

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**CRIMINAL APPEAL NO.22 OF 2015**

(Arising from Criminal Case No.954/2013)

**KICONCO AGNES**

**APPELLANT**

**VERSUS**

**UGANDA**

**RESPONDENT**

**BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI**

**JUDGMENT**

The Appellant was charged with Causing Grievous Harm Contrary to Section 219 of the Penal Code Act and was on the 8<sup>th</sup> December 2015 sentenced by His Worship Nsoby Ronald Kamy, Magistrate Grade One to three years imprisonment.

The facts presented in support of the Charge were that on the 31<sup>st</sup> October 2103 at Rwakabara Trading Centre within Kabale Municipality, the Appellant met the Complainant by the road side. The Appellant demanded from the Complainant Shillings 1,000 which the latter owed her. There was an exchange of words between them and the Appellant threw a stone at the Complainant causing a fracture of the right leg.

The Complainant walked home unaided, went to Kabale Hospital for dressing the following day and made a report of the case to the Police on the 15<sup>th</sup> November 2013 after 45 days. The Appellant was arrested on the 29<sup>th</sup> November 2013 and eventually tried, found guilty and convicted. She was not represented by Counsel in the lower Court.

The Appellant's evidence was that on the 31<sup>st</sup> October 2013 at 8.30 pm while walking to Rwakabara Trading Centre to get "*change*", she was stopped by a person she could not recognize who held her by the neck and began assaulting her. She made an alarm and a one Evans who did not testify in Court came to her rescue and the Assailant left her. She went home and was arrested after 45 days for having caused grievous harm to the Complainant who she knows as Twongyeire Francis who had tried to befriend her but she refused. She denied ever stoning the complainant and claims the arrest arises from a grudge that developed after she denied his sexual demands.

The following grounds Of Appeal were filed by the Appellant's Counsel from the Legal Aid Project of the Uganda against Law Society;

1. The Learned trial Magistrate erred in law when he failed to evaluate the evidence on record properly thus arriving at a wrong decision.

2. That the trial Magistrate erred in law and fact when he passed a harsh and inconsistency{sic} sentence against the Appellant in the circumstances

3. The trial Magistrate erred in law when he sentenced the Appellant to three years imprisonment without making orders subjecting the sentence to confirmation by the High Court which caused a miscarriage of justice.

On the 25<sup>th</sup> August 2016, this Court ordered both Counsel to file and exchange submissions. The Respondent's Counsel who was required to have filed on the 9<sup>th</sup> September 2016 has not filed to date. I will deal with all the grounds of Appeal generally.

The first Appellate Court is under a duty to subject all the evidence to a fresh scrutiny and make its conclusions but bearing in mind that it was the trial Court that had the opportunity of observing the demeanor of the witnesses.

**See: Uganda Vs Geoge Wiliam Ssimbwa Crim. Appeal No.37/1995.**

The alleged offence according to the Complainant took place at 7.30 pm on the 31<sup>st</sup> October 2013 and the Appellant stoned her. No other witness who saw or heard what happened was brought to Court. The Complainant went to the Hospital on the 1<sup>st</sup> November 2013 but reported the case to Police on the 15<sup>th</sup> November 2013 and the Appellant was arrested on the 29<sup>th</sup> November 2013. On the 3<sup>rd</sup> December 2013, the complainant took to the Police Station the stone allegedly thrown at him by the Appellant which Court admitted in evidence.

The Appellant denied the Complainant's version of the facts and claimed to have been assaulted by a person she did not know. She claimed the Complainant framed her because she denied him sex. The trial Magistrate faulted the Appellant for not having reported the assault on her to the Police and hence believed the Complainant's version of evidence. On perusing the record of proceedings and specifically the version of the Complainant's testimony set out above, I believe the Trial Magistrate did not properly evaluate the evidence.

The Complainant claimed to know who caused the grievous harm on him, waited for 45 days to report the case to Police and allegedly kept the stone used in the assault until the 3<sup>rd</sup> December 2013. The trial Magistrate did not warn himself to the possibility of a mistaken identity given the time the assault on the Complainant allegedly occurred but chose to convict on the sole identification of the Complainant. I find this a grave misdirection which indeed caused a miscarriage of justice.

**See; Nabulere Vs Uganda; Crim. Appeal No.9 of 1979**

The Appellant's version of the evidence that she did not know who assaulted her and that the complainant carried a grudge against her is in my assessment more credible. It is inconceivable how the Complainant who had a fracture of the right tibia walked home unaided. The Medical report dated 15<sup>th</sup> November 2013 classified the injuries to the Complainant as 'recent' which in my view was inconsistent with the claim that the injuries were sustained on the 31<sup>st</sup> October 2013 as alleged. The trial Magistrate did not in my opinion

properly analyze this piece of evidence and had he done so, he would have reached a different conclusion.

Section 173 of the Magistrates Courts Act requires Magistrates other than Chief Magistrates to submit to the High Court for confirmation files with imposed sentences exceeding two years. I have perused the lower Court record and found no evidence of such confirmation of the impugned sentence in this Appeal. This is a serious abuse of the mandatory requirement in Section 173 of the Act. This practice is seriously condoned. I thus direct the Registrar High Court Kabale to issue a reminder of this legal requirement to all Magistrates within the High Court Circuit to adhere to this requirement of the Law.

This Appeal succeeds and the Appellant should immediately be released unless she is being held on any other lawful charges.

Dated at Kabale this 27<sup>th</sup> day of September 2016.

MOSES KAZIBWE KAWUMI

JUDGE