The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Criminal Revision Application No. 0001 of 2022

(Arising from Kumi Court Criminal Case No.230 of 2021, CRB 230 of 2021)

Epeet Joshua :::Applicant

Versus

Uganda :::Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling.

This is an application by way of Notice of Motion under section 48, 50 & 53 of the Criminal Procedure Code Act Cap 116 for orders that this court revises the conviction and sentence of 4 years handed to the applicant by the Chief Magistrate Court of Kumi *vide* 230 of 2021 and the applicant be released from custody.

The grounds of the application as set out in the application and further expounded in the affidavit in support of the applicant briefly are that the applicant was charged with attempted murder and he pleaded guilty resulting into conviction and sentencing to 4 years in prison.

The essence of the application is that at the time the applicant was arrested and produced in court for plea on the 31st of August 2021 he was a minor of 17 years, however, the Magistrate relied only on

the charge sheet and ignored contents of the applicant's medical documents and illegally sentenced him to 4 years.

That the Applicant did not understand all the contents of the charge and PF3 relied on by court to sentence him to 4 years with the trial Magistrate relying only on the information contained in PF3 to sentence him to 4 years without classifying the injuries and translating the same to the Applicant.

That the procedure that was adopted by the trial Magistrate to record a plea of guilty was illegal.

The applicant further in his affidavit states that at the time of his arrest he narrated to the police in his statement that he was 17 years but the charge sheet read to him in court indicated that he was 20 years and he informed the Magistrate that he was 17 years but this information was ignored.

He further states that the girl who translated for him in Ateso did not explain to him well that the offence was attempted murder and he did not understand the particulars read in court, it was later after he secured the services of his lawyers that he was advised that the offence he was charged and convicted with means he wanted to kill the complainant.

That he did not know this as at the time of plea, conviction and sentence because he was not represented by any lawyer.

That what he accepted in court was that he fought with the complainant who attacked him and his retaliation in self-defence but he did not intend to kill the complainant.

That the Magistrate ignored the physical injuries and bruises he sustained as a result of the attack by the complainant.

In a supplementary affidavit sworn by the applicant's mother, it was stated that the applicant was born on the 20th August 2005 and was now 17 years and 9 months.

The applicant's mother averred that she could not produce any documentary evidence of the applicant's age as on the 10th August 2021 when the applicant was arrested, her home was vandalised during the process of his arrest and detention with all the property therein either destroyed or stolen leaving her to file a complaint to that effect with Kumi Court.

That subsequent to the arrest of the applicant, her family was chased from their home that day with many of them assaulted and injured thus she had no opportunity to pick any document from the house.

The respondent did not make any reply even when served and so the applicant sought and was granted leave to proceed with this matter *ex parte*.

Applicant's submissions:

Counsel for the applicant M/s Natala & Co. Advocates submitted that this honorable court has Jurisdiction under **section 48 of the Criminal Procedure Code Act Cap 116** to call for and examine the record of any criminal proceedings before any Magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order

recorded or passed, and as to the regularity of any proceedings of the Magistrate's court.

Counsel submitted that the trial Magistrate erred when he ignored the fact that the Applicant was a minor aged 17 years and should not have been tried, and sentenced as an adult.

Counsel relied on the statements of the applicant and his mother as well as PF 24 which indicate that the applicant was 17 years at the time he took plea and was sentenced.

Counsel further submitted that the law on sentencing and detention of minors is well elaborated under the Childrens' Act, Cap 59.

That under Section 94(1) (g), it is provided that;

> **"...a family and children court shall have the power to make an order for detention for a maximum of 3 months for a child under the age of 16 years of age and a maximum of 12 months for a child above the age of 16 years of age and in case of an offence punishable by death, 3 years in respect of any child**. (Emphasis mine)

In the instant case, the Applicant was aged 17 years, and the offence he was charged with did not attract a death penalty and therefore the maximum sentence that should have been imposed on him would have been 12 months instead the trial of 4 years which is even higher for child offenders charged with an offence attracting a death penalty.

