

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**CRIMINAL APPEAL NO. 030 OF 2013**

**(Originating from KCCA Court Criminal Case No.53 of 2013)**

**NAMARA DAPHINE :::APPELLANT**

**VERSUS**

**UGANDA:::RESPONDENT**

**JUDGMENT BY HON.MR. JUSTICE JOSEPH MURANGIRA**

The appellant through M/S Bamwite & Kakuba Advocates filed this appeal on 13<sup>th</sup> May, 2013 against the respondent. The respondent is represented by the Directorate of Public Prosecutions.

The facts of the appeal are that:-

**On 9th day of May 2013 the appellant was convicted of careless driving Contrary to Section 119 of Traffic, Roads and Safety Act, Cap.361 on count 1 and driving a motor vehicle with alcohol level above the prescribed limit Contrary to Sections 112 (1), 46 (j) and (i) of the RSA (Roads Safety Act) and Regulation 31 of the Statutory Instrument, 2004 of the prescribed Alcohol Limit and sentenced to imprisonment for 4 months on count 1 and a fine of shs.600,000/= or imprisonment for 4 months on count 2 by the trial Court presided over by His Worship Julius Borore, Magistrate Grade 1 at KCCA Magistrate’s Court.**

**The appellant being dissatisfied with the decision of the trial Magistrate appealed to this Court on the following grounds, that:-**

- 1. The learned trial Magistrate erred in law and in fact when he adopted a wrong and improper procedure in recording the plea of guilty.**
- 2. The appellant's plea of guilty before the learned trial Magistrate was equivocal as the appellant did not admit each and every ingredient of the offences charged.**
- 3. The learned trial Magistrate erred in law and in fact when he convicted the appellant on a plea of guilty yet the facts were not set out in the Court record by Court for one to ascertain whether the facts constituted the offences charged.**
- 4. The sentences imposed were excessive in the circumstances.**

Consequent to the above, the appellant prayed to Court:-

- a) To allow the appeal.**
- b) Quash the conviction.**
- c) Set aside the sentence.**

When the appeal came up for hearing, the parties opted to file written submissions and authorities in support of their respective arguments. I allowed the parties' request.

In his submissions, Counsel for the appellant, Mr. Edward Bamwite, reduced the five (5) grounds of appeal to 2, summarized as herebelow; that:-

- 1) The procedure for recording the plea by the learned trial Magistrate was improper and the appellant's plea of guilty was equivocal as the record does not show that the appellant admitted each and every ingredient of the offences charged.
- 2) That the sentences imposed were excessive.

In arguing ground 1 above (that covered grounds 1, 2 and 3 of the memorandum of appeal) Counsel for appellant submitted that indeed the trial Magistrate erred in law and in fact when he failed to comply with the procedure of recording pleas of guilty, he relied and cited the following cases:-

- a) **ADAM- vs – R [1973] EA 445.**
- b) **Davis Kamundi Gathithis vs R [1973] EA 540 (k).**
- c) **Vincent Oryema –vs R [1976] HCB 123 (HC).**
- d) **Uganda vs Yusuf Kasanda and 4 others [1978] HCB 223.**
- e) **Uganda vs Mawa & Gaspol [1976] HCB 195.**
- f) **Matthias Kauma vs Ug Criminal appeal No. 90 of 1997 [1997] HCB 12.**

Lying on the abovestated cases Counsel for the appellant submitted that this Court finds that the trial Magistrate did not record in details the proceedings and detailed words said by the appellant. That the manner in which the pleas of guilty were entered was not proper and was irregular resulting into illegal convictions which ought to be reversed.

In reply, Counsel for the respondent, M/S Caroline Nabaasa, Principal State Attorney with the Directorate of Public Prosecutions submitted that for the fact that the appellant pleaded guilty, she had no right of appeal. In her written submissions she advanced her reasons to support her arguments. Further, in her submissions she distinguished the cases that were cited and relied on by Counsel for the appellant and made a conclusion that they are all not applicable to the instant appeal.

