

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CRIMINAL APPEAL NO.016 OF 2016
(Arising out of Criminal Case No.RUK-05-CR-188/2014)

TURYATUNGA UZOBIO:..... APPELLANT

VERSUS

UGANDA:..... RESPONDENT

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

JUDGE

The Appellant was charged with Stealing Cattle contrary to Sections 254(1) and 264 of the Penal Code Act on Count 1 and Injuring Animals contrary to Section 334(1) of the Penal Code Act on Count 11. He was found guilty on both counts and accordingly convicted. He was then sentenced to two years on Count 1 and to One year on Count 11.

The Appellant filed a Memorandum with only one ground which is that;

The learned trial Magistrate erred in law when he passed a sentence of two years imprisonment against the appellant on Count 1 and failed to forward the file to the High Court of Uganda for confirmation of the sentence which occasioned a miscarriage of justice to the Appellant.

It was proposed in the Memorandum that the Appeal be allowed and the sentence of two years quashed and Court directs that the Appellant serves only the sentence in Count 11. Counsel for the Appellant reiterated the same concerns about the failure to forward the file for confirmation of the sentence in her submissions and invited Court to quash the sentence. The net effect of the argument by Counsel is that the sentence was rendered void for want of confirmation by the High Court.

Confirmation of sentences is provided for in Section 173 of the Magistrates Courts Act in the following words;

- (1) 'Where any sentence to which this section applies is imposed by a Magistrate's court (other than by a magistrate's court presided over by a chief magistrate) the sentence shall be subject to confirmation by the High Court.
- (2) This section applies to-
 - (a) A sentence of imprisonment for two years or over, or
 - (b) Preventive detention under the Habitual Criminals (Preventive Detention) Act.

Section 174(4) of the same Act provides;

"Subject to section 50(2) of the Criminal Procedure Code Act, the High Court may exercise the same powers in confirmation as are conferred upon it in revision by Part 111 of that Act."

The import of the above provisions is that in the exercise of confirming any sentence passed by a magistrate under section 173 of the Magistrates Courts Act, the High Court enjoys the same Powers as if it is conducting Revision under Section 50 of the Criminal Procedure Code Act. These are the Powers to Alter Sentences under Section 34 and to call for Further Evidence where necessary under section 41 of the Criminal Procedure Code Act.

The question for this Court to investigate is how does the failure to forward a file to the High Court for confirmation affect the sentence passed by a Magistrate?

The Halsbury's Laws of England, Volume 36, Paragraph 656 discusses Mandatory and Directory enactments in statutes thus;

"Where a statute requires an act to be done at or within a particular time, or in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as "mandatory", "absolute", "imperative" or "obligatory"; if, on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be "directory."

Relating the above quotation to Section 173 of the Magistrates Courts Act, the Act does not specify a specific period within which the file must be sent to the High Court for confirmation. The Act does not spell out the consequences for not remitting the file for

confirmation of the sentence imposed by the Magistrate. On the basis of the above observations, it is the conclusion of this Court that the use of the term “*shall be subject to confirmation*” in Section 173 of the Act is directory but not mandatory.

In determining whether a particular provision in a statute is mandatory or directory, the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be secured.

Sentencing powers of Magistrates are laid out in Section 162 of the Magistrates Courts Act. The requirement for confirmation was intended to ensure compliance with the judicial process by the trial magistrate which is an equivalent to the Revision set out in Section 50 of the Criminal Procedural Act. Any interpretation to the effect that failure to forward the file renders the sentence invalid would amount to usurpation of the sentencing powers of the Magistrate under the Act. The implication would then be that any sentence of two years and above is deemed valid on confirmation which could not have been the intention of the Legislature.

I have perused the record of proceedings in the lower court and do not detect any miscarriage of justice in the conduct of proceedings and the passing of the sentences by the magistrate. The Appellant is a habitual offender who absconded from trial prior to sentencing hence abusing the bail conditions set by the trial Court. He was arrested for sentencing. I find the sentence of two years imposed commensurate to the offence he was convicted of.

I dismiss the Appeal and uphold the sentence of two years on Count 11 of the Charge Sheet.

.....

Moses Kazibwe Kawumi

Judge

22nd September 2017.