

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**CRIMINAL REVISION NO.0002/2014  
(FROM HCT-04-CR-CN-0018-2014)**

**(FROM MBALE CRIMINAL CASE NO. 870/2012)**

**ANDREW KITONGO.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**RULING IN REVISION**

This matter was referred to me by the Assistant Registrar for possible revision under Section 50 of the Criminal Procedure Act.

The matter arises out of the orders of **Her Worship Doreen Karungi** in **Criminal Case No. 870 of 2012 Uganda vs. Andrew Kitongo**.

The trial Magistrate convicted the accused of obtaining money by false pretences and sentenced him to a compensation order of shs. 1,700,000/= or in default to serve 1 year imprisonment.

The Assistant Registrar in his memo has drawn to my attention the following errors committed by the Trial Magistrate.

1. There was no order for custodial sentence or option of payment of a fine contrary to the provisions of section 197 (1) of the Magistrates Courts Act.

2. Convict was sent to serve an illegal sentence of compensation without being given a chance to pursue the appeal which he filed on 14<sup>th</sup> February 2014 Contrary to Section 197 (3) of the Magistrates Courts Act.

I have gone through the lower court record and have indeed observed grave errors as pointed out by learned Assistant Registrar. I noted from the record that the Magistrate after convicting the accused stated that:

*“the Court hereby sentences accused to a compensation order of Ug. Shs. 1,700,000/= going to the complainant or face 1 year imprisonment in default.”*

The provisions of section 133 Magistrates Courts Act require the Magistrate to pass sentence in accordance with the law.

The sentence imposed in this case was illegal and unknown. The Magistrate if she wanted to order for compensation, should have followed the clear provisions of Section 197 (1) which preserves compensation as an additional to another lawful punishment.

Secondly from section 197 (3) such an order of compensation is subject to appeal and no payment can be made before expiry of the period allowed for presenting the appeal; and if an appeal is presented before determination of the appeal.

None of the above provisions were followed by the Magistrate. The orders for compensation or for imprisonment are accordingly irregular and bad in law.

Under section 50 (1) (b) of the Criminal Procedure Act, once an irregularity material to the case is drawn to the attention of the High Court, the Court has powers of revision of that order.

By virtue of Section 50 (1) (b) of the Criminal Procedure Act and in exercising its powers of revision this court hereby alters and reverses the orders passed by Her Worship Karungi and replaces them with the following orders:

1. The Sentence of compensation of shs. 1,700,000/= is hereby set aside.
2. The order of 1 year imprisonment in default, is also hereby set aside.
3. I have also gone through the entire lower court record in this case. The accused/convict filed a notice of appeal and has also applied for bail pending appeal.

However I have noted that this revision can settle this matter wholly without going into multiplicity of cases.

By virtue of section 17 (2) of the Judicature Act and section 50 (Civil Procedure Act), this court finds that the entire trial within the lower court shows that the trial Magistrate did not properly evaluate the evidence and the law, and appears to have reached erroneous conclusions.

The court will therefore set aside the Judgment and orders of the lower court and order that the accused/convict be immediately released. An order for retrial of this case is hereby given. The retrial should be conducted before another Magistrate with jurisdiction to hear the matter.

I so order, Assistant Registrar to follow up these orders.

**Henry I. Kawesa**

**JUDGE**

**08.05.2014**