

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.42 OF 2015**

**(Arising from Buganda Court Criminal Case No. 616 of 2014)**

**EMMANUEL MULOKOZI :::APPELLANT**

**VERSUS**

**UGANDA :::RESPONDENT**

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

1. The appellant is represented by Mr. Mulumba Hannington from Lule Godfrey & Mulumba & Co. Advocates. Whereas. The respondent is represented by Jacquelyn Okui, Senior State Attorney working with the Directorate of Public Prosecutions.

**2. Brief facts of the appeal.**

The appellant was charged with assault occasioning actual bodily harm Contrary to Section 236 of the Penal Code Act, Cap. 120.

The appellant was tried by Her Worship Shwanda Nkole Jolly, Senior Principal Magistrate Grade One, of Mengo Chief Magisterial Area, sitting at Law Development Centre Magistrate's Grade One Court. The appellant was found guilty, convicted of the charged offence, sentenced to six (6) months imprisonment and to pay Ug. Shs.200,000/= as compensation to the complainant, on 10<sup>th</sup> April,2015.

The appellant served the imprisonment sentence, but has not yet paid the said compensation.

The appellant being dissatisfied with the whole decision in the judgment of the Trial Magistrate appealed to the High Court of Uganda against conviction and sentence and the Orders.

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

The appellant appeals against conviction, sentence and the order of compensation on the following grounds; that:-

- a) The learned Trial Magistrate erred in law and in fact when she failed to properly and adequately evaluate the evidence as a whole thus reaching a wrong decision.
- b) The learned Trial Magistrate erred in law and fact when she imposed a harsh punishment onto the appellant.
- c) The learned Trial Magistrate erred in law and fact when she imposed a heavy fine onto the appellant for the said offence.

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

4.1 On 12<sup>th</sup> August, 2015, when the appeal came up for hearing, both Counsel agreed to file in Court written submissions. I then gave Counsel for the parties' schedules within which to file in Court their respective written submissions. Each Counsel for the parties complied with the orders of the Court.

4.2 **Ground 1 of appeal.** The learned Trial Magistrate erred in fact and in law when she failed to properly and adequately evaluate the evidence as a whole thus reaching a wrong decision.

In his submissions, Counsel for the appellant criticized the Trial Magistrate. He submitted that the sharp object allegedly used to injure PW1 on his finger was not exhibited in Court, that yet it was necessary to prove this ingredient of assault. That according to PW3 at page 21 of the record of proceedings line 15, that upon examining PW1 he found him in a fair condition. That, that meant he was not seriously injure. That on further examination he had wounds which show that a skin peeled off, not deep they were on his left thumb and also on his left index finger. The underlining is mine for emphasis.

Again, Counsel for the appellant submitted that, at pages 29-30, at page 23, line 18, at page 28 lines 1 and 17, that instead it was PW1 who assaulted the appellant. That had the Trial Magistrate considered the abovestated evaluated evidence that she should have acquitted the appellant of the charged offence. He prayed that this ground 1 be allowed.

In reply, counsel for the respondent, too, evaluated the evidence on the Court record and in her submissions supported the Trial Magistrate's judgment and findings therein. She criticized the submissions by Counsel for the appellant. She prayed Court disallow this ground one of appeal.

This instant matter is an appeal from the Magistrate's Court Grade 1 of Law Development Center. This is the 1<sup>st</sup> appeal in this Court. In the case of Kivamuntuyo-vs- Uganda Supreme Court, Criminal appeal No 10 of 1997 and Pandya -vs- R [1957] EA 336, the principle of law is that the duty of the 1<sup>st</sup> appellate Court is to re-evaluate all the evidence on record, as a whole, subject the same to a fresh and strict scrutiny and to make its own conclusion, bearing in mind that the Judge did not see the witnesses testify.

Again, in the case of Abdu Ngobi-vs- Uganda, Supreme Court, Criminal appeal No.10 of 1991, it was held that:-

**“the proper approach is to consider the strengths and weaknesses of each side, weigh the evidence as a whole, appeal the burden of proof as always resting upon the prosecution and decide whether the defence has raised a reasonable doubt. If the defence has successfully done so, the accused must be acquitted.”**

Well aware of the abovestated principle in the above three (3) cited cases, I shall re-evaluate the evidence on record as a whole, subject it to a fresh and strict scrutiny and come out with my own conclusion in this appeal.

