

The Hon. Justice Tsekooko

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL APPEAL NO. 12/94
(ORIGINAL IGANGA CRIMINAL CASE NO. MJ. 212/94)

NAIGAGA IRENE : : : : : APPELLANT
 VERSUS
UGANDA : : : : : RESPONDENT
BEFORE: THE HONOURABLE JUSTICE C. M. KATO

J U D G E M E N T

This is an appeal by the appellant Irene Naigaga against the sentence imposed upon her by the Grade I Magistrate at Iganga. The appellant was charged with the offence of obtaining goods by false pretences contrary to section 289 of the Penal Code Act. She pleaded guilty to the offence and she was sentenced to 12 months imprisonment.

She gave five grounds of appeal which may be summarized into only one ground which is that the sentence of 12 months was excessive.

At the hearing of the appeal the appellant was represented by Mr. Magelani Olubwe from Legal Aid Project (LAP) and the respondent was represented by the Senior State Attorney Mr. Vincent Okwanga. Mr. Olubwe submitted that the sentence was not only excessive but was also illegal because the appellant did not plead guilty to the offence and if at all she did so it was because she had been forced by the prosecutor to do so. On his part Mr. Okwanga argued that the sentence was not excessive and the plea was properly recorded.

Starting with the first point raised by Mr. Olubwe I would say that the plea by the appellant was materially properly recorded although when the appellant was asked to plead to the charge her words were not recorded as stipulated under the provisions of section 122(2) of the Magistrates Courts' Act which requires the exact words to be recorded. That irregularity was however cured by the appellant's acceptance of the facts of the case as being correct.

The question of the plea having been illegally recorded does not arise.

As for the real ground of this appeal I would say from the very start that the sentence meted upon the appellant was excessive considering the fact that the appellant was a first offender, she had pleaded guilty to the offence thus saving court's time and expense, the amount involved was only 70,000/- and the appellant appeared repentant. It would appear the learnt trial magistrate did not address his mind to all these mitigating factors, had he done so he would possibly have imposed a lesser sentence than what he imposed. The learned magistrate's statement that this kind of crime is prevalent in the area was speculative as there was no evidence before him to establish that the crime was common in that part of the country.

Considering all the circumstances of this case I do allow this appeal and set aside the sentence of 12 months imprisonment imposed upon the appellant and I replace that sentence with a sentence of 3 months imprisonment. So I order.

C. M. KATO
JUDGE
7/9/1994

At the hearing of the appeal the appellant was represented by Mr. Magistrate Ochwera (IAP) and the respondent was represented by the State Attorney Mr. Vincent Ochwera. Mr. Ochwera admitted that the sentence was not only excessive but was also illegal because the appellant did not plead guilty to the offence and it is all she did so it was because she had been forced by the prosecutor to do so. On his part Mr. Ochwera argued that the sentence was not excessive and the plea was properly recorded. Starting with the first point raised by Mr. Ochwera I would say that the plea by the appellant was materially properly recorded. Although the appellant was asked to plead to the charge but words were not recorded as stipulated under the provisions of section 182(2) of the Magistrates Courts Act which requires the exact words to be recorded. This irregularity was however cured by the appellant's acceptance of the facts of the case as being correct.

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