

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)
CRIMINAL REVISION NO. 002 OF 2021
(ARISING OUT OF NATETE/RUBAGA COURT CASE NO. 659 OF 2018)
KIWANUKA ROBERT.....APPLICANT
VERSUS
UGANDA.....RESPONDENT

BEFORE HON JUSTICE TADEO ASIIMWE

RULING

This Application was brought by way of a letter seeking to move this Honorable Court to call for the record of proceedings in Rubaga Criminal Case No 659 of 2018 and examine the propriety, legality and correctness of the sentence passed by a grade one magistrate, his worship Timothy Lumunye.

The background of this application is that the applicant was charged, tried and convicted of the offence of obtaining Money by false pretence contrary to section 305 of the penal Code Act and sentenced and a fine of 65,000,000/= and in default to serve 3 years of imprisonment. The applicant was dissatisfied by the sentence hence this application

Counsel Nakazi represented the Applicant while the learned state Attorney Ninsiima Emily represented the Respondent. Both Counsel made oral submissions which I shall consider.

In her submission, counsel for the applicant submitted that the sentence imposed by the magistrate was beyond his sentencing powers. That under section 162(1)(b) of the Magistrates Court Act cap 16, a magistrate grade one only impose a fine not exceeding ugx 4,800.000/=. That therefore the fine of 65,000,000/= imposed by the magistrate was illegal and should be reviewed and set aside.

In reply, the learned state attorney agreed that indeed as per section 162 (1)(b) of the magistrate's court Act, a magistrate grade is allowed to pass a fine not

exceeding ugx 4,800,000. That it was improper for the trial magistrate grade one to impose a fine of 65,000,000/= out of his powers.

RESSOLUTION

The applicant in this case is not challenging the conviction but the sentence for being illegal and beyond the powers of the learned trial Magistrate. The lower court record at page 33 clearly shows that the trial magistrate indeed imposed a sentence of a fine of shs 65,000,000/=out of which shs 60,000,000/= was to be paid to the complainant as compensation and in default the applicant was to serve a sentence of 3 years.

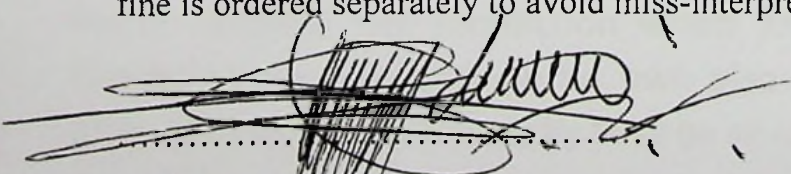
Section 162(1)(b) of the magistrate courts act cap 16 as amended states s follows; -

“..... a magistrate grade I may pass a sentence of imprisonment for a period not exceeding ten years or a fine not exceeding four million Eighty thousand shillings or both such imprisonment and fine.....”

From the wording of the above provision of the law, it's clear that the trial magistrate grade one exceeded his power when he imposed on the applicant a sentence of a fine of shs 65,000,000/= which was beyond his limits as regards to sentences of fines.

I therefore find that the sentence passed in this matter was illegal and improper for contravening section 162 of the magistrate's court Act. It was clearly outside the jurisdiction of a trial magistrate. I therefore set the sentence aside and order that the lower court file be returned back to the trial magistrate for sentencing in accordance with the law.

Before I take leave of this matter I wish to state that it's not un common for magistrates to convert fines into compensation despite the express provisions under section 197 which allows a magistrate to order for compensation in addition to other sentences. It would be better to separate fines from compensation where a fine is ordered separately to avoid miss-interpretations of court orders by litigants.



TADEO ASIMWE

JUDGE

24.03.2021