



The trial Court ordered the sentences to run concurrently. Again, the trial Court ordered the appellant to pay to the complainant shs. 35,000,000/= as compensation. Hence this appeal.

### **3. Grounds of appeal**

#### 3.1

1. The learned Trial Magistrate erred in law and fact when she allowed Mbazira that abounded cross-examining prosecution witnesses PW1, PW2, PW4, PW5 and PW6, without instructions from the appellant to appear for the appellant in the trial proceedings occasioning a miscarriage of justice thereby with bias failed to adequately evaluate the evidence and wrongly convicted the appellant on all events in the charge sheet.
2. The learned Trial Magistrate having ordered that terms of imprisonment of the appellant for the six counts shall run concurrently erred in law when she signed an order to imprison the appellant for 8 years, harsh and excessive punishment instead of 3 years which she ordered.
3. The Trial Magistrate erred in law when she ignored culprits PW3 and PW4, ordered an illiterate and unprotected appellant to compensate the complainant for the loss of Shs. 35,000,000/=, which loss was not proved against the appellant in favour of the complainant nor claimed by the complainant.

3.2 Counsel for the appellant argued ground 1, 3 and 2 in his submissions in that order. In his submissions in reply, Counsel for the respondent followed the same format of when presenting his arguments to Court.

### **4. Resolution of the Grounds of appeal by Court.**

- 4.1 I agree with both Counsels for the parties that this Court being the first appellate Court has a duty to reconsider the entire evidence on record of both the prosecution and the

defence. In the case Supreme Court, Criminal appeal No. 10 of 998, reported in 199 KALR 17 it was held that:-

**“It is the duty of the first appellate Court to reconsider the entire evidence on record and subject it to a fresh and exhaustive scrutiny and make its own conclusion.”**

Again, Section 34 (1) of the Criminal Procedure Code, Cap.116, laws of Uganda, provides that:- “the appellate Court, on any appeal against conviction shall allow the appeal if the decision has in fact caused a miscarriage of justice or if Court is satisfied that there has been a miscarriage of justice.”

#### **4.2 Ground 1 of appeal**

Counsel for the appellant in his submissions endeavoured to fault the Trial Magistrate, that the offences under which the appellant was charged do not need Court to assign a state brief presentation to the appellant. Counsel for the appellant relied on Article 28 (2) (e) of the Constitution on this complaint by the appellant, Counsel for the respondent in reply does not agree. He submitted that the offence of forgery Contrary to Section 348 of the Penal Code Act carries a sentence of life imprisonment. That therefore, the Trial Magistrate acted within the law to assign the appellant and Counsel Mbazira to represent the appellant in his trial.

Under Article 28 (2) (e) of the Constitution of the Republic of Uganda provides that for the offences that carry sentence of death or imprisonment for life, an accused person shall be entitled to legal representation at the expense of the state. According to Section 348 (1) of the Penal Code Act under which the appellant was charged, the maximum sentence on conviction is imprisonment for life. In this regard, I agree with Counsel for the respondent that the Trial Magistrate legally and rightly afforded the appellant legal representation in his trial before the lower Court.

Thus, the appellant was legally represented by Counsel Mbaziira. I have perused the Court record of the lower Court, and noted that throughout the trial of the appellant, the appellant did not object to the legal representation of Mr. Mbaziira.

Therefore, in his submissions Counsel for the appellant argued that if Mr. Mbaziira had instructions from the appellant, the said Counsel would have Cross-examined PW1, PW2, PW4, PW5 and PW6 on their evidence in examination-in-chief. That when one looks at the documentary exhibits that were admitted against the appellant, (Exh. P1 the sale agreement, on evaluation of evidence, that the vendor is Jonah Nanyumba, that there is neither signature nor a thumb print and that on the side they typed John Nanyumba. That the state brief Counsel would have cross-examined.

PW3 and PW4 who were witnesses to this agreement. He submits that such exhibit P1 should not have been used in evidence. Counsel for the respondent in reply to appellant's submission on the point under consideration does not agree. I have looked at Exh. P1 which is the sale agreement, and noted that the seller of the disputed land to PW1 did actually sign on that agreement. The agreement was also signed by the buyer, PW1 and witnessed by the PW3, PW4 and another person. In this endeavour, I fail to appreciate the arguments of Counsel for the appellant.

Consequent to the above, I wish to note that the complaint of the appellant in ground 1 of appeal does not include the failure by Counsel on state brief to cross-examine the prosecution witnesses. Thus, Counsel for the appellant mixed up the issues of failure to evaluate the evidence on record, with failure of Counsel on state brief to cross-examine the prosecution witnesses. However, I hasten to add that failure by Counsel for a party to cross-examine the witnesses of the opposite party might be a professional conduct. Again, failure by then Counsel for the accused (applicant) to cross-examine the prosecution witnesses cannot be a ground to fault the Trial Magistrate. There is no law the Trial Magistrate would have used to compel Counsel for the accused to cross-examine the prosecution witnesses on their evidence in examination-in-chief under the law cross-examination of a witness is not mandatory. May be, in the wisdom of the

Counsel Mbaziira, he did not see any need to cross-examine PW1, PW2, PW4, PW5 and PW6 on the evidence they gave in examination-in-chief. Under Section 137 (1) of the Evidence Act, Cap.6 laws of Uganda. It realize:-

**“S.137 Order of examinations.**

(1) Witnesses shall be first examined-in-chief, then **(if the adverse party so desires)** cross-examined, then **(if the party calling them so desires)** re-examined”. The underlining is mine for emphasis.

