

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HCT-OO-CR-CN-0112-2014

TUGUME CHRISTOPHER & TUMWEBAZE:::APPELLANTS

VERSUS

UGANDA::: "PROSECUTION

BEFORE: THE HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT:

The Appellants, Tugume Christopher and Tumwebaze Paulo, were charged, convicted and sentenced by the Senior Magistrate Grade One sitting at City Hall Kampala on a charge of theft Contrary to section 261 of the Penal Code Act. They appealed against conviction and sentence upon the following grounds:-

1. The learned Trial Magistrate erred in law with grave irregularity to accept the prosecution to refer the court to “facts as from evidence of PW1” whose copy was not with the Appellants.

2. The learned magistrate failed to put or to cause to be put to the Appellants the facts and the ingredients of the offence alleged to have been committed, departing from the practice and the manner of recording and steps to be taken in compliance with the rule in the case of *Adan vs Republic*.

3. The irregularities in grounds 1 and 2 constituted a plea which was not unequivocal, as it shows reference to Airtel workers
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carrying property in contrast to the contents of the charge.

4. The learned Magistrate Grade I, while imposing the sentence of 11 months did not take into account a presumption, on the facts before it, that the Appellants did not have a previous conviction which is a serious irregularity affecting the term of the sentence.

The court record shows that on 6th August 2014 the charge was read and explained to the

Appellants. They denied the charge and a plea of not guilty were entered.

On the 4th November 2014 evidence on chief was recorded from the first prosecutions witness. Then the Appellants sought the charge to be read back to them. The court record thereafter was as follows:

“ Court: Charge re-read to the accused persons

Al: It is true

PG entered.

A2: It is true

PG entered

Court: Change of Plea. PG entered.

Prosecution: Facts as per the evidence of PW1.

Al: Facts are correct

Court: The Accused is convicted on his own plea of guilty.

A2: Facts are correct

Court: The accused is convicted on his own plea of guilty.

Sentencing proceedings followed and each accused person was sentenced to 11 months imprisonment and advised to reform after serving the sentence.

Mr. Joseph Zagyenda, Counsel to the Appellants argued grounds 1 and 2 together, then ground 4 followed by ground 3. In my judgment I will consider grounds 1, 2 and 3 together. In his submissions counsel for the Appellant submitted that the procedure adopted by the learned trial magistrate departed from the manner and steps to be taken in compliance with the rule set out in ***Adan vs Republic (1973) EA 445***. Further that the plea recorded was not unequivocal as the evidence recorded from PW1 and relied upon as the facts of the offence did not disclose all the ingredients of the offence charged and pleaded to. Counsel prayed that the appeal be allowed, conviction quashed, sentence set aside and the Appellants released.

Ms. Barbara Masinde (SSA) conceded that the right procedure as set out in ***Adan vs Republic*** was not followed particularly as the facts were not read out to the Appellants. She however argued that the evidence of PW1 set out the ingredients of the offence charged. That the plea was entered

subsequent to PW1 's evidence which they accepted as true. She contended that the irregularities did not

cause a substantial miscarriage of justice and invited court to *O* proceed under section 34 of the Criminal Procedure Code Act to dismiss the appeal and uphold the conviction. Section '24 of the • Criminal Procedure Act provides:

“(1) —, except that the court shall, notwithstanding that court is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to subsection (1), the appellate court on any appeal may _

(a) reverse the finding and sentence, and acquit or discharge the appellant, or order him or her to be tried or retried by a court of competent jurisdiction.

(b).....

Uganda vs Olet & Anor (1991) HCB 13 is on all fours similar to the instant case. In that case each of the Appellants was charged with elopement c/s 121 A(1) and (2) (now 127(1) & (2) of PCA respectively. Both appellants first pleaded not guilty but later changed their pleas to guilty after the prosecution had led evidence of four witnesses.

On their pleas both appellants were convicted as charged. The summary of the facts constituting the offence were not narrated and put to the accused/appellants. It was held that for a conviction to be properly based on a plea of guilty, the plea must unequivocally admit all ingredients of the offence charged. A summary of the facts constituting the offence must be narrated and put to the accused. Only if these facts disclosed the commission of the alleged offence and the accused admits the correctness thereof can a conviction be properly entered. This rule was laid by the Court of Appeal of East Africa in ***Adan vs Republic*** and has been approved by the Superior Courts of Uganda and has now taken the force of law in this country and it must be followed.

In the instant case the learned trial magistrate, just like in the above case, did not receive from the prosecution a summary of the facts constituting the offence and the same were not put to the

accused which was in violation of the above rule. When the charge was ready afresh to the appellants and they pleaded guilty that put a close to the proceedings before the plea and the court had to receive a summary of the facts from the prosecution and put them to the Accused to accept their correctness. This was not done.

A conviction in such circumstances cannot be sustained, and it is hereby quashed.

In the event of such a finding court may under section 34 (2) of the Criminal Procedure Code Act order an appellant to be retried by a court of competent jurisdiction. In *Beninyo Onen vs R Criminal Appeal No. 328 of 1961*, a retrial was ordered.

The appeal is accordingly allowed, conviction quashed and a retrial before another Grade One Magistrate ordered.

This disposes of the appeal against sentence as there cannot be a sentence without a conviction

It is ordered that the file be immediately referred back to the lower court for a retrial.

The Appellants will be free to exercise their right to apply for bail before the lower court. They are meanwhile remanded.

LAMECK N .MUKASA

JUDGE 10th march 2015