

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL APPEAL No. 0013 OF 2014

(Arising from Nebbi Grade One Magistrates Court Criminal Case No. 0251 of 2013)

ANGALA FRANCIS **APPELLANT**

VERSUS

UGANDA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

JUDGMENT

The Appellant was on 10th June 2013 charged with the offence of Forcible Entry c/s 77 of *The Penal Code Act* before the Grade One Magistrate at Nebbi. It was alleged that during the month of September 2012 at Jupachora village in Nebbi District, the appellant entered onto the garden of Rwothomio David in a violent manner in order to take possession of the same.

The complainant, who testified and P.W.1. stated that during September 2012, he heard a radio announcement to the effect that the appellant's land would be sold in execution of a decree of court in a civil suit which the appellant had lost and he had failed to pay the costs. The witness paid the price of shs. 1,3000,000/= to the bailiff on 22nd September 2012 and on 29th September 2012 the bailiff handed over the land to him. Later when the witness' caretaker's children went to pick coffee growing on the land, the appellant stopped them, threatening to kill them if they ever set their feet onto the land. He reported to the L.C.1 Chairman who the appellant threatened to kill too, hence the report to the police and the subsequent arrest and charging of the appellant.

P.W.2. George Gamba, the complainant's uncle and neighbour, testified that when the complainant bought the land from court, he left it to him as caretaker. In August 2012, he sent his children to go to the land to find out whether the coffee was ready for picking. The appellant

turned them back and for that reason the witness reported to the L.C.1 and to the complainant. The appellant later found the witness on the land with his son and threatened them with a hoe. He reported the incident to the police at Gori Custom.

P.W.3. D/Cpl Andama Collins testified that he received a report of criminal trespass. He visited the scene of crime whereupon the appellant emerged with a stick, was very violent and threatened to burn the police motorcycle.

P.W.4. Ovongiu Qurinos, a court bailiff, testified that he was issued with a warrant of attachment and sale of the appellant's land in execution of a court decree, by the Chief Magistrate's Court of Nebbi. He advertised the property for sale on 22nd August 2012 and auctioned it off on 29th September 2012. He handed over vacant possession of the land to the complainant on that day.

In his defence, the appellant testified that the land in issue belongs to his brother. There was a dispute between that brother of his and the complainant which was decided in his brother's favour by the L.C.III Court. The complainant as well sued the appellant before court at Nebbi which was decided in favour of the complainant but the appellant appealed to the High Court. He doubted the authenticity of the warrant of attachment and sale of the land and so he resisted the sale. He did not pursue the matter because the land is not his.

D.W.1 Alithum Felix testified that he is the brother of the appellant and owns the land in dispute. He was aware of the suit between the appellant and the complainant in Nebbi court which was decided in favour of the complainant but did not know about the order of attachment and sale of the land and why the appellant was now in court.

In her judgment, the trial magistrate found that upon attachment and sale of the land, and since there were no objector proceedings by D.W.1 who claimed to be the rightful owner of the land, the complainant became owner of the land. The appellant then forcefully attempted to take the land back claiming it was his. In the process he held a hoe, threatened P.W.2 and stopped him from picking coffee on the land. This constituted the offence of forcible entry. She therefore convicted the appellant and sentenced him to two years' imprisonment.

Being dissatisfied with the decision, the appellant appealed both conviction and sentence on the following grounds, namely;

1. The learned trial magistrate erred in law and fact when she failed to consider the appellant's defence of an honest claim of right to the offence of forcible entry and wrongly convicted the appellant.
2. The learned trial magistrate erred in law when she did not take into account the mitigating factors and sentenced the appellant to a term of imprisonment of 2 years which is harsh and excessive in the circumstances of the case.

At the hearing of the appeal counsel for the appellant, Mr. Paul Manzi, argued that the evidence on record showed that the appellant was in possession of the land in respect of which he was charged with forcible entry. He had a coffee plantation on the land. There was no evidence that he was ever evicted from the land. When presented with the warrant of attachment and sale of the land, he was justified in doubting its authenticity since it was signed by a Grade One Magistrate in Nebbi, it referred to land in Nebbi, yet its heading read; "In the Chief Magistrate's Court of Arua at Arua." The appellant was justified in reacting angrily. Citing *Nkwine Jackson v. Uganda, H. C. Criminal Appeal No. 59 of 1992, [1995] III 113*, he argued that a person is not criminally responsible in respect of an offence relating to property, if he acted in exercise of an honest claim of right. Regarding the second ground, he submitted that the appellant was sentenced to serve the maximum sentence for the offence without the court having taken into account the mitigating factors in his favour. Therefore the sentence was harsh and excessive. The court should have considered alternative to a custodial sentence.

