THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CR-CN-0053-2014
(ARISING FROM PALLISA CRIMINAL CASE NO. 312 OF 2014)

OKURUT ANDREW	**::::::::::::::::::**	**APPELLANT**
	VERSUS	
UGANDA	**::::::::::::::::::**	**RESPONDENT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellant was convicted of contempt of court and sentenced to 8 months imprisonment by his Worship **Kintu Isaac** Magistrate Grade I.

The grounds of the appeal are listed in the memorandum of appeal as;

1. Failure by learned trial Magistrate to properly evaluate the evidence on record leading to a miscarriage of justice.
2. Sentencing the appellant to 8 months without the option of a fine or non custodial sentence was too harsh and excessive.
3. Learned trial Magistrate acting as complainant, prosecutor and Judge led to a miscarriage of justice.

The duty of a first appellate court following *Pandya v. R (1957) E.A. 336* is to review all the evidence in the lower court and subject it to fresh scrutiny.

In the lower court, it is shown that on 01.08.2014 at 12:10p.m, the appellant represented by **Kasaijja Raymond** of Kajja Amooti Advocates were produced in court. The record shows that a State prosecutor **Safina** informed court that the "matter is coming up in contempt of court."

Another prosecutor **Beatrice Omaset** then read out the facts constituting the alleged contempt of court. In which she confessed that she witnessed appellant assaulting the complainant in open court in the presence of court orderlies and court users. The complainant/victim was given a chance to say something and she confirmed that she had been assaulted as alleged. Counsel for appellant then addressed court and apologized on behalf of the appellant, pleading for leniency. After State replying, court then gave reasons and sentenced the accused to 8 months imprisonment.

In submissions, both counsel for appellant and learned Resident State Attorney agreed that the above procedure as adopted by court was grossly irregular for the reasons that:

1. There was no formal charge of contempt of court against the appellant.
2. Appellant never took plea.
3. There was no finding whether appellant needed to defend himself on the evidence or not.
4. Appellant was never convicted of the offence.

It is the finding of this court that the procedure adopted by the learned trial Magistrate as detailed above was illegal and grossly irregular. It offends the provisions of sections 124 , 126, 127, 128 and 133 of the MCA.

The above sections make it mandatory, Article 28 (12) of the Constitution notwithstanding, for every criminal trial to conform to the above laid down procedure.

Briefly, under section 124 MCA the accused must be called upon to plead to a charge. Court should have formally charged the appellant of contempt. The charge according to section 85 of the MCA is intended to inform the accused of the statement of the specific offence or offences with which he is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

This was not done. There is no record by court to indicate whether accused admitted the crime or not. It is not therefore clear why the State began its case by reading out facts of an offence they alleged happened in court- without asking the accused to formally plead to it.

Moreover in the giving of facts, the State prosecutor turned herself into a witness, led evidence and also called upon the complainant to confirm the facts! All this is strange to known tenets of criminal procedure and was grossly irregular.

Section 133 MCA, requires the trial Magistrate to hear both the prosecution and the defence evidence, then record a decision by either "convicting" the accused then pass sentence upon, or make an order against him or her according to the law or "acquit" him or her.

The procedure adopted by the trial Magistrate was irregular. The act of sentencing appellant, on a non-existing charge, to which no plea is recorded no decision recorded was altogether irregular. This is recorded by the Magistrate in his personal agreement with the State, and turning himself into its witness as follows:

> "*The State elaborately gave an account of how contempt occurred. I will not repeat the same, but it occurred before me. I was visibly seeing the whole absurd act that A.2 committed*."

He then goes on to consider sentencing the appellant.

The above procedure is a misdirection, and misapplication of the law. It's an abuse of judicial discretion for which the Court should be the ardent protector. No person should be a Judge in his own cause. Justice must not only be done, but must be seen to be done. Gross irregularities of this nature cause injustice, abuse and present the arm of justice in bad light in society. The learned trial Magistrate ought to have known the glaring provisions of the Constitution as a whole which require him to administer justice to all without bias or discrimination and not to selectively apportion some bit of it, so as to achieve a preconceived illegal result. The provision of article (28) (2) does not mean a blatant closing of the eye to all procedure as enumerated in the MCA (sections 124, 126, 127, 128 and 133) which are the procedural requirements that govern the matter he was trying. As a result, it is my finding that the entire process to which the appellant was subjected was illegal, irregular and occasioned a miscarriage of justice. As pointed out in the case of *Makula International v. Cardinal Nsubuga 1982 HCB 11* an illegality once brought to the attention of the court cannot be allowed to stand.

This appeal must succeed on all grounds as prayed.

The appeal is allowed.

The illegal sentence passed against appellant is quashed and set aside. There is no need for a retrial given the circumstances of this case. The appellant must be immediately set free. I so order.

NB:

I direct the Assistant Registrar to provide a copy of this judgment to the trial Magistrate and personally bring the concerns of this court to his attention regarding the procedures adopted, which were found illegal.

Henry I. Kawesa

JUDGE

18.11.2014