I have perused the judgment of the Trial Magistrate and indeed the Trial Magistrate did her level best to evaluate the evidence as a whole on record. The prosecution called five (5) witnesses: PW1, ASP Lubega Samuel, PW2, Lillian Mulokozi, PW3, Oligo Michael, PW4, Sgt Onenechan Raymond, and PW5, Detective Police Officer, Okello Robinson.

The accused gave evidence on oath and called no other witness to testify on his behalf. In her judgment from page 4 to page 13 of the record of appeal, the Trial magistrate considered the strengths and weaknesses of each side and weighed the evidence of both parties as a whole.

The appellant is charged with assault occasioning actual bodily harm Contrary to Section 236 of the Penal Code Act (Supra). At page 8 lines 4-5 from top of the record of appeal, in her judgment the Trial Magistrate raised two (2) issues, namely: “Whether there was an assault; and whether PW1 was assaulted by the accused. At page 7, last paragraph and page 8 lines 1-2 from top, of the record of appeal the Trial Magistrate defined the word “assault”:-

**“Assault in law as per definition from Osborn’s Concise Law Dictionary, 7<sup>th</sup> Edition by Rogers Bird is :- “the unlawful laying of hands on another person, or on at least or offer to do a corporal hurt to another, coupled with an apparent present ability and intention to do an act.”**

“Harm” according to Section 2 of the Penal Code Act, Cap.120 Laws of Uganda means “any bodily hurt, disease or disorder whether permanent or temporary.”

According to PW1 at page 16, lines 18-19; then page 17 lines 1-2 of the record of appeal gave evidence that on 6<sup>th</sup> August, 2014 at 4:00p.m, the appellant attacked his mother at their Hotel and he intervened and tried to Separate them, but the appellant boxed him in the chest and cut his two fingers with a sharp object. PW1 further said on lines 10-11 at the same page that he sustained injuries on his chest and two fingers. This evidence was corroborated by the evidence of PW2 who at page 19 lines 26-27 and page 20 line 1 of the record of appeal who testified that on 6<sup>th</sup> August, 2014 the appellant attacked her in

the presence of PW1 who tried to calm down the appellant. At page 20 lines 1-4, PW2 gave evidence that the appellant boxed PW1 who fell and his fingers started bleeding. That the appellant then ran away according to line 7 at page 20 of the record of appeal.

Then there is the evidence of PW3 at page 21 lines 12-22 and page 22 lines 1-2 of the record of appeal. PW3 testified that he examined PW1 on 7<sup>th</sup> August 2014 and found open wounds on his left thumb and index finger and tenderness in his front chest. He observed that the injuries were about one day old and classified them as harm. He entered the details of the examination in Exh P1. There is also the evidence of PW4, at page 23 lines 13-15, he gave evidence that on 6<sup>th</sup> August 2014 at 6:30p.m him and others chased the appellant and arrested him. PW5, at page 26, line 27 of the record of appeal, gave evidence that he saw injuries on PW1's hand.

On the other hand, the appellant at page 28 line 7 of the record of appeal in his evidence, he placed himself at the scene of crime. At page 29, line 11 and at page 30, line 23 of the record of appeal, the appellant admitted being involved in a fracas at the scene of crime.

Counsel for the appellant in his submissions criticized the Trial Magistrate that the sharp object used to injure PW1 was not exhibited in Court, that yet it was necessary to prove the ingredient of assault. From the definition of the word assault hereinabove in this judgment such sharp object is not necessary to prove the ingredient of assault. I, thus, agree with Counsel for the respondent in her submissions that there was no need to exhibit the object and more so when it had not been recovered from the scene of crime. Again, in his submissions, in the words I underlined for emphasis, Counsel for the appellant agrees with the examination in medical report and the evidence of PW3 that PW1 was assaulted.

In essence, therefore, I hold that there is enough prosecution evidence on the Court record that proved that the appellant committed the charged offence. Thus, the Trial Magistrate adequately evaluated the evidence as a whole and reached the right decision. In the result, ground 1 of appeal fails.

4.3 **Ground 2 of appeal:** The learned Trial Magistrate erred in law and fact when she imposed a harsh punishment onto the appellant.