Submitting in opposition to the appeal, the learned State Attorney Mr. Emmanuel Pirimba submitted that at the time the appellant committed the offence, ownership of the land had been transferred to the complainant on 29th September 2012 and the appellant was no longer in possession. There was no dwelling on the land. It was simply a coffee plantation. He in one breath claimed to be owner of the land and caretaker at the same time. That the warrant read Arua Magistrate's Court instead of Nebbi Magistrate's Court was a minor error since it was signed by a Grade One Magistrate in Nebbi and the land to be attached was in Nebbi. The

method he chose to challenge the perceived forgery by threatening P.W.2 and his children off the land violently constituted an offence. He did not raise a proper defence of claim of right and the trial magistrate was justified in convicting him for the offence. Regarding the second ground, he argued that the trial magistrate considered both the aggravating and mitigating factors and therefore the sentence ought to be sustained, the conviction upheld and the appeal be dismissed.

This being a first appellate court, it is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion, as to whether or not, the decision of the trial court can be sustained (see *Bogere Moses v. Uganda S. C. Criminal Appeal No.1 of 1997* and *Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997*, where it was held that: “the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it”).

An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination, (see *Pandya v. Republic [1957] EA. 336*) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion (see *Shantilal M. Ruwala v. R. [1957] EA. 570*). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, (see *Peters v. Sunday Post [1958] E.A 424*).

Grounds one of the appeal assails the decision of the court below on grounds of failure to consider the appellant’s defence of an honest claim of right to the offence of forcible entry and thereby wrongly convicted the appellant. Section 7 of *The Penal Code Act* provides that a person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by the person with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

A claim of right defence under section 7 of *The Penal Code Act* involves: (a) a genuine, honest belief, regardless of whether it is well founded in fact or law. The fact that it is a wrongheaded claim does not matter (see *Rex v Bernard [1938] 2 KB 264 at 270* where it was held that a person has such a claim of right “if he is honestly asserting what he believes to be a lawful claim even though it may be unfounded in law or in fact;” (b) regarding a legal entitlement to property or money in the hands of another, not simply a moral entitlement (see *Harris v Harrison (1963) Crim LR 497*).

The defence allows for a subjective belief in a claim of right which if established negatives the required mental element of property related offences. It should be noted that this defence is not limited to situations in which an accused believed he / she owned the property. Rather, it includes those situations in which the accused honestly, although not necessarily correctly, believed that he / she had either the right or the authorisation to receive, take, acquire, or dispose of the property. The existence of such a claim may constitute an answer to a property related crime in which the issue as to whether the accused had a genuine belief in the legal right to the property rather than a belief in a legal right to employ the means in question to recover it, is relevant to the determination of culpability. Once the defence is successfully raised on the evidence, it is then for the prosecution to negative it (see *Astor v Hayes (1998) 38 A Crim R 219*).

The authorities relating to a claim of right were reviewed by the New South Wales Court of Criminal Appeal in *R v Fuge (2001) 123 A Crim R 310 at 314-315*. The principles relating to this defence were stated to be as follows:

1. The claim of right must be one that involves a belief as to the right to the property or money in the hands of another.
2. The claim must be genuinely, that is, honestly held, whether it was well founded in fact or law or not.
3. While the belief does not have to be reasonable, a colourable pretence is insufficient.
4. The belief must be one of a legal entitlement to the property and not simply a moral entitlement.
5. The existence of such a claim, when genuinely held, may constitute an answer to a crime in which the means used to take the property involved an assault, or the use

of arms, the relevant issue being whether the accused had a genuine belief in a legal right to the property rather than a belief in a legal right to employ the means in question to recover it.

