

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA.**

**CRIMINAL REVISION CAUSE NO. 03 OF 2018.**

**ISABIRYE THOMAS ..... APPLICANT.**

**VERSUS**

**UGANDA ..... RESPONDENT.**

**RULING**

**BEFORE HONOURABLE JUSTICE EVA K. LUSWATA**

**Introduction and background**

Following a complaint by one Mudasi Pauo on 9/10/2018, this matter was placed before me for revision under **section 49CPC** and **221MCA** on the ground that the convict, **Isabirye Thomas** a juvenile, should not have been tried, convicted, sentenced and remanded in an adult prison. A request was made for the High court to satisfy herself as to the legality and propriety of the sentence and orders passed by the Learned Magistrate in JIN-01-CR-CO-387/2018 (Chief Magistrate's Court Kamuli).

Isabirye Thomas (hereinafter referred to as the convict) was on 13/6/2018 convicted of the offence of house breaking and theft and sentenced to two years and a fine (with an option of imprisonment on default, on the second count). The sentence of imprisonment is to run consecutively.

Ms. Obizu who represented the respondent objected to the application on a matter of law. She argued that not only were the documents presented to prove the applicant's birth date copies, they were not issued by the designated officer under the Registration of Persons Act.

**The law and evidence**

Under Section 50 CPC, the powers of the High Court in criminal revision are quite wide. I am empowered to alter or reverse an order where there has been an error material to the facts of a

case, or where a sentence is illegal or excessive so as to amount to a miscarriage of justice. See for example, **Barasa Samuel v Uganda** (Criminal Appeal No. 294 of 2003) [2006] UGCA 15.

A trial of any offender under the age of 18 years must be conducted in line with the provisions of 93 to 105 of the Children Amendment Act. Owing to their diminished culpability and heightened capacity for reform, juveniles are by law treated differently from adults for sentencing purposes. For the purposes of this case and according to Section 94 of the Children Act (as amended), the maximum sentence for a juvenile convicted of a capital offence is three years and 12 months for any other offence.

### **My decision**

It was held in the case of **Uganda vs Apunyo Hudson (Criminal session case No. 7 of 2004) [2004] UGH52 (28<sup>th</sup> July 2004)** that the best evidence to prove age is the birth certificate, immunization card or baptism certificate, whichever is available. To support his complaint, Mr. Mudasi presented the convict's child health card and a short birth certificate to prove that he was a juvenile who should have been remanded in remand home for children. However, it is not clear whether those documents were available to the trial Court before or during the convict's trial

I note that the certificate shows the two certificates provided indicate birth dates of 6/7/2001 and 17/5/2001 respectively which means the actual birth date is unclear.

I believe the birth certificate contemplated in the above case is one under either the Births & Deaths Registration Act Cap 309 LOU (hereinafter the (BDRA) or the Registration of Persons Act 2015 (hereinafter the RPA).

Although there is no specific provision for a birth certificate under the BDRA, registration of a birth was completed once an entry of the birth was made into the Births Registration Book (BRB). However, the short birth certificate is provided for as a certificate of birth that can be issued by a person registering a birth (other than the Registrar General) under Rule 7(2) of the Birth and Deaths Registration Regulations SI 309-1. In practice, that certificate would be presented to the Registrar General for purpose of entry into the BRB and for a formal certificate to be issued.

The BDRA was on 1/1/2016 repealed by the RPA and I would agree with counsel Obizu that currently, only a Registration Officer appointed by the National Registration and Identification Authority (NIRA) is authorised to register births of Ugandan citizens. A Sub- County Chief is not such an officer. The short birth certificate was issued on 30/5/18 well after the BDRA was repealed and thus, it cannot be the basis of confirming the convict's birth date. It is even made weaker by the fact that a different birth date was inserted into the convict's immunization card.

The decision of **Uganda vs Apunyo Hudson**(supra) proceeds the RPA which appears to be very clear on the issue of registration of births. The issue of age in criminal proceedings is very crucial, and although an accused (as opposed to the prosecution) is not always expected to adduce strict proof of any fact, it was incumbent of the convict to produce sufficiently reliable information and certification of his birth date which is not the case here.

In the circumstances, the convict's age remains uncertain and it would be wrong for my court to conclude that he was a minor on the date he committed the offence. I am unable to find fault with the Trial Magistrate on that ground.

Having found so, I am unable to make a finding that the sentence of two years was excessive in the circumstances.

I therefore decline to revise the decision of the lower court, and the conviction and sentence is sustained.

My advise is that the convict's parent or guardian follows up registration of his birth with NIRA which will issue a birth certificate that can be allowed as a basis of his age. The convict can then attempt to revisit his application for revision.

I direct that the file be returned to the Chief Magistrates Court of Kamuli and the convict retained place of detention to which he was placed following his conviction.

I so Order.

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**Eva. K. Luswata**

**Judge**

**08/01/2019**