THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE.

CRIMINAL SESSION CASE NO. 19 OF 92

UGANDA ..... PROSECUTOR

VERSUS

CHEPTEGEI NDIWA ..... ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

S E N T E N C E:

In the original charge, the accused was indicted for murder contrary to sections 183 and 184 of the Penal Code Act. Subsequently, the State reduced the charge to that of manslaughter contrary to sections 182 and 185 of the Penal Code Act.

In the event following, the accused readily pleaded guilty to manslaughter without wasting court time. He is a young man of 30 years old at the trial and married with 4 children. Since his detention for about 4 years, the accused is a cardiac case, still undergoing some treatment.

In the premises, the learned defence Counsel pleaded for a lenient sentence as was the case in Uganda Vs. Ebanu (1975) HCB 349 where the accused pleaded guilty to manslaughter, he was sentenced to 12 months imprisonment after being in custody for only 1 year. In the instant case the accused has been on remand for a period of about 4 years which period the Counsel submitted was sufficient punishment.

The State prosecutor, however, submitted that manslaughter is a serious offence which carries a maximum sentence of life imprisonment. Although the accused is treated as first offender, the circumstances under which the offence was committed are grave. The accused who had on 11.2.90 cut his mother in-law with a knife had no good reason also to stab one Augustine Cheptai on the stomach and the deceased on the chest on 12.2.90. By resisting the arrest and running away into hiding after committing the offence, the accused had clearly displayed a guilty mind. Severe sentence would serve the purpose and protect the society from wild people in the like of the accused.

Having considered the circumstances of the case together with the mitigating factors stated above, I have formed the opinion that the accused is a man of wild temperament which does not easily cool down even after a period of about one day. He is therefore dangerous to the society which must be protected.

Accordingly, accused is sentenced to 3½ years' imprisonment.

SGE/eg

S.G. ENGWAU
JUDGE 4/8/93.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI.

CRIMINAL APPEAL NO. 2 OF 1993

(From original Soroti Criminal Case No.MS 407/92)

JOHN MICHAEL EMENU ..... APPELLANT

VERSUS

U G A N D A ..... RESPONDENT

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU

J U D G M E N T:

In the Chief Magistrate's Court, Soroti, the appellant/accused was charged in three counts with Causing financial loss contrary to sections 258 (1) and 259 of the Penal Code Act, theft contrary to section 252 of the Penal Code Act and Receiving or retaining stolen property contrary to section 298 (1) of the Penal Code Act. He was on 22.4.93 convicted in the first and second counts and sentenced to 3 years and 9 months imprisonment respectively and sentences to run concurrently.

The appeal is against both the conviction and sentence. The grounds of appeal are:-

1. THAT, the learned trial Chief Magistrate misdirected himself in law in convicting the appellant in the absence of a judgment as prescribed by the law.

2. THAT, because there was no sufficient evidence to incriminate the appellant in the offences alleged in the charge sheet.

The third ground of this appeal was abandoned. However, it is submitted in the first ground that the learned Chief Magistrate misdirected mimself in law in convicting the appellant in the absence of a judgment as prescribed by the law. The entire judgment of the trial court reads as follows:-

> "I have gone through the evidence for both the prosecution and the defence. I am lawfully satisfied that the accused is guilty of the offence charged. He is convicted."

It is submitted that the above is not a judgment within the meaning of section 134 (1) M.C.A., 1970. In the alternative, it was a defective judgment. Under section 134 (1) M.C.A., 1970, a judgment shall contain inter alia, the point or points for determination, the decision thereon and the reason for the decision and shall be dated and signed on the date on which it is pronounced in open court.

..../2

In the instant case, the whole judgment as quoted above is not a judgment within the meaning of section 134 (1) M.C.A., 1970 and therefore it is submitted that the trial is a nullity: Diregó s/o Atya & Anor. V.R. (1953) 20 E.A.C.A. 766.

In that regard, the learned State Attorney for the State conceded that the trial court did not write a comprehensive judgment as by law required thereby rendering the trial a nullity.

In the premises, the whole judgment as quoted above does not fall within the meaning of section 134 (1) M.C.A., 1970. It falls too short of it and leaves a lot to be desired. Consequently, the trial is a nullity and the first ground of appeal succeeds.

Regarding the 2nd ground of appeal, it is submitted that there was no sufficient evidence on record to incriminate the appellant with the offences charged even when the key prosecution witnesses like PW1, PW3, PW4 and the investigating officer PW8. Consequently, it is submitted that since there was no sufficient evidence on record to warrant a conviction, the appellant deserves an acquittal rather than an order for a retrial: Ratilal Shah V.R. (1958) E.A. 3.

On the other hand, the State Counsel submitted that a "retrial order" would be appropriate in the instant case. The learned trial Chief Magistrate failed to appraise and evaluate the evidence on record. There is sufficient evidence on the 3rd count which warrants a retrial order.

After an appraisal and evaluation of evidence on record, it is conceivable that there is no sufficient evidence to warrant conviction in the 1st and 2nd counts. The learned trial Chief Magistrate therefore erred in law by convicting the appellant in those counts. In that regard the second ground of appeal is allowed.

As regards the 3rd count, apparently the appellant was acquitted. He cannot be tried again for the same offence. The State has not appealed against the acquittal therefore there is no way by which this court can make a retrial order in the circumstances.

Accordingly, conviction in the 1st and 2nd counts are hereby quashed and sentences set aside. The appellant is to be released with immediate effect unless being held lawfully for some other offences. Cash bail paid by the appellant be refunded to him.

S.G. ENGWAU
JUDGE 15.7.93.

15.7.93: Appellant is present in court. Mr. Kakembo for appellant present.
Betty Nandawula for respondent present.
Judgement delivered in open court.

S.G. ENGWAU
JUDGE 15.7.93.

SGE/eg