6. The claim of right is not confined to the specific property or banknotes which were once held by the claimant, but can also extend to cases where what is taken is their equivalent in value, although that may be qualified when, for example, the property is taken ostensibly under a claim of right to hold them by way of safekeeping, or as security for a loan, yet the actual intention was to sell them.
7. The claim of right must, however, extend to the entirety of the property or money taken. Such a claim does not provide any answer where the property or money taken intentionally goes beyond that to which the bona fide claim attaches.
8. In the case of an offender charged as an accessory, what is relevant is the existence of a bona fide claim in the principal offender or offenders. There can be no accessorial liability unless there has in fact been a foundational knowing of the essential facts which made what was done a crime, and unless the person who is charged as an accessory intentionally aided, abetted, counselled or procured those acts.
9. It is for the Crown to negative a claim of right where it is sufficiently raised on the evidence, to the satisfaction of the jury.

The substantive defence of honest claim of right clearly operates to negate the fault element of the property offence. It operates to negative *mens rea*, for property related offences in which the issue as to whether the accused had a genuine belief in the legal right to the property is relevant to the determination of culpability and thus absolves from criminal liability any person who held such a belief. This defence has successfully been applied to offences relating to receiving, taking, acquiring, or disposing of property, mainly in the form of chattels (see for example *Oyat v. Uganda* [1967] EA 827) and in respect of malicious damage to property (see for example *Nkwine Jackson v. Uganda, H.C. Criminal Appeal No. 59 of 1992* [1995] III KALR 113). The question in this appeal is whether it applies as well to the offence of forcible entry into real property.

The offence of Forcible Entry c/s 77 of *The Penal Code Act* is committed by any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people. Forcible entry is constituted by entering upon, or keeping possession of, lands or tenements with menaces, force and arms and

without the authority of the law (see *Russell on Crime (12th ed., (1964), p. 279)*). For purposes of this offence, it is immaterial whether the offender is entitled to enter on the land or not. Forcible entry is prohibited even by a person who is entitled to possession or who has a legal right of entry (see *Hemmings Y. Stoke Poges Golf Club Ltd. [1920] 1 K.B. 720*). The only exception is in respect of those persons who forcefully enter upon lands or tenements of their own, but which are in the custody of their servants or bailiffs.

To establish that the entry and detainer is forcible there must be proof of such force as constitutes a public breach of the peace, or such conduct as constitutes a riot or unlawful assembly or such as to be likely to deter a person minded to resist the entry (see *Archbold's Criminal Pleading, Evidence and Practice (38th ed., (1973), para. 3608)*). Whereas the wording in section 7 of *The Penal Code Act* is wide enough to cover any property related offence, including offences in respect of which force is used in receiving, taking, acquiring, or disposing of the property, the wording of section 77 of *The Penal Code Act* excludes the use of force by even those persons who are entitled to enter onto land or tenements. The implication is that the defence is only available where the honest but mistaken receiving, taking, acquiring, or disposing of the property is not accompanied by the use of such force as to be likely to deter a person minded to resist the entry, where the property in issue is land or tenements. L. Owen Pike, *History of Crime in England*, vol. 1 p. 249 shows that at common law, offences of forcible entry and detainer were not confined to brigands and outlaws, but were committed by otherwise law-abiding persons, sometimes to recover land of which they had been dispossessed, and sometimes in the belief that they had some title to the land.

It is trite that words used in a penal statute should be construed according to their natural meaning. Construed according to their natural meaning, the words in section 77 of *The Penal Code Act* mean that the offence with which the appellant was charged in the instant case is constituted by the unlawful taking of possession of real property by force or threats of force or unlawful entry into or onto another's property when accompanied by force. The obvious reading of the section is that it is necessary for the prosecution to show that his purpose in entering was to dispossess the occupier and occupy the land himself. The prosecution must prove that the entry must have been for the purpose of assuming or resuming the possession of land, and not

simply chattels on the land. For that reason, forcible entry upon land for the purpose of seizing and taking away chattels, although made without permission of the occupant is merely a trespass and not a contravention of section 77 of *The Penal Code Act*.