At page 4 of the Court proceedings, Counsel Mbaziira successfully applied for bail for the appellant and at page 5 of the Court proceedings bail was granted to the appellant. This is clear evidence that the appellant (accused) accepted Counsel Mbaziira as his Counsel on state brief. Then at page 10, of the accused (appellant) cross-examined PW3 on his evidence in examination-in-chief.

At page 15 of the Court Proceedings, Mbaziira, Counsel for the accused conducted the accused’s (appellant’s) defence. Thus, Counsel Mbaziira executed his work as instructed by the appellant. He had to do his work as a professional lawyer. I have perused the evidence of PW1, PW2, PW4, PW5 and PW6 together with that of the defence, plus the exhibits on Court record, the evidence of the prosecution witnesses and the exhibits were clear enough and under Section 137 (1) of the Evidence Act (Supra) Counsel for the accused saw. No need to cross-examined the witnesses on such evidence.

Furthermore, Counsel for the appellant submitted that, while the consideration on the agreement is Shs. 35,000,000/=, that the application for transfer that was filed in the Land Registry to pay the stamp duty show the consideration of Shs. 10,000,000/=; that therefore the transfer form is an illegal document. That there was a miscarriage of justice by the Trial Magistrate on convicting the appellant based on the certificates of titles, already cancelled by the Registrar of Titles PW2. In reply to the aforesaid submissions by Counsel for the appellant, Counsel for respondent does not agree.

I perused the record of proceedings of the lower Court and the Judgment of the Trial Magistrate and compared the same with the submissions of both Counsels for the parties. And as regards the evaluation of evidence complained of by the appellant, at pages 1 and 2 of the judgment, the Trial Magistrate properly stated the ingredients of the offence charged. In her judgment, the Trial Magistrate relied on those ingredients of the offence charge on each count to convict the appellant. Again, in her judgment the Trial Magistrate properly considered the evidence of both the prosecution and the defence, together with the prosecution exhibits. The Trial Magistrate relied on all the evidence of the prosecution witnesses and the exhibits to reach the decision in her judgment.

According to the exhibits PE6 and PE7, the transfer forms for Plots 1123 and 1124, the evidence PW2, the photographs of the appellant are attached, and noted that the photographs thereof are of the appellant. In his defence, the appellant does not deny how his photographs came to be attached to the said exhibits. On the issue of the certificates of title which were cancelled by the Registrar of titles not to be used in evidence as complained of by Counsel for the appellant, there is enough evidence on record that the said certificates of title were forged documents, which had been brought to the attention of PW2, who in turn cancelled them. Forged documents, through cancelled, are still good documentary evidence to use and prove the offence of forgery. This is because the offence of forgery and uttering false documents were committed before the cancellation of the said documents by the Registrar of Titles, PW2. Hence, it is my finding that the said certificates of Title were properly admitted in evidence for the prosecution.

In the result, ground 1 of appeal fails.

#### **4.3 Ground 2 of appeal**

Counsel for the appellant submitted that it was an err by the Trial Magistrate to order for the compensation of Shs.35,000,000/= to the complainant by the appellant. He is argument is that the stamp duty that was assessed by Uganda Revenue Authority on the subject matter was based on Shs. 10,000,000/= and not Shs.35,000,000/= the alleged loss. That the appellant in his defence denied selling the said land to the complainant, PW1. In

reply, Counsel for the respondent supported the findings and judgment of the Trial Magistrate.

On this complaint in ground 3 of appeal, I again reconsidered the evidence on the Court record, perused and analysed the judgment of the lower Court.

The issue of compensation is governed by Section 197 of the Magistrates Courts Act, Cap 16. That Section empowers the Magistrates after conviction, but in the sentencing process to make an order of compensation for the loss occasioned to the complainant because of the action/omissions of the accused person. PW1, the buyer and the complainant in this case gave direct evidence on how he paid Shs.35,000,000/= to the appellant. There is on record an agreement of sale which is duly signed by the parties and duly witnessed by witnesses. PW3 and PW4 witnessed the appellant receiving Shs. 35,000,000/= from PW4. PW4 was representing the appellant. The transaction took place during the day, according to the record of the lower Court. Therefore, I am satisfied that the appellant was known to PW1, PW3 and PW4 and that the question of mistaken identity of the appellant is out.

In sum total in this ground 3 of appeal, I make a finding that – the Trial Magistrate legally awarded compensation of Shs. 35,000,000/= that was proved in evidence, having been falsely obtained by the appellant from PW1 the complaint. In the premises, grounds 3, too fails.

