

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI**

CRIMINAL APPEAL NO. 0017 OF 2016

(ARISING FROM KABERAMAIDO CRIMINAL CASE NO. 111 OF 2015)

VERSUS

ERONGU JOHN & 7 OTHERS:.....APPELLANTS

VERSUS

UGANDA :.....RESPONDENT

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE

Judgment

This is an appeal against harsh sentences and an order for compensation. Her Worship Tumuhimbise, Magistrate Grade 1 of Kaberamaido convicted the accused of Criminal Trespass, Malicious damage to property and Simple robbery. Counsel for the Appellant dropped the appeal against convictions and submitted on the harsh sentences. Prosecution did not defend the conviction and sentences.

On count 2 of Malicious damage to property C/S 335 of the Penal Code Act each of the accused persons was sentenced to 03 years of imprisonment and they were all ordered to pay compensation of **3,000,000/=** in equal contributions.

Counsel for Appellants submitted that the sentence of 03 years was excessive because what was destroyed was a mere grass thatched house and a toilet. And that each accused had raised mitigating factors of being sole bread winners for large families, school going children who need school fees and some had poor health.

I have looked at the whole evidence and found that the hut and toilet destroyed belonged to a widow living in poverty. The accused are relatives who ought to

have supported her to live a decent life after the death of her husband. Instead of consoling her, they wanted to forcefully evict her. The law must come to her aid.

This Court would seriously support a stiff sentence that not only protects widows but also their rights to inherit the property of their spouses in accordance with Articles 31 and 33 of the Constitution of the Republic of Uganda.

A sentence of 3 years for the destruction of a dwelling house and a pit latrine is not harsh. Considering the fact that the maximum penalty under the law is imprisonment for Life (about 20 years) and considering the fact that the convicts are first offenders, I find the sentence of 3 years imprisonment reasonable.

I would ignore the so-called mitigating factors of ill health and having large families. These are not factors that could not be avoided in the commission of the crime.

Not all people with big families or school going children or with kidney problems are compelled to commit crimes and more so malicious damage to property. Even if one was having 100 children with 20 or more wives and was on his death bed for various sicknesses, I would still sentence him to 3 years imprisonment in the circumstances of this case.

The suffering to their wives and children upon their detention is self-invited and did not form part of the excuse for committing the crimes they committed.

Let the lesson sink in the minds of not only the convicts but also of their family members who did not restrain them from committing the crime. Next time they will get more wise counsel to prevent crimes.

About the value of **Sh. 3,000,000/=** when the State had valued the property at **Sh. 2,800,000/=**, I think the trial Magistrate cannot be faulted. **Sh. 2,800,000/=** was an estimated value. **Sh. 3,000,000/=** is not far from it. Considering inflation and how hard it is to get grass for thatching now days, I find no reason to disturb the order of compensation of **Sh. 3,000,000/=**. To the widow in Teso, a grass thatched hut is not to be trivialized as a mere grass thatched structure. It is a house of reasonable value and dignity. Counsel for the appellant did not seem to appreciate the value of the destroyed property in the context.

Compensation for destroyed crops that can rejuvenate with suckers, buds or seedlings may be put at low estimates. I would differentiate such cases from the present case of buildings. Once a building is destroyed it requires starting from zero.

I did not find the cited case of **NAsirika Peter Wejuli –vs- Uganda, High Court Criminal Appeal no. 40 of 2009** relevant to assist me in lowering the sentence or ordered compensation in count II.

In count III the accused A1 was sentenced to imprisonment of one year and ordered to pay **Sh. 300,000/=** as compensation for 3 goats stolen by A1. He was also ordered to refund **Sh. 500,000/=** he stole from the widow.

Counsel for the Appellant argued that there was no evidence lead to establish the value of the goats. That it was awarded in error.

I looked at the record and did not find much to support the value. But the evidence that the widow lost 3 goats is not denied. There is a conviction for the robbery of the three goats which is not denied or appealed against.

Using common sense the Court would give the 3 goats a value. A small goat goes for **90,000/=** while the biggest, I have ever bought for my last Christmas, goes for **Sh. 400,000/=**.

I would find **100,000/=** for a goat average and reasonable estimation by the trial Court. Not so high, not so low. I will not disturb the award.

Counsel for Appellant also submitted that the sentences should have been converted into fines or other alternatives. One would think of community service as another option. But the trial Magistrate did not find the convicts remorseful at all. The sentences of imprisonment will stand to serve the purpose the trial Magistrate intended them to serve. A convict who does not readily plead guilty and beg for mercy should not be easily forgiven by Court.

Lastly, for the order that sentences run consecutively, I found no justification for that. For offences that were committed in one transaction and jointly charged on one file at one trial the convicts will serve the imprisonment concurrently.

It is only the compensation for various property that is distinct that is paid separately. Hence the order for **Sh. 3,000,000/=** and **Sh. 300,000/=** and **Sh. 500,000/=** will all be paid as ordered.

The **3,000,000/=** million will be contributed by all the eight convicts. If they do not, Court will treat it as a civil debt and will attach and sell their properties to raise the money.

This appeal fails on all grounds except for the order that the sentences run concurrently. It is so dismissed.

Judge
19/04/2017

Orders

The Assistant Registrar at Soroti will supervise the full execution of the Court orders.

Judge
19/04/2017