The intention of this provision is to prevent breaches of the peace in the case of a forcible entry whether or not the person entering has a right to enter peaceably. The object is to protect the peacefulness of actual possession of land. This is in line with the general policy behind the series of legal principles which traditionally regard the citizen's home as a privileged space. The courts in that spirit have insisted that servants of the state cannot enter a private home without the occupier's permission unless a specific law authorises them to do so. "To cross the threshold of someone's property is to move from a public to a private world, a world in which, broadly, different social conventions, different moral obligations and different legal standards apply" (see Harry Snook, "*Crossing the Threshold : 266 ways the State can enter your home,*" (2007), Centre for Policy Studies, April 2007).

The policy of the law being the protection of possession of property and the privacy and security of its occupier, a person who enters the property of another must justify that entry by showing that he or she either entered with the consent of the occupier or otherwise had lawful authority to enter the premises (see *Entick v Carrington* 95 ER 897). According to the judgment of Lord Camden L.C.J. in *Entick v. Carrington*, 95 ER 897; (1765) 19 St Tr 1029, at p1066:

.....every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing ... If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him.

In *Swales v Cox* [1981] 1 All ER 1115, [1981] 2 WLR 814, [1981] QB 849 at p 853, it was held that at common law there was power of entry into premises and, if necessary, power to break doors to do so in four cases, but in four cases only; i.e. by a constable or a citizen in order to prevent murder; by a constable or a citizen if a felony had in fact been committed and the felon had been followed to a house; by a constable or a citizen if a felony was about to be committed, and would be committed, unless prevented; and by a constable following an offender running away from an affray. In any other circumstances there was no power to enter premises without a

warrant, and, even in the four cases where there was power not only to enter but to break in order to do so, it was an essential pre-condition that there should have been a demand and refusal by the occupier to allow entry before the doors could be broken.

The general policy of the law being against the use of force the defence of claim of right will not be available to a person who uses or threatens to use force in taking or recovering possession based a belief in a legal right to employ the means in question to recover it, whether that person is entitled to enter on the land or not for as long as the force or the threat thereof, was applied for the purpose of entering, dispossessing the occupier and occupying the land himself or herself. Therefore, exercise of an honest claim of right in respect of land or tenements excludes the use of force by even those persons who are entitled to enter onto the land or tenements in question.

That being the case, by his own admission during his defence at trial, the appellant doubted the authenticity of the warrant of attachment and sale of the land and so he resisted the sale. The manner by which he chose to resist the sale was explained by P.W.2 and P.W.3 who testified that it involved threatening the former with a hoe and the latter with a stick and a threat to burn the police motorcycle. I am therefore satisfied that the prosecution adduced evidence which proved beyond reasonable doubt that the appellant used or threatened to use such force as constituted a public breach of the peace, or as was likely to deter a person minded to resist the entry. It was immaterial that he did so in exercise of an honest belief that he was entitled to enter on the land.

The prosecution was as well required to prove that there was an entry onto the land by the appellant for the purpose of assuming or resuming possession of the land. The evidence adduced in this case was by P.W.4 the court bailiff, who testified that he was issued with a warrant of attachment and sale of the appellant's land in execution of a court decree, by the Chief Magistrate's Court of Nebbi. He advertised the property for sale on 22nd August 2012 and auctioned it off on 29th September 2012. He handed over vacant possession of the land to the complainant on that day. The appellant questioned the validity of the warrant but not the fact that vacant possession was handed over to P.W.1. I am therefore satisfied that the prosecution adduced evidence which proved beyond reasonable doubt that the land was in possession of P.W.2 who held it on behalf of P.W.1 as from 29th September 2012, at the time the appellant

used or threatened to use force in order to regain possession. At page 7 of the record of appeal, P.W.2 testified that the appellant found him and his son in the coffee garden where they had gone to pick coffee. The appellant was “wild, he was holding a hoe so we feared he would injure us.” For purposes of this offence, the least entry onto the land or tenement with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of assuming, resuming or keeping possession of the land, is sufficient to complete the offense. I am therefore satisfied that the evidence adduced by the prosecution proved beyond reasonable doubt that the appellant entered upon the land with menaces, force while armed with a hoe and without the authority of the law. The defence of claim of right was not available to him and the trial court did not err in not taking that defence into account. Ground one of the appeal fails.