#### **4.4 Ground 2 of appeal**

Counsel for the appellant submitted that the sentence of eight (8) years imprisonment is harsh and excessive. His arguments for his reasons of his submissions are that:-

- a) Since the appellant was ordered to pay compensation of Shs. 35,000,000/=: eight (8) years imprisonment would be excessive and harsh.
- b) The convict should be given a short imprisonment sentence of three (3) years so that he is able to come out of prison, then work and pays the compensation ordered by Court and pays the complainant.

- c) The convict now is 58 years, and that if he stays in prison for all these 8 years, he would not be able to come out of prison and work.

Counsel for the appellant prayed that the sentence of 8 years be reduced to three (3) years imprisonment. He finally prayed that the appeal be allowed, conviction quashed and sentence set aside.

In reply, Counsel for the respondent does not agree with arguments of Counsel for the appellant. In his submissions Counsel for the respondent supported the sentences and orders handed down against the appellant. He further submitted that the sentences which the subject of this ground 2 are within the law. In his arguments, he submitted that the sentences being complained of are too low; and that the sentence should be enhanced to 15 years imprisonment on each count (from counts 1-4 on forgery).

I failed to appreciate the arguments by Counsel for the appellant in ground 2 of appeal is that:-

**“The Trial Magistrate having ordered that terms of imprisonment of the appellant for the six counts shall run concurrently erred in law when she signed an order to imprison of the appellant for eight (8) years, which is harsh and excessive punishment instead of three (3) years imprisonment which she ordered.”**

During the interaction with both lawyers for the parties, I noted that Counsel for the appellant had misunderstood the words.

**“to run Concurrently”. On his part, he thought that the appellant should have been ordered by the Trial Magistrate to serve the lowest number of three (3) years imprisonment on count six (6). That is why, during the submissions, Counsel for the appellant took a different direction in his approach to resolve this ground 2 of appeal.”**



As seen in the Court record of the lower Court, the appellant was charged with forgery Contrary to Section 348 of the Penal Code on two Counts, uttering a false document Contrary to Section 351 of the Penal Code on two counts. These four counts carry the same sentence of imprisonment for life. The appellant was sentenced to eight (8) years on each of those said counts (that is from counts 1-4). The sentence passed on each count was not legal. I, therefore, make a finding that the sentence of eight (8) years imprisonment to cover all the sentences passed on the six counts was not excessive as opposed to the maximum sentence for offence of forgery and the offence of uttering a false documents of imprisonment for life. In passing the sentences, the Trial Chief Magistrate considered the mitigating factors by each party.

In mitigation for an appropriate sentence the prosecution had this to say: “that the offences charged against the accused are on the increase and that it covers 80% of such cases they handle. That a number of people have lost sums of money through fraud.” It is my considered view that such offences which are on the rise in our society need to be curbed down. Wherefore, I do not see any convincing reasons to base on to fault the sentencing Chief Magistrate.

However, I hasten to add that although the sentence complained of is with the law, I am of the considered view that in granting an order of compensation, the Trial Magistrate intended the complainant to be paid Shs. 35,000,000/= for the loss he suffered. The to maintain a sentence of eight (8) years imprisonment, by the time the convict comes out of prison, the order for compensation would have been grossly affected. In my considered view the appellant should be given a less imprisonment sentence to enable him come out of prison, and then pays the compensation of Ug. Shs. 35,000,000/= to the complainant (PW1). It is, therefore, in the same spirit that I reduce the sentence of eight (8) years on each count, from counts 1-4 to 3 (three) years imprisonment; and the sentence on count 5 of four (4) years imprisonment; too, reduced to 3(three) years imprisonment. The sentence on count 6 of 3 (three) year is upheld. The sentences shall be served concurrently, that is, the appellant shall serve 3 (three) years imprisonment from the time of conviction by the trial Court. In the result, ground 2 of appeal succeeds by one-tenth.

Finally, from the findings hereinabove in this judgment on each ground of appeal, grounds 1 and 3 are dismissed. On ground 2, as stated above, the sentence of imprisonment of 8 years is substituted with the sentence of 3 years imprisonment. The convictions on the 6(six) counts and the order of Ug. Shs. 35,000,000/= as compensation to the complainant are upheld.

Dated at Kampala this 24<sup>th</sup> day of August, 2015.

**Joseph Murangira**  
**Judge.**

**24/08/2015**

The appellant is in Court.

My lawyer is absent.

I am ready to receive my Judgment.

Mr. Luzige Hamuza, Senior State Attorney, holding brief for Mr. Bwiso Charles, Senior State Attorney, for the respondent.

I am ready to receive the judgment.

Ms. Margaret Kakunguru, the Clerk is in Court.

Ms. Catherine Musoke, interpreter in Luganda, in Court.

Court: Judgment is delivered to the parties in open Court.

Right of appeal explained to the parties.

**Joseph Murangira**  
**Judge.**

**24/08/2015.**