

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(CRIMINAL DIVISION)

HCT-00-CR-CN-0033-2020

(ARISING FROM NAKAWA CM-CR-CASE NO. 197/2020)

ODUKA MOSES APPELLANT

VERSUS

UGANDA RESPONDENT

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

JUDGMENT:

Moses Oduka, 27 years old, was on 24th April 2020 charged before Her Worship Ruth Nabasa, Chief Magistrate sitting at Nakawa. He was found guilty and convicted on plea of guilty and sentenced to 3 years imprisonment.

He has appealed against the conviction and sentence on the following grounds:-

1. That the Learned Trial Magistrate erred in Law and fact when she sentenced the Appellant to 3 years imprisonment on totally defective proceedings.
2. The Learned Trial Magistrate erred in Law and fact when she imposed a severe sentence of 3 years when the Appellant had pleaded guilty to the offence.

I have examined the proceedings in the Lower court and established the following:-

- (i) The Appellant was charged in one count:- ***“stealing from a motorvehicle C/ss. 254(1) and 267 (c) of the Penal Code Act”.***

Particulars of the offence:- ***“Oduka Moses, on the 21st day of April 2020 at Bugolobi Flats in Nakawa Division in the Kampala District, stole a phone charger, break fluid and a watch from motor vehicle Registration No. UAV 132U, Toyota Premio all valued at Ug. Shs. 100,000/= the property of Kakeeto Benjamin”.***

The proceedings show that the charges were read and explained to the accused in Luganda. The accused answered **“it is true”**, and a plea of guilty were recorded.

The prosecution gave brief facts as follows:- **“It is alleged that on 21/4/2020 at Bugolobi Flats, the complainant was informed that the accused person had been arrested breaking into motor vehicle UAV 132U, Toyota Premio”.**

The accused person stated:- **“The brief facts are true”.**

The trial Magistrate recorded the conviction:- ***“You are convicted on your own plea of guilty to the offence of stealing from a motorvehicle Contrary to Section 254(1) and 267 of the Penal Code Act”.***

The above grounds of appeal arise from the above summarised proceedings. The appeal raises two fundamental issues:-

1. Whether the proceedings were defective or not?
2. Whether the sentence was illegal or excessive?

Once this court has freshly evaluated the evidence, it's answer to the two issues will determine or resolve this appeal. From the proceedings, it is clear that whereas the charge sheet alleges stealing

from motorvehicle C/ss. 254(1) and 267 (c) of the Penal Code and specific properties stolen valued at Ug. Shs. 100,000/= were listed, the conviction is based on different brief facts reproduced above as supplied by the prosecution after the purported plea of guilty. The brief facts accepted by the accused do not include any statement that there was theft of a telephone charger, brake fluid and a watch. The conviction becomes irregular.

The correct procedure for recording a plea of guilty was settled by SPRY V.P (as he then was) in **Adan Versus Republic (1973)E.A 446** in the following terms:- *“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand.*

The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the Magistrate should record what the accused has said, as nearly as possible in his own words, and then formerly enter a plea of guilty. The Magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts which, if true, might raise a question as to his guilty, the Magistrate should record a change of plea to “not guilty” and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the Magistrate should record a conviction and proceed to hear any further facts relevant to sentence”.

In my view, the fact that the accepted facts are different, in substance, from the particulars of the offence renders the plea unequivocal and the trial Magistrate should have recorded a plea of not guilty. The brief facts state that the Complainant was informed that the accused was arrested breaking into the motorvehicle. The acceptance that the brief facts are true raises questions. Is the truth about the fact that complainant was merely informed or was it that it is true that the

accused was breaking in the car? Does this amount to acceptance of the alleged theft? In my evaluation, these facts and questions set up unequivocal answers and there should never have been a finding that the Appellant pleaded guilty.

There is no evidence that the trial Magistrate explained to the Accused/Appellant the ingredients of the offence of Theft under Section 254(1) which she had a duty to do.

For a conviction to be properly based on a plea of guilty, the plea must be an unequivocal admission of all essential elements of the offence. See:- **Uganda Versus Charles Olet (1991) HCB 13.**

The particulars of the offence in the Charge Sheet and the summary facts of the case are two different offences and therefore, it is not clear what the accused pleaded to.

In view of the above, this case did not pass the test set out in **Adan Versus Republic (Supra)** and several decided cases of this court that have previously followed this settled principles of Law which protect fair trial. The accused must understand what he is charged with, be given opportunity to be heard on all the essential elements of the offence and failure to observe this procedure amounted to a miscarriage of justice and therefore, I do hereby quash the conviction and set aside the sentence which was based on irregular proceedings. I do hereby Order that the Appellant be set free.

Dated this 30th day of **December 2020**.

J. W. Kwesiga

Judge

30/12/2020

Decision to be delivered by the Deputy Registrar to:-

- 1) M/s. Denis Kakeeto Advocates for Appellant.
- 2) The Director of Public Prosecutions
(The Respondent).