In ground two, the appellant challenges the proportionality of the sentence imposed by the trial court. His argument is that the learned trial magistrate did not take into account the mitigating factors and thereby ended up sentencing the appellant to a term of imprisonment of two years which is harsh and excessive in the circumstances of the case. The circumstances in which an appellate court may interfere with the sentence of a trial court were specified in *Kiwalabye Bernard v. Uganda, S. C. Criminal Appeal No. 143 of 2011* where the Supreme commented as follows;

The appellate Court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed being manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle.....The Court may not interfere with the sentence imposed by a trial court simply because it would have imposed a different sentence had it been the trial Court. (See *Ogalo S/o Owou v. Republic (1954) 24 EACA 270*).

This court therefore may interfere with the sentence imposed by the trial court only if it comes to the conclusion either that; (i) the sentence is excessive, given the background of the appellant and the circumstances of the offence; (ii) the sentence is illegal; or (iii) there was an error in a principle of sentencing which resulted in an unreasonable sentence. If a sentence is manifestly

excessive, that is an indication of a failure to apply the right principles (see *R v Ball* 35 Cr App Rep16).

Sentencing remains one of the most delicate stages of the criminal justice process. Although this task is governed by provisions in *The Magistrates Courts Act* and *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, and although the objectives set out in those sources guide the courts and are clearly defined, the process nonetheless involves, by definition, the exercise of a broad discretion by magistrates' courts in balancing all the relevant factors in order to meet the objectives being pursued in sentencing. Appellate courts give wide latitude to trial courts in matters of sentencing since they have, inter alia, the advantage of having heard and seen the witnesses. The sentencing court is for that reason in the best position to determine, having regard to the circumstances, a just and appropriate sentence that is consistent with the objectives set out in the law and the sentencing guidelines.

That a sentence is harsh and excessive can be determined comparatively by considering the type and length of sentences generally given previously for that type of offence in which the circumstances are similar to the instant case and the background of the accused is similar by showing that the sentence represents a substantial and marked departure from the sentences customarily imposed for similar offenders who have committed similar crimes; or by demonstrating that the trial court ignored or placed too much emphasis on one of the sentencing principles, resulting in a disproportionate sentence or one that does not fit the crime or the offender in the circumstances as to amount to a wholly disproportionate penalty; or that the court failed to individualise the sentence by its failure to consider the relevant mitigating factors while placing undue emphasis on the circumstances of the offence and the objectives of denunciation and deterrence, such that all that was done was to punish the crime; or that for some other manifest reason, the punishment is demonstrably grossly disproportionate to what would otherwise have been appropriate. The appellant should be able to show that the sentence is startlingly or disturbingly inappropriate.

A lawful sentence of whatever description, magnitude or duration which is not disproportionate in itself or on the face of it would be so, if the sentencing range provided for by the law is

indiscriminately applied without taking into account factors which would aggravate or mitigate the seriousness of the offence. Generally, a sentencing court is allocated wide latitude to dispense proportionate and fair punishment. However, a court's discretion in sentencing is not without limits, the sentence must comply with the legislation that applies to the offence and fall within the sentencing powers of the court. Some of the factors to be considered by the trial court at sentencing are outlined in section 133 (2) of *The Magistrates Courts Act* and Regulations 5 and 6 of *The Magistrates Courts Act* and *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* and they include; the character and antecedents of the convict, including any other offences admitted by him or her whether or not he or she has been convicted of such offences, denunciation (public criticism) of the unlawful conduct, deterrence to the offender and to others of a similar mind, protection of the public, rehabilitation of the offender, and reparation (make amends) for harm done to victims or to the community while promoting a sense of responsibility in offenders. Under section 172 of *The Magistrates Courts Act*, a magistrate's court may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass. Furthermore, section 178 (2) of *The Magistrates Courts Act*, authorises magistrates court, to sentence a person liable to imprisonment instead to pay a fine in addition to or instead of imprisonment.

Proportionality is a limiting principle that requires that a sentence should not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence. It is with such consideration that in *Uganda v. Ali Katumba [1974] HCB 117*, it was observed that there is a judicial practice of treating first offenders with lenience by granting them the option to pay a fine rather than imposing a custodial sentence in exercise of judicial discretion under the then section 192 (b) of the *Magistrates' Courts Act, 1970* (similar to the current section 178 (2) of *The Magistrates Courts Act, Cap 16*). This option though is more readily afforded a convict of a misdemeanour or a minor felony.