Counsel further submitted that detention in prison should always be a last resort per Section 94(g) of the Children Act Cap 59, which provides that;

> **"Detention shall be a matter of last resort and shall only be made after a careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order'.**

Counsel stated that in the instant case, the trial Magistrate did not offer any explanation as to why he opted to detain the Applicant rather than exploring other alternatives.

Section 94(1) of the Children Act offers various alternative sentences or orders which include caution, conditional discharge for not more than 12 moths, binding the child to be of good behavior for a maximum of 12 months, compensation, restitution, or fine, probation order among others, but the trial Magistrate did not consider all this, but instead sentenced him to 4 years in clear violation of Section 94(1)(g) of the Children Act.

Moreover, the Applicant was ordered to be detained in an Adult Prison which offends Section 94(9) of the Children Act.

The error of the trial Magistrate was occasioned by the fact that he refused to acknowledge the Applicant as a minor despite the fact that the PF 24 indicated that he was aged 17 years old.

As deposed, by the Applicant on Paragraph 9 of his Affidavit, the trial Magistrate was also notified of the fact that the Applicant was aged 17 years, but the trial Magistrate ignored and believed the

charge sheet which indicated that the Applicant was aged 20 years old.

Regarding the procedure of plea taking counsel submitted that the procedure for taking a plea of guilty was clearly set out in the case of ***Adan V R [1973] EA 445,*** which has since been domesticated in Ugandan Courts and become law in cases such as ***Sebuliba Siraji vs Uganda*** as cited by the Court of Appeal in ***Nkunyingi Juma & Anor Vs. Uganda,*** wherein the Court of Appeal stated that;

> ***"When a person is charged with an offence, the charge and the particulars thereof should be read out to him, so far as possible in his own language, but if that is not possible in the language which he can speak and understand. Thereafter the Court should explain to him the essential ingredients of the charge and he should be asked if he admits them. If he does admit his answer should be recorded as nearly as possible in his own words and then plea of guilty formally entered. The prosecutor should then be asked to state the facts of the case and the accused be given an opportunity to dispute or explain the facts or to add any relevant facts he may wish the court to know. If the accused does not agree with the facts as stated by the prosecutor or introduces new facts which, if true might raise a question as to his guilt, a change of plea to one of not guilty should be recorded and the trial should proceed. If the accused does not dispute the alleged facts in any material***

respect, a conviction should be recorded and further facts relating to the question of sentence should be given before sentence is passed."

Counsel stated that in the instant case, the record is silent on whether the charge and particulars thereof were read out and explained to the applicant.

The Applicant has deponed in Paragraph 10 of his Affidavit that the girl who translated for him in Ateso did not explain to him well the offence of attempted murder and he did not understand all the particulars read to him in court.

The ingredients of the charge were also not read out to the Applicant as required. (See Adan V R).

The position of the law is that in order to prove attempted murder, the prosecution must show that the accused specifically intended to commit the crime.

(See Uganda V Muwanga & Anor Criminal Session Case No. 456 of 2018).

In the instant case, it is clear that it was not explained to the Applicant that at the time of the fight with the deceased, he had a *mens rea* / intention to kill the complainant.

As deboned by the Applicant in Paragraph 15 of his Affidavit, what the Applicant admitted was the fact that he fought with the complainant who attacked him but that he had no intention to kill the complainant.

Had the matter been properly investigated and put to the Applicant, it would appear to me that the accused would not have

admitted to the charges which were read to him given his averment now to that effect for he only admits to a fight but not to the intention of killing the complainant.

Given the fact that the Applicant was not represented by counsel, the trial Magistrate should have clearly and specifically asked the Applicant if he did have intentions of killing the complainant or not.

But because the particulars that were not properly read to the Applicant the Applicant admitted the charges put to him yet there was a clear misunderstanding of the particulars of the offence.

This is shown by the fact that though he admitted to participating in a fight with the deceased what was not true was the fact that at the time of the fight he had the intentions of killing the complainant.