Further, Counsel for the respondent argued on these grounds 1, 2, and 3 of appeal in the alternative at page 5 of her written submissions, that:-

**“Be that as it may, we further submit that even if the “I plead guilty” may seem insufficient, her full admission of facts when read and put to her cured the insufficiency and confirmed that she understood the charges and intended to admit to them un equivocally. This position was the basis for dismissal of a second appeal against plea of guilty in the case of Mose vs Republic [2002] I EA 163 at 169.”**

She finally submitted that grounds 1, 2 and 3 of appeal have no merit and that they ought to fail.

From the nature of this appeal I note that the parties are dealing with the procedural aspects of recording a plea of guilty. Further, on whether the appellant had a right of appeal in the circumstances of this case, Section 204 (3) of the Magistrates Courts Act (MCA) Cap. 16 Laws of Uganda provides the answer. Subsection 3 of Section 204 states:-

**“No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a Magistrate’s Court except as to the legality of the plea or to the extent or legality of the sentence.”**

Underlining is mine for emphasis only.

Counsel for the appellant submitted that the plea of guilty as recorded by the trial Magistrate did not conform with the law. That the convictions and sentences on the two Counts are illegal. His argument is that the plea of guilty recorded by the trial Magistrate was equivocal. On the other hand, Counsel for the respondent in her submissions insisted that the plea of guilty recorded by the trial Magistrate was unequivocal.

Plea taking is governed by Section 124 (1) of the Magistrate's Courts Act (MCA), (supra), Act 16 Laws of Uganda which provides that:-

**“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.”**

If the accused person admits the charge, then Section 124 (2) of the Magistrate's Courts Act, thereof provides that:-

**“If the accused person admits the truth of the charge, the admission shall be recorded as nearly as possible in the words used by him or her, and the Court shall convict him or her, and pass sentence upon or make an order against him or her, unless there shall appear to it sufficient cause to the contrary.”**

The above quoted law is as plain as that Section 124 of the Magistrate's Court Act (Supra) guides the Magistrate Courts on how to take a plea.

In the instant appeal, the record of the lower Court shows:-

At page I of the Court proceedings.

**“Court: Charges explained to the accused.”**

**Count 1:**

**Accused: I plead guilty.**

**Court: Plea of guilty entered.**

**Count II:**

**Accused:** I plead guilty.

**Court:** Plea of guilty entered.

**Brief Facts:**

**Read and explained by the prosecutor.**

**Accused:** Correct.

**Court:** Accused is convicted for careless driving Contrary to Section 119 of the Traffic, Road Safety Act (TRSA).

**Court: “Accused is convicted for drink driving Contrary to Section 112 (1), 46 (J) and (1) of the Traffic, Road Safety Act and Regulation 31 of prescribed Alcohol limit regulation of 2004”**

This appeal is premised on whether the abovestated plea of guilty recorded by the trial Magistrate as reproduced above was equivocal or unequivocal. According to Black’s Law Dictionary 9<sup>th</sup> Edition:

**(a) At page 621 – “Equivocal means 1- of doubtful character, questionable. 2 – Having more than one meaning or sense, ambiguous.”**

**(b) At page 1667 – “unequivocal means – unambiguous, clear, free from uncertainty.”**

A plea of guilty must be properly received and results recorded. As per Section 124 (2) of the Magistrates Courts Act (MCA) (Supra) the accused's admission must be recorded as nearly as possible in the words used by him or her. A Magistrate must not record "Plea of guilty, or" The accused pleads guilty.

I have carefully read and analyzed the authorities cited by Counsel for the appellant, and I am convinced that by the trial Magistrate recording, the words of the appellant: "I plead guilty" the words would appear do not amount to the plea of guilty being unequivocal. The Magistrate is required to deal with the case in a way that should leave no room for doubt. In answer to the charge that was read and explained to the appellant, the Magistrate recorded the answer of the accused (appellant): "I plead guilty". In this regard, the Magistrate should have asked her; for example, that:-

**"Well do you admit that you drove your car on the road recklessly, carelessly whilst under influence of drink to such an extent that you were incapable of having proper control of your car?"**

And if the accused had said "yes" the Magistrate would then have been able to record a plea of guilty which is not ambiguous. Care on the Magistrate's part ensures that such people are not convicted on pleas which are equivocal. **But the care needed is not simply to satisfy technical rules.** The whole point is that a Magistrate records a plea of guilty in such a way that an appellate Court will be satisfied that the accused fully understood the charge and admitted every element of the offence unequivocally. In that regard, then the following benefits would accrue:

- a) No one can be convicted in error; and

- b) No one who really intended to plead guilty will be able to take advantage of the Magistrate’s incompetence and pretend to a higher Court (where there is no material on record to contradict him/her that he or she did not really understand the offence).