What length of imprisonment is appropriate in a case such as the instant one, a case with no unusual mitigating circumstances where an immediate custodial sentence cannot properly be avoided, will be a question which the sentencing Magistrate has far greater latitude to decide. Extremely short sentences, measured in days or weeks or months rather than years, may well be

appropriate for first time offenders on whom any period of incarceration is likely to have a great punitive impact. It is, however, impossible to categorize the sort of circumstances which will be so exceptional as to justify departing from the general public expectation that violent crime ought to be punished by a term of imprisonment. Attaining the delicate balance which satisfies all considerations at sentencing is determined on a case by case basis as stated by the Supreme Court of Canada in *R. v. Lacasse*, [2015] 3 SCR 1089, thus;

Proportionality is the cardinal principle that must guide appellate courts in considering the fitness of a sentence imposed on an offender. The more serious the crime and its consequences, or the greater the offender's degree of responsibility, the heavier the sentence will be. In other words, the severity of a sentence depends not only on the seriousness of the crime's consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. Both sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice. Moreover, if appellate courts intervene without deference to vary sentences that they consider too lenient or too harsh, their interventions could undermine the credibility of the system and the authority of trial courts..... There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. Thus, the fact that a judge deviates from a sentencing range established by the courts does not in itself justify appellate intervention.

It has not been shown that the trial magistrate was labouring under any error of principle in the determination of the sentence or that there was such an error as resulted in the sentence being unreasonable. Counsel for the appellant has not demonstrated that the trial court ignored or placed too much emphasis on one of the sentencing principles, resulting in a disproportionate sentence or one that does not fit the crime or the offender in the circumstances as to amount to a wholly disproportionate penalty. I have not been furnished with any earlier decision in which the circumstances are similar to the instant case and the background of the accused is similar where

the court imposed a different or lighter sentence and therefore there is nothing to suggest that the sentence represents a substantial and marked departure from the sentences customarily imposed for similar offenders who have committed similar crimes. I note that section 77 of *The Penal Code Act* does not prescribe a penalty for the offence of Forcible entry. For that reason under section 22 of *The Penal Code Act*, when no punishment is specially provided for any misdemeanour, it is punishable with imprisonment for a period not exceeding two years. It is on the face of it a lawful sentence passed within the range of the court's sentencing powers as regulated by section 162 of *The Magistrates Courts Act*. In effect, the trial magistrate did not offer the appellant, a first offender, the option of paying a fine and went ahead to impose the maximum penalty for the offence.

Determination of a just and appropriate sentence is a highly individualised exercise. The primary sentencing factors for a court to consider are the protection of the public, the gravity of the offense, and the rehabilitative needs of the offender. I have considered the fact that the appellant resorted to physical confrontation in challenging what he thought to be an unlawful Court Order, even with the intervention of the police, which is a manifestation of disrespect for the law and legal processes, a fact suggestive of a high likelihood of re-offending in this way again. It is conduct like this that usually results in inflicting serious physical injury in disputes over land and sometimes the loss of lives. Personal deterrence inevitably had to play a part in sentencing the appellant; hence the imposition of a custodial sentence of such duration as the court considered to be reasonably proportionate to the gravity of the offence and would be likely to have a deterrent effect upon the appellant. I therefore do not find any reason to interfere with trial Magistrate's otherwise proper exercise of discretion when he considered the offence to be sufficiently serious to justify a custodial sentence.

As long as the trial court considered the proper factors and the sentence was within the statutory limits, the appellate court will not set it aside unless it is so excessive as to shock the public conscience. A sentence will be considered harsh and excessive if it has the tendency to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances of the case. Having found that the term of imprisonment imposed in the instant case is legal and is not so disproportionate to the offense committed as to shock the

public sentiment and violate the judgment of reasonable people, I have not found any reason to interfere with it.

Since both grounds of appeal have failed, the appeal stands dismissed and the appellant should be returned to prison to serve his sentence.

Dated at Arua this 9th day of February 2017.

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Stephen Mubiru
Judge