



**“The learned Trial Magistrate erred in law and fact when she made an order for the appellant to pay to the complainant the sum of 3,500,000/= (three million, five hundred thousand shillings only) within six (6) months from release by way of compensation when the appellant clearly showed he had no means/capacity to comply with it and thus was unfair and unreasonable.”**

### **3. Resolution of the appeal by Court.**

When the appeal came up for hearing the parties were given schedules within which to file their respective submissions. Both Counsel for either party filed their respective submissions.

Counsel for the appellant MS. Sarah Namwanje from Justice Centers, Uganda, in her written submissions argued that an order for compensation should not be made where the accused person clearly does not have the means to comply with it. She further submitted that an order for compensation should not be oppressive. That the compensation that was awarded by the Trial Magistrate was not fair and not reasonable. That a compensation order should not be made unless it is realistic; in the sense that the Court is satisfied that the offender either has the means available, or will have the ability to pay within a reasonable time. That as shown from the evidence on the Court record the appellant has no realistic means within which to pay back the shillings 3,500,000/= (three million five hundred thousand) to the complainant within six (6) months from release.

In the alternative, Counsel for the appellant submitted in the event of this Court finding that the Trial Magistrate was right in holding that the appellant has the means to pay back the said money that the appellant be given at least some years from the date of release to pay the said some and that the said money be paid in installments.

In reply, Counsel for the respondent, Ms. Jacquelyn Okui, in her submissions supported the order for compensation that was awarded by the Trial Magistrate. She submitted that the order for compensation that was meted out to appellant by the Trial Magistrate was legal and supported by the facts of the case. In her submissions, she endeavoured to

evaluate the evidence on record to support her submissions. She finally prayed that this appeal be dismissed, and that the order for compensation be upheld.

In this case the appellant never appealed against conviction and sentence. His appeal is against the order for compensation of Shs. 3,500,000/= to the complainant. The issue to determine therefore, is whether the Trial Magistrate had powers to award such compensation and in the circumstances of the case.

Section 197 (1) of the Magistrates Court Act, Cap 16, Laws of Uganda provides that when any accused is convicted by a Magistrate's Court of any offence and it appears from the evidence that some other person such as a witness in the case, has suffered material loss in consequence of the offence committed and that substantial compensation is, in the opinion of the Court, recoverable by that person by Civil Suit, the Court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the Court deems fair and reasonable. This law empowered the Trial Magistrate to award a compensation order if she deemed it necessary.

I have perused the lower Court record of proceedings, at page 2 lines 1-2, 6-7 thereof, the complainant gave the appellant Shs. 3,500,000/= to buy eggs for her. On the last page of her judgment, the appellant was convicted of theft of shs.3,500,000/= of the complainant. It should be noted that this conviction is not appealed against. Certainly, the complainant suffered material loss of shs. 3,500,000/=. This amount of money plus general damages and interest at about 30% per annum could be recovered by way of a Civil Suit. The Trial Magistrate just awarded as compensation to the complainant, barely shs. 3,500,000/= which was the money had and received by the appellant from the complainant. In awarding this compensation, the Trial Magistrate considered all the possible avenues that would enable the convict to realize and pay the Shs. 3,500,000/= to the complainant within six (6) months from release.

Counsel for the appellant in support of her arguments cited the following British Courts' cases.

- a) R-vs- involved (1974) 60 Cr.App R.70.
- b) R-vs- matter (1976) Cr. LR 694.
- c) R-vs. Stapylton 2013 [EWCA] crim at page 728

I agree that they are good authorities on the award of the orders for compensation in Criminal Cases. They contain good principles to consider before awarding an order for compensation to a complainant in criminal cases. However, I hasten to add that Section 197 (1) of the Magistrate's Courts Act (Supra) is clear on this matter. Further, in the case of Sula Kasiira Vs- Uganda Criminal appeal No. 20 of 1993, the Supreme Court of Uganda, sitting at Mengo, in confirming the order for compensation that was awarded by the High Court of Uganda held that:-

**“The appellant should pay shs. 3,335,000/= to the complainant Jogider (PW4) as compensation for the money, textiles materials and video cassettes which the complainant lost as a result of the robbery.”**

Wherefore, considering my analysis of this appeal hereinabove, I find no fault with the Trial Magistrate. The order for compensation of Shs. 3,500,000/= to the complainant she made against the appellant was within the law. In the premises, the appeal is dismissed. The conviction, sentence and the order for compensation are upheld.

Dated at Kampala this 23<sup>rd</sup> day of September, 2015.

**Joseph Murangira,  
Judge.**



His Counsel Sarah Namwanje from Justice Centers Uganda was here this morning. But now she is not in Court.

Mr. Muzige Amuza, Senior State Attorney, holding brief for Senior State Attorney Ms. Okui Jacquelyn for the respondent.

I was informed that the matter is coming up for judgment.

I am ready to receive the judgment.

Ms. Margaret Kakunguru Clerk is in Court.

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

Right of Appeal is explained to the parties.

**Joseph Murangira,  
Judge.**