This often happens when the accused person receives a severe sentence than he or she expected; and

- C) The public will have confidence in the administration of Justice.

In the case of Uganda vs Kilama Geoffrey [1994 -95] HCB 38, it was held that:-

- 1) **“In order for a plea of guilty to be properly entered, the words of accused in answer to the charge, admitting all the ingredients of the offence charged must be recorded.**
- 2) **That after an accused person pleads guilty, the facts constituting the offence should be narrated to Court which should put these facts to the accused to admit or deny the correctness of the facts before he is convicted.”**

Certainly, in this instant case, the trial Magistrate did not comply with the procedure of taking pleas. However, I hasten to observe that the authorities cited by the appellant date back before the promulgation of the Constitution of the Republic of Uganda, 1995. Thus, Article 126 (2) (e) of the constitution of the Republic of Uganda takes care of the procedural mistakes. It provides:-

**“(2) (e) thereof, in adjudicating cases of both a civil and criminal nature, the Court shall, subject to the law apply the following principles:-**

- (a).....
- (b).....
- (c).....



(d).....

(e) **Substantive justice shall be administered without undue regard to technicalities.”**

According to the Court record, the trial Magistrate read and explained the charges to the accused. Then the accused pleaded to the charges. A plea of guilty was entered by the trial Magistrate. Then the brief facts were read and explained to the accused person by the trial Magistrate. The accused in reply stated that the facts are correct. Thereafter, the trial Magistrate proceeded and convicted the appellant as charged. The procedure that was adopted when taking plea complied with Section 124 (1) of the Magistrate’s Courts Act (Supra). There is nothing equivocal in the admission of the offences by the appellant affecting the legality of her plea. This is further supported by what she stated in her allocutus when she prayed for forgiveness and suggested the sentence of a fine. In my considered opinion the appellant could not have prayed for forgiveness for something she did not understand or aware of. Again applying the principles in the cases cited by Counsel for the appellant to the instant case, the appellant was given an opportunity when the facts were read and explained to her. She did not only plead guilty but also admitted the facts that were read and explained to her as depicted by the record of proceedings. The trial Court was indeed certain that the accused (appellant) understood the charges and the facts as read and explained to her. This proposition is supported by the case of Mose vs Republic [2002] I EA 163 at page 169 (e & f) whereby it was held that:-

**“For these reasons we have stated above, we arrive at the conclusion that the response of the appellant to each of the three charges, both on**

**18<sup>th</sup> October, 1999 and on 19<sup>th</sup> November, 1999, were insufficient. But this is not the end of the matter. On 18<sup>th</sup> October, 1990, the facts were fully set out to him, he was given the opportunity to respond, and, he said the facts were true. Similarly, on 19<sup>th</sup> November, 1999, the facts as previously recorded by the Court, were fully read out to him and he confirmed them to be correct. For these reasons, we are satisfied, that his response to the three charges were in themselves, not sufficient if they stood alone, his subsequent full admission of the facts on the two occasions cured the insufficiency in his response to the charges and confirmed that he understood the charges and intended to admit them unequivocally and did so before the trial Court.”**

In the result and in consideration of the record of the Court, reasons and authorities quoted hereinabove in this judgment, I make a finding that grounds 1, 2 and 3 of appeal lack merit. I am satisfied that the pleas of guilt on 2 counts are unequivocal.

On count 4, Counsel for the appellant submitted that the sentence of 4 months' imprisonment on Count 1 and fine of shs. 600,000/= or imprisonment for 4 months on Count 2 imposed on the appellant to run consecutively were too harsh and excessive. In reply, Counsel for the respondent submitted that there is no illegality in the sentences, and that as such the appellant had no right to appeal against such sentences.

