

violation of the accused's right to a fair trial which is guaranteed by the Constitution of the Republic of Uganda.

Under Article 28 (3) thereof every accused person who is charged with a criminal offence shall

(a) be presumed to be innocent until proved guilty or until that person pleads guilty;

(b) be informed immediately in a language that person understands, of the nature of the offence.

This enables the accused person respond to the accusation and may inform court that, after all, he was previously tried of the same offence and was either acquitted or convicted or that he was pardoned of the offence before.

If a plea is not taken, there is no way court will come to know any of these mitigating circumstances. (See also Articles 28 (9), (10) and (12) of the Constitution and S.124(5) MCA).

This position is echoed under S. 124 of the Magistrates Courts Act (MCA) where an accused is called upon to plead. S. 124 (1) is drafted in mandatory terms that:

“(1) The substance of the charge shall be stated to the accused person by the court and the accused person shall be asked whether he or she admits or denies the truth of the charge.”

The mandate to proceed with a full trial is derived from S. 124 (3) when the accused does not admit the truth of the charge and a plea of not guilty is recorded.

I will therefore find that by trying the accused in this case without taking his plea, it violated the accused's right to a fair trial and caused him a miscarriage of justice. Consequently, I will order the trial of the accused a nullity and order that a fresh trial be conducted in accordance with the law and criminal procedure.

Stephen Musota

JUDGE

26.03.2013