Without his admitting that he had intentions of killing the complainant, the Applicant was not pleading guilty to the offence of Attempted Murder and the trial Magistrate should have recorded a plea of not guilty but alas that was not done.

The Applicant has also deponed in Paragraph 12 of his affidavit that he has learnt that the trial Magistrate relied on the information contained in PF3 to sentence him to 4 years in prison without classifying and translating the same to him.

The trial Magistrate should have tasked the Prosecution to properly explain the injuries that are contained in PF3 so that he states clearly whether he admits having caused such injuries or not.

Counsel additionally submitted that the purpose of reading out the statement of facts to the accused before a conviction on a plea of guilty is entered is given in the **Adan case (supra),** as cited by the Court of Appeal in **Nkunyingi Juma & Anor vs Uganda Crim Appeal No. 217 of 2012** is that;

> ***"The statement of facts serves two purposes: it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defense and it gives the magistrate the basic material on which to assess sentence. It not infrequently happens that the accused, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty: it is for this reason that it is essential for the statement of facts to precede the conviction."***

Counsel then stated that it cannot be said that the plea of guilty was unequivocal when the **PF3** was not explained and translated to the Applicant to confirm that he admits that he is the one that caused the injuries that are contained therein.

Counsel concluded that from the above analysis, it is clear that the procedure of entering the plea of guilty against the Applicant was irregular and did not conform to the requirements of the law relating to recording of pleas and therefore prayed that this honorable court finds so and sets aside the conviction and sentence which was handed to the Applicant for basing on an irregular and illegal Plea of Guilty. Given the fact that the Applicant

was sentenced on the 31st day of August, 2021 and has so far spent more than a year in an Adult prison, counsel prayed that the Applicant be released from custody so that he can go back to school and be a responsible citizen.

Position of the law:

Section 48 of the Criminal Procedure Code Act provides that the High Court may call for and examine the record of any criminal proceedings before any magistrate's court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the magistrate's court.

Section 50 of the Criminal Procedure Code Act provides for the power of the High Court on revision.

50(1) provides thus;

> **In the case of any proceedings in a magistrate's court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may—**
>
> **(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence;**
>
> **(b) in the case of any other order, other than an order of acquittal, alter or reverse the order.**

The applicant brings this application on two grounds that is the applicant was sentenced as an adult yet at the time of plea taking and sentencing he was a minor and the plea taking process was irregular.

With regard to the applicant being a minor from the affidavit evidence stated above he was born on the 20th August 2005 meaning on the 31/08/2021 when the applicant took plea and was subsequently convicted and sentenced he was actually 16 and not 17 as stated in the affidavits.

A copy of PF24 attached to the application indicates that the applicant was 17 at the time he was convicted.

Without any contrary evidence I would find that the applicant was a minor at the time he was convicted and the trial magistrate should have considered this age when the applicant informed him that the age on the charge sheet was wrong.

It is clear to me that the Magistrate relied only on the charge sheet and ignored contents of the applicant's medical documents and illegally sentenced him to 4 years.

That the procedure that was adopted by the trial Magistrate to record a plea of guilty was illegal.

Having found that the applicant is a minor he should have been sentenced as a juvenile.

<u>The law on juvenile sentencing.</u>

Section 94(1) of the Children's Act provides for the orders of family and children court to include absolute discharge, caution, conditional discharge for not more than twelve months, binding

the child over to be of good behaviour for a maximum of twelve months, compensation, restitution or fine, taking into consideration the means of the child so far as they are known to the court; but an order of detention shall not be made in default of payment of a fine, a probation order in accordance with the Probation Act for not more than twelve months, with such conditions as may be included as recommended by the probation and social welfare officer; but a probation order shall not require a child to reside in a remand home and detention for a maximum of three months for a child under sixteen years of age and a maximum of twelve months for a child above sixteen years of age and in the case of an offence punishable by death, three years in respect of any child.

Subsection 4 provides that detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order.

Subsection 6 prohibits detention of children in adult prison.