According to the trial Court proceeding, in mitigation for sentence; it is recorded:-

**“State Attorney: No previous record. I pray for an appropriate sentence.**

**Accused: I pray for forgiveness and payment of a fine.”**

The response of the trial Magistrate before passing the sentence was:

**“In the instant case, what the law set out to prevent is what the offender or convict did. In the circumstances I don’t think I should be lenient at all.**

**I believe the convict deserves a prohibitive and deterrence punishment so that in future there is no loss of lives at her hands.”**

In passing the sentence, the trial Magistrate did not consider the mitigating factors that were submitted on by the parties. In that regard, I make a finding that the trial Magistrate applied wrong principles because he took into consideration extraneous matters which were not on record. These are the factors which the trial Magistrate considered in passing the sentence against the appellant (accused):-

- “(i) believe one of the care reasons why the drink driving law was enacted to prevent loss of lives and properties as a result of motor accidents.**
- (ii) What the law set out to prevent is what the offender or convict did.**
- (iii) The convict deserves a prohibitive and deterrence punishment so that in future there is no loss of lives at her lands.”**

It is then very clear from the above that the trial Magistrate when passing the sentences never considered the mitigating factors that were submitted on by the parties. The respondent (Uganda) and not pray for a harse sentence. The appellant prayed in mitigation for leniency.

I therefore, agree with the submission by Counsel for the appellant in that regard that the reasons on which the trial Magistrate based on to pass the disputed sentences were extraneous and not supported by evidence on Court record. The case against the appellant is said to arise from traffic offences where there are no allegations of an accident being caused by the appellant. And no evidence was placed before the trial Court to show that there was loss of life or loss of property or any injury caused at the hands of the appellant. The reasons bases on by the trial Magistrate are in the circumstances farfetched.

The nature of the offences charged and for the fact that the appellant pleaded guilty to the charges on both counts and taking into account the mitigating factors by both parties, I make a finding that the trial Magistrate did not properly exercise his discretion under the law when he imposed on the appellant a sentence of 4 months imprisonment on count 1 without an option to pay a fine. In the case of Nsubuga -vs- Uganda [1975] HCB 355, it was held that:

- “1. The sentence of twelve (12) months’ imprisonment on a 23 years old, first offender was excessive. The appellant was entitled to be given an option of paying a fine as it is usually the case in Traffic offences for negligent use of motor vehicles.**
- 2. Imprisonment would be more effective on a person exhibiting criminal tendencies rather than one of negligent or reckless disposition in the use of motor vehicles.**
- 3. The sentence of twelve (12) months was quashed and a fine of shs 200/= or six months imprisonment in default was substituted.”**

The above quoted authority is a good authority and relevant to this instant case. In the premises, the sentence of 4 (four) months imprisonment on a 27 year old (appellant) first offender was entitled to be given the option of paying a fine. There was no need for the trial Magistrate to impose the sentence of 4 months imprisonment on count I without an option of a fine in default to the appellant who did not according to the Court record exhibit criminal tendencies. Wherefore; I make a finding that ground 4 of the memorandum of appeal has merit. It is accordingly allowed. The sentence of 4 months imprisonment is quashed and substituted with a sentence of paying a fine of shs.600,000/= (six hundred thousand shillings) or 4 months imprisonment in default of payment of a fine, on count I. The sentence on count 2 remains undisturbed.

In the result and for the reasons given hereinabove in this judgment, grounds 1, 2, and 3 are dismissed; and ground 4 is allowed in the terms and orders given hereinabove in this judgment. The sentences on counts 1 and 2 shall run concurrently. Since the appellant paid shs.600, 000/= fine on count 2, she has already satisfied both sentences. She is free to go home.

Dated at Kampala this 19<sup>th</sup> day of February 2014.

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**Joseph Murangira**

**JUDGE**

**19/2/2014.**

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**NAMARA**  
**DAPHINE :::0APPELLANT**

**VERSUS**

**UGANDA:::RESPONDEN**  
**T**

M/S Caroline Nabaasa, Principal State Attorney, for the respondent.

The appellant and her advocate are not in Court, yet they were duly served with the Judgment notice.

Counsel for the Respondent:-

I am ready to receive the Judgment.

M/S Margaret Kakunguru, the Clerk is in Court.

**Court:** Judgment is delivered in open Court. The applicant and her advocate shall be informed by the Court Clerk of the results of the appeal.

Right of Appeal is explained to the parties.

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**Joseph Murangira**  
**JUDGE**  
19/2/2014