IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL APPEAL NO. 4 OF 2005

(ARISING FROM SOROTI CHIEF MAGISTRATE'S COURT CRIMINAL CASE NO. 146 OF 2013)

ONGIJI PETER ....APPELLANT

V

UGANDA................RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant through his advocates Isodo & Co, appealed the judgment of HW Baker Rwatooro Chief Magistrate on two main grounds of appeal , namely,

1. The trial magistrate erred when he imposed a long custodial sentence considering the circumstances of the offence.
2. The trial magistrate erred when he awarded the complainant a large sum in compensation when both parties sustained injuries.

The respondent was represented by Ms. Harriet Adong, State Attorney.

Both counsel made oral submissions that i have carefully considered.

From my analysis of the grounds of appeal and the submissions of counsel for the appellant, the appellant does not contest the conviction but contests the sentence and compensation imposed.

On the first ground, counsel Isodo submitted that it was the complainant that attacked the accused first who then retaliated. According to the complainant Robert Ewayu PW1, he was cut on the head with a hoe after a scuffle upon

which he became unconscious and was admitted in hospital where he spent three weeks.

I note that PF3 was not tendered as this would have guided the court on the kind of injuries inflicted and therefore provide a measure against which an award of compensation would be made.

Counsel for the respondent submitted that the cut was inflicted on the head , a lethal part of the body hence there was an intention to kill which justifies the conviction for attempted murder.

Counsel Harriet Adong submitted that the sentence and compensation award were not excessive.

I am grateful to state Attorney Harriet Adong who supplied an authority on appeals against sentence. In **Court of Appeal criminal Appeal No. 228 of 2009, Kawesi John v Uganda,** the COA reiterated the principle on appeals against sentences, i.e, that the first appellate court will not normally interfere with the discretion of the sentencing court unless it was illegal or manifestly excessive as to amount to an injustice.

The learned trial magistrate imposed a sentence of four years without remission.

As mentioned earlier, the appellant did not appeal the conviction for attempted murder .

Attempted murder carries a maximum of life imprisonment . Therefore , the sentence of four years is not illegal nor is it excessive.

However, i take exception to the order for sentence to be served without remission.

Under section 47 of the Prisons Act, every convict is credited with full remission which is then maintained or deducted depending on good conduct of the prisoner. It is a privilege conferred by Law which cannot be taken away by a trial court.

Although the Supreme Court in **Att.Gen v Kigula and others Const. Appeal No**. **3 of 2006** (reported on ulii) made an order that took away remission, it concerns prisoners on death row whose sentences have been confirmed by the Supreme Court but whose appeals for mercy have not been handled .

In the instant case, the trial chief magistrate had no powers to order the convict to serve sentence without remission. This part of the sentence on remission is illegal .

With respect to the award for compensation, no reasons were given for the sum of 2,500,000/. Apart from oral evidence that the complainant was hospitalised for three weeks, there is no documentary evidence of such long hospitalization. I find that the award is excessive in the circumstances. I substitute it with a sum of 300,000/.

In the result, i vary the orders of the learned chief magistrate as follows:

1. The sentence of four years imprisonment is confirmed
2. The order on remission is set aside.
3. The award of 2,500,000/ is substituted with an award of 300,000/ to be paid after the convict serves sentence.

DATED AT SOROTI THIS 17th DAY OF DECEMBER 2015.

HON. LADY JUSTICE H. WOLAYO