

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KOLOLO

MASABA ROGERS SEBASTIAN ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

HCT-00-AC-CN-NO. 022 OF 2014

(Arising from Criminal Case No. 0121 of 2014)

BEFORE: HON.LADY JUSTICE MARGARET TIBULYA

J U D G M E N T

This is a Judgment on appeal from the Judgment and orders of the Chief Magistrate Anti-corruption court sitting at Kololo.

The appellant was convicted of two counts of acquiring or having in his possession prohibited goods contrary to **Section 200 (d) (i)** of the **East African Community Customs Management Act, 2004**, and importation of a specimen without complying with the Customs Laws contrary to **Sections 66 and 76** of the **Wild Life Act, CAP 200**. He was sentenced to two (2) years imprisonment on the first count and to three (3) years imprisonment on the second count, with an order that the sentences run concurrently. The appeal, premised on two grounds, is against sentence.

THE GROUNDS

- 1. The trial magistrate on delivering her judgment did not consider the fact that the accused had spent four months on remand.**
- 2. The trial magistrate was not lenient in determining the sentence of 2 and 3 years imprisonment.**

At the hearing the appellant argued that he did not intend to commit the offence, further that the real culprit died, and that he has no assistance in prison since he is a Tanzanian. He prayed that the period he has spent on remand be considered and the sentence be reduced.

The respondent argued that the maximum sentence for the first offence is 5 years imprisonment or a fine of equal to **50%** of the value of the goods involved. The goods in issue were ivory, a prohibited good, so the only sentence could be an imprisonment term. He was sentenced to two years imprisonment.

The second offence involved 37 pieces of ivory. The law sets the maximum sentence at 7 years imprisonment but the appellant was given only 2 years. The sentences are to run concurrently. The sentence is not excessive. The fact that the period on remand was not considered did not occasion a miscarriage of justice.

For ease of reference I will lay down the provisions of the relevant laws.

The East African Community Customs Management Act, 2004.

S. 200. *“Any person who-*

- (d) acquires, has in his or her possession, keeps or conceals, or procures to be kept or concealed, any goods which he or she knows, or ought reasonably to have known, to be*
- (i) prohibited goods; commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine equal to fifty*

percent of the dutiable value of the goods involved, or both”.

Wild Life Act, CAP 200.

S. 66. *Any person who imports, exports or re-exports or attempts to import or re-export any specimen—*

(a) except through a customs post or port;

(b) without producing to a customs officer a valid permit to import, export or reexport the specimen, commits an offence.

S. 76. *“Any person who is convicted of an offence under section 66 or 67 or under regulations made under section 67 is liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than seven years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence”.*

Ground 1: *The trial magistrate on delivering her judgment did not consider the fact that the accused had spent four months on remand.*

The principle in **Kiwalabye Bernard versus Uganda, Criminal Appeal No. 143 of 2001** and in **James S/O Yoram versus Rex 1950 [EACA] 18** is that an appellate court will only interfere with the sentence passed by a Trial Court in exercise of its discretion on sentence if it appears that the Trial Court acted on wrong principles or overlooked some material facts or the sentence is illegal, or manifestly excessive as to amount to a miscarriage of justice.

The areas to look into are;

a. Whether the Trial Court acted on wrong principles.

The trial court considered that the convict was a first offender and appreciated his domestic problems but noted that crimes of this nature are on the increase and that the same could not go unpunished. The court was mindful of the provisions of the **Sentencing Guidelines** but found that the aggravating factors in the case outweigh the mitigating ones.

The appellant is now arguing that the court did not consider the four months he spent on remand.

My decision is that the court by considering the **Sentencing Guidelines** which is the embodiment of the sentencing principles, including one that the remand period is to be taken into account by sentencing courts, acted on the correct principles.

b. Whether the court overlooked some material facts.

The complaint that the court did not consider the four months the accused had spent on remand has been answered that since the court considered the **Sentencing Guidelines**, the embodiment of the sentencing principles, and which gives specific guidance that remand periods should be considered by sentencing courts, the court must be taken to have considered the time on remand by the appellant.

In **Lubanga Emmanuel Vs Uganda C/A Criminal Appeal No.124 of 2009**, it was held that while **Article 23 (8)** of the Constitution requires Courts while sentencing a convicted person to take into account any period he or she spends in lawful custody, “**taking into account**” does not mean an arithmetical exercise.

It is therefore not expected that sentencing courts go the full extent, specifically mentioning the fact that the period has been taken into account, or even making calculations in the sentencing ruling. The sentence in this case which falls far below the prescribed maximum sentence is to be taken to have been arrived at after all due considerations.

Ground 2; *The trial magistrate was not lenient in determining the sentence of 2 and 3 years imprisonment.*

The issue to consider in this regard is;

c. Whether the sentence is illegal, or manifestly excessive as to amount to a miscarriage of justice.

The maximum sentence for the first count is imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the **dutiable value** of the goods involved or both.

For the second count the maximum sentence is a fine of not less than ten million shillings or imprisonment for a term of not less than seven years,

The appellant was sentenced to two (2) years imprisonment on the first count and to three (3) years imprisonment on the second count, with an order that the sentences run concurrently. These sentences are within the legally prescribed limits, though way below the prescribed maximum sentences. They are not illegal and can't be said to be harsh. Moreover there was good reason for not considering the option of the fine; and this was that the goods in issue, ivory, is a prohibited good, and no **dutiable** value could therefore be attached to it.

I am satisfied that the trial magistrate considered all that she ought to have considered and that the sentence of 3 years imprisonment is neither illegal nor manifestly excessive as to amount to a miscarriage of justice.

The appeal therefore fails.

Margaret Tibulya

Judge

28th October 2015.