THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

ORIG. IGANGA TRAFFIC CASE NO. NPT 741/94

VERSUS

UGANDA :::::: RESPONDENT

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

JUDGMENT

This is an appeal against sentence. The appellant Kasata John was charged with 3 counts before Magistrate Grade I at Iganga. The 3 counts were: CI1: Driving a motor vehicle which was not licenced contrary to section 52(1)(a) of T.R.S.A; CIII: Using a motor vehicle with defective handbrake contrary to section 115(1) and (5) of T.R.S.A and CIIII was for driving a motor vehicle with defective speedometer contrary to section 115(1) and (5) of T.R.S.A.

The accused pleaded guilty to all the 3 counts and he was sentenced to one month's imprisonment for each count. The sentences were to run consecutively. The accused, who appeared in person in this appeal, appealed against these sentences. The appellant's main complaint is that the sentences are excessive, but Mr. Okwanga who appeared for the respondent was of the view that the sentences were appropriate.

By provisions of sec. 216(4) of M.C.A an appeal cannot be lodged before this court against a sentence which is for one month's imprisonment sec. 169(3) of M.C.A however provides that where more than one sentence of imprisonment is imposed at the same trial and the sentences are to run consecutively the court takes the aggregate sentence as one. In this case therefore the court takes the sentence to be 3 months imprisonment and not one month so the provisions of sec. 216(4) do not apply.

I have considered the appeal and I am of the view that the appellant's complaint is justified because in all these 3 counts he ought to have been given a chance to pay a fine before the custodial sentence was considered as the sections involved in the 3 counts stipulate fine as initial punishment, imprisonment should have been imposed as an alternative punishment. After the magistrate had decided to impose custodial sentences such sentences should have been made concurrent but not consecutive as there were no circumstances for making such sentences to run consecutively as he ordered. Although the learned trial magistrate said he was being lenient, in my view he was not lenient when he made the sentences to run consecutively, considering the fact that the accused was treated as a first offender. The appeal is allowed, but as the appellant has already served half of his sentences of imprisonment I set aside the sentences imposed on him as being excessive and instead I .ake an order that the sentences do run concurrently with the effect that he serves only one month which he has already served.

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C.M. KATO

<u>JUDGE</u>

13/12/1994