In his submissions on this ground 2 of appeal, Counsel for the appellant submitted that there was no justifiable reason why the learned Trial Magistrate imposed a harsh sentence of six (6) months against the appellant. He prayed that the sentence be set aside, that or reduced even when the appellant has already served it. In reply Counsel for the respondent in her submissions supported the sentence that was imposed by the Trial Magistrate against the appellant. She submitted that the maximum penalty for the charged offence of assault occasioning actual bodily harm is five years imprisonment.

At pages 12 and 13 of the record of appeal, the Trial Magistrate before imposing the sentence of six (6) months imprisonment, moreover with remission considered the mitigating factors that were submitted on by both parties. At page 13 of the record of appeal, the Trial Magistrate gave reasons for her sentence she passed against the appellant. Thus, I don't agree with Counsel for appellant when he criticized the Trial Magistrate that there was no justifiable reason to support the sentence of six (6) months imprisonment.

From the evidence on Court record and the circumstances of this case, like the appellant assaulting PW1, a senior police officer, was so demeaning of that officer. Then the appellant also attacked her mother, which was also another offence. Thus, in my considered view, the sentence of six (6) months imposed on the appellant was manifestly too low. The Trial Magistrate should have passed a relatively higher sentence than that she imposed on to the appellant. I wish to note that in the state/respondent never cross-appealed against sentence, thus there is no way I can enhance the sentence against the appellant.

In the premises, considering the submissions by both Counsel for the parties and my own analysis and re-evaluation of the evidence in the record of appeal, this ground 2 of appeal also fails.

4.4 **Ground 3 of appeal:** The learned Trial Magistrate erred in law and fact when she imposed a heavy fine on the appellant for the said offence.

Counsel for the appellant in his submissions submitted that the award of Shs.200,000/= as a fine for such a small injury as mentioned by PW3, to them seemed too much. That it would be unjust for the appellant to pay such money when he has already served this sentence. He prayed that the order of the award of Ug. Shs,200,000/= be set aside. In reply, Counsel for the respondent in her submissions does not agree with the submissions by Counsel for the appellant. In her submissions Counsel for the respondent supported the order of compensation posed by the Trial Magistrate. She prayed that this ground 3 of appeal be disallowed.

From the evidence of PW3 in the record of appeal PW3 never stated that the injuries that were occasioned to PW1 were small in nature. Again, the appellant was not fined, Contrary to the complainant by the appellant in this ground 3 of appeal. Rather, the Trial Magistrate ordered the appellant to pay compensation of Shs. 200,000/= to the complainant (PW1). It is noted hereinabove on ground 1 of appeal in this judgment that the complainant suffered bodily injuries, shame before his officers other people who were present when the appellant assaulted him, occasioning him bodily harm. Thus, even the award of Shs. 200,000/= as compensation for the damages suffered by PW1, is in my considered view not adequate. The Trial Magistrate should have awarded a higher figure than the current award of Ug. Shs. 200,000/=.

Consequent to the above, under Section 197 (1) of the Magistrate's Courts Act, Cap.16, Laws of Uganda, the Trial Magistrate had Powers to order for the said compensation. Thus, the complaints by the appellant in ground 3 of appeal do not hold water at all. Again, ground 3 of appeal, too, fails.

## 5. Conclusion

In the result, having re-evaluated the evidence on record as a whole subjected the same to a fresh and exhaustive Scrutiny, considered the submissions by the Counsel for the

parties and the law applicable to this matter which is the subject of the appeal; I hold that this appeal lacks merit. It is accordingly dismissed. The conviction, sentence and the order for compensation by the Trial Magistrate are upheld.

Dated at Kampala this 11<sup>th</sup> day of September, 2015.

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

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**NT**

**PRESENTATION**

Ms. Jacquelyn Okui Senior State Attorney is for the respondent.

The appellant is in Court.

His lawyer is not in Court.

We are ready to receive the judgment.

Ms. Margaret Kakunguru the Clerk is in Court so is Ms. Sarah Nasimbwa, the interpreter.



**Court:** Judgment is delivered to the parties in open Court.  
Right of Appeal is explained.

**Joseph Murangira**

**Judge**

**11/9/2015**