

**IN THE HIGH COURT OF UGANDA AT SOROTI**  
**CRIMINAL CONFIRMATION NO. 1 OF 2014**  
**ARISING FROM KATAKWI CRIMINAL CASE 477 OF 2013**  
**UGANDA V OLOYA RICHARD**  
**BEFORE: HON. LADY JUSTICE H. WOLAYO**

**RULING**

The Katakwi court file was forwarded to the High Court by the Grade one magistrate HW Samuel Munobe under section 173 of the MCA for confirmation of sentence. This followed a specific request by G. Baguma & co Advocates for the convicted person.

In his letter to the grade one magistrate Katakwi, counsel cited irregularities at plea taking. For convenience, i repeat them here.

1. The elements of the charge were not explained to the accused person although the charge was read to him.
2. The accused pleaded guilty ambiguously as follows:  
  
‘i have understood the charge and its true.’
3. The accused was convicted on facts that did not disclose the major elements of the offence under section 219 of the Penal Code Act.
4. The accused person was not informed of his right to appeal.

Counsel supplied authorities in support of his request to forward file for confirmation of sentence.

Mr. Agulipa Patrick the Resident State Attorney Katakwi defended the conviction and sentence on the ground that the plea was properly taken.

Section 173 of the MCA requires that sentence of two years or over imposed by a magistrate's court other than a chief magistrate, shall be subject to confirmation by the High Court.

In confirming sentence, the High court examines the propriety of the proceedings that led to the sentence and considers whether the sentence imposed is appropriate.

In so doing, the High Court is guided by the procedure in revision provided by section 50 of the Criminal Procedure Act. The gist of section 50 is that the High court may alter or reverse an order or enhance sentence where it appears that in those proceedings, an error material to the merits of any case or involving a miscarriage of justice has occurred. (A guide to Criminal Procedure by B. Odoki, LDC publishers, 3<sup>rd</sup> edition, 2006).

I have examined the record of proceedings.

The statement of offence in the charge sheet was

'doing grievous harm c/s 219 of the Penal Code Act.'

Particulars of offence

Oloya Richard on the 16<sup>th</sup> day of October 2013 at Igola village Alogook parish Katakwi sub-county, Katakwi district unlawfully did grievous harm to Amodoi Margret. '

To this charge, the accused person responded

' i have understood the charge and its true'

Counsel for the convict argued that the response was ambiguous and equivocal. I find no irregularity with the process up to this stage.

It is the next part of the plea taking that has problems. The facts as recorded are as follows:

‘On 16.10.2013 the accused got the complainant had gone to collect water at the borehole when she came back the accused told complainant that she has delayed he immediately started boxing her, picked a hoe used it on her head, police rescued , the accused was arrested’.

The problem with these facts is that they don’t bring out the injuries sustained by the complainant to justify a charge of causing grievous bodily harm. The word ‘used ‘doesn’t necessarily mean the complainant was cut on the head.

Police Form 3 is critical in cases where an accused is charged with causing grievous bodily harm unless the harm is so obvious as in disfigurement. The ingredients of grievous harm are contained in section 2 (f) of the penal code Act.

‘grievous harm means any harm which amounts to a maim or dangerous harm or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement or to ant permanent or serious injury to any external or internal organ , membrane or sense’.

In the absence of obvious loss of limb or some other disfigurement, merely ‘using ‘a hoe on the head cannot be construed as grievous bodily harm. Under

these circumstances, the prosecution was duty bound to tender PF3 showing findings of a health worker and the classification of harm as grievous.

In the absence of such evidence, the admission by the accused that 'facts are correct' was with regard to the facts as read to him which facts did not disclose 'grievous harm' but rather simply 'harm'.

At this point, the magistrate ought to have convicted the accused person of assault occasioning actual bodily harm c/s 235 of the penal code.

Therefore, while the plea was unequivocal, the trial magistrate had a duty to convict the accused person for the offence that matched the facts even though the accused person was not charged with the lesser offence.

I accordingly substitute the conviction of causing grievous bodily harm c/s 219 of the penal code with one of causing actual bodily harm c/s 235 of the penal code.

The sentence of thirty six months is set aside as it was based on an irregular conviction.

The accused person shall pay a fine of 120,000/ or serve six months imprisonment in default. Sentence of imprisonment to run from date of first conviction.

**DATED AT SOROTI THIS 24<sup>th</sup> DAY OF OCTOBER 2014.**

**HON. LADY JUSTICE H. WOLAYO**