Regulation 50 of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* provides for sentencing of child offenders. It provides that;

(1) When making an order against a child offender, the court shall consider the following—

(a) the degree of participation of the child;

(b) best interests of the child;

(c) protection of the community from harm and ensuring people's personal safety;

(d) rehabilitation of the child;

(e) any non-custodial options provided for in section 94 of the Children Act;

(f) the shortest appropriate period of detention where that is the only appropriate sentencing option; or

(g) detention as a last resort if in all the circumstances it is the most appropriate sentence.

In light of the above provisions I find that the applicant should not have been sentenced to imprisonment and worse still in an adult prison.

The second issue that this application is based on is the plea taking process. The applicant avers that the charge, its particulars and PF3 were not translated to him

The record of proceedings indicates that on the 31/08/2021 the applicant appeared in court for plea taking and the charges were explained to him thereafter he pleaded guilty. The facts given by the state prosecutor indicate that on the 10th of August 2021 at 11:00pm the accused attacked the complainant together with others who are at large and the attack left him with broken limbs.

The applicant claims that these facts were not explained well by the girl who translated to Ateso, especially that the offence he was pleading to was attempted murder. That what he accepted was the fact that he fought with the complainant who attacked him in self-defence but he did not intend to kill him. He also stated that the

PF3 relied on by the trial Magistrate in sentencing him was not explained to him.

Counsel for the applicant rightly submitted on the proper procedure for plea taking as set out in ***Adan V R (1973) EA 445.*** The charges and the facts per the proceedings were read to the applicant, however, there is no indication that the ingredients of the offence were explained to the applicant by Court, there is also no indication that he was asked if he admits the ingredients of the offence before the plea of guilty was entered.

From the applicant's own affidavit, it is clear that he did not understand the crime he pleaded to nor its ingredients.

He even further states that he only got to know that the complainant had died and that he was accused of attacking him after he had been convicted and sentenced.

It should be noted that the applicant never had a lawyer throughout this process, so he had no knowledge whatsoever on the procedures he was subjected to prior to his sentencing.

He only understood the charge, particulars and what transpired in court after he secured the services of M/s Natala & Co. Advocates.

The trial magistrate appears to have only relied on the charge sheet and ignored contents of the applicant's medical documents and went on to illegally sentenced him to 4 years without classifying the injuries and translating the same to the Applicant.

That the procedure adopted by the trial Magistrate to record a plea of guilty was illegal.

The prosecution also made no reply to this application and as such there is no evidence to the contrary to the assertion of the applicant.

This court therefore can only decide this application basing on the merit of evidence adduced by the applicant.

I have already found that the applicant was a minor at the time he was arraigned for plea taking and subsequently sentenced and the trial magistrate should have considered the same.

The trial court should not have sentenced the applicant to a sentence of 4 years especially since he was also ordered to compensate the complainant a sum of Ugshs. 5,000,000/= for his treatment.

I also find that the plea taking process was irregular as the ingredients of the offence were never explained to the applicant and he never admitted to the offence.

One of the most important recommendations made by Lord Woolf in his Access to Justice report in 1996 to the English Justice system was that pleadings should not be technical and must be clearly read to an accused person.

Where a plea is equivocal, then a plea of not guilty must be entered as was pointed out in ***Adan V R (1973) EA 445***.

This is the case here and so where a plea is not taken properly, any conviction arising from such is a nullity.

Accordingly, the omission by the trail court to take a proper plea is an incurable irregularity.

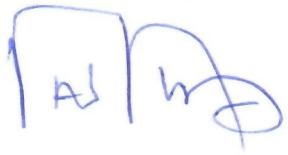
In respect of the instant matter where the plea was taken irregularly I would thus dismiss the charges against the applicant and acquit him.

Accordingly, this application would accordingly be allowed.

The conviction and sentence imposed upon him is overturned as being illegal.

The applicant who was erratically sentenced to four years and who has spent over a year in detention, ordered released from custody immediately, unless held for any other lawful reason.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

24th January, 2023