellant's counsel the figure is arrived by adding 300,000/=, 1,400,000/= and 1,000,000/=. By way of deduction therefore the proper figure owed to the complaint is 69,300,000/=

The compensatory order is accordingly rectified to reflect UGX 69,300,000/= as the remaining sums payable to the complaints by the appellant

The appeal is accordingly dismissed save for the rectification of the compensatory order of UGX 69,300,000/=

I so order.

**JUDGE**

**18/08/2022**