

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

Criminal Appeal No. 152 of 2018
(Arising from KST Court 153 of 2018)

LWANGA KEETO RABISON APPELLANT
VERSUS
UGANDA RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The Appellant **Lwanga Keeto Rabison** brings this Appeal against sentence. His Worship **Matovu Hood** Magistrate Grade I sitting at Kasangati found him guilty and sentenced him on two counts of: a) The Offence of Stealing a Vehicle contrary to Section 254 (1) and 265 and b) Theft contrary to Section 254 (1) and 261 both of **The Penal Code Act Cap 120. He was sentenced 7 years on both Counts to run concurrently.**

This appeal is against those sentences.

The background to this matter is that the appellant was charged with the theft of a Toyota Noah motor vehicle, the property of one Sendagire Joseph. At the time of the theft it is alleged that there was 7,340,000/- in cash and a suit in the car.

Investigations led to the recovery of the car which was in the possession of the appellant. He also had the original number plates of the car. He also had several

other number plates in his possession. The appellant was arrested and charged. The trial magistrate found him guilty on both counts and sentenced him as above.

The appellant did not file a memorandum of appeal. Because he was unrepresented this Court opted to hear him on his submissions.

He filed this appeal against sentence only.

In his submissions, the appellant stated that the period he spent on remand was not taken into account. He sought for this Court to deduct that period from the sentence.

Secondly that the sentence meted out to him was harsh. He prayed that it be reduced.

The respondent opposed this appeal. Ms Apolot Joy submitted that in the circumstances of this case, the sentence was in fact too lenient and should ordinarily have been more. For that reason she submitted that the appeal be dismissed.

Determination

The principle is that sentences are meted on the discretion of the trial court.

In the Court Appeal case of **Nfutimukiza v Uganda** [1999] 1 EA 220

We want to point out that an appellate court can interfere with the exercise of discretion of the trial Judge only where the Judge has acted on a wrong principle or where the sentence he passed is manifestly excessive or too low

I have examined the merits of the trial court's decision. The trial Magistrate gave reasons for his decision, especially that the theft of motor vehicles was rampant in his jurisdiction. The sentence was meant as a punishment for the appellant and a deterrent to others.

I have not found any miscarriage of justice or wrong principle exercised in the reasons by the learned trial magistrate that would warrant this Court interfering with the discretion exercised by the trial Court.

It is true however that there is no mention of the period spent on remand by the trial Court.

Article 23 (8) of the Constitution stipulates as follows,

Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.

The above provision makes it mandatory for the trial court to take the period spent on remand into account. In this case the appellant was charged on the 19th of March 2018. The sentence was passed on the 2nd of November 2018. That is a period of 8 months. From the record, it is clear that the trial Court omitted to take this period into account and deduct it from the sentence.

In view of the above the sentence of the lower Court is confirmed. It shall however be reduced by the period the appellant spent on remand.

For avoidance of doubt, this Court finds as follows,

The sentenced of 7 years on both Counts is hereby confirmed. That sentence will be reduced by the 8 months that the appellant spent on remand.

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Michael Elubu

Judge

24.3.21