THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

Criminal Appeal No. 66 of 2021

(Arising from Makindye Court Criminal Case No. 976 of 2021)

BASEME RONALD :::::::::::::::::::::::: APPELLANT

Versus

UGANDA :::::::::::::::::::::::: RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The Appellant, **Baseme Ronald,** brings this Appeal against sentence. HW Osauro John Pauls, Magistrate Grade I sitting at Makindye Court, found him guilty and sentenced the appellant on a charge of Smoking of a Narcotic Drug, c/ss 6 (a) of **the Narcotic Drugs and Psychotropic Substances Act.**

The background to this matter is that on the 31st of August 2021, following an operation carried out by the Kabagala police station officers, the appellant and others were caught smoking marijuana without a lawful excuse. They were arrested and charged.

On production before the trial court the appellant pleaded guilty. He was convicted and sentenced to 23 months in prison.

Being dissatisfied with the findings and sentence of the lower Court, the appellant filed this appeal with one ground:

1. That in the circumstances, the learned trial magistrate erred in law and in fact when he passed a manifestly harsh and excessive against the appellant.

Wherefore he prayed that:

a. The sentence passed by the trial court be set aside and substituted with a more lenient sentence.

The parties have both filed written submissions. I will refer to these in the determination of the appeal.

Determination

The submission for the appellant is that the trial Court imposed a sentence which was harsh and excessive. That the Court did not take into consideration the appellants mitigating factors which included the fact that he had pleaded guilty at first instance; that he was a first time offender; that he did not have previous convictions; that he had prayed for the lenience of the court; and finally that he was remorseful.

In her submission Counsel for the respondent cited **Rwabugande Moses vs Uganda SCCA No 25 of 2014** where it was held,

> A question which then follows is whether this court can address an issue which the first appellate court had no opportunity to rule on but was nevertheless brought to the attention of this Court. The general rule is that an appellate court will not consider an argument raised for the first time on appeal.

The argument is that the appellant was relying on factors not canvassed during the trial. Counsel for the respondent also cited **Ojangole Peter vs Uganda SCCA 34 of 2017** where the Supreme Court held,

> The appellant here was raising issues that do not relate to the sentence imposed by the lower court. The fact that he has 7 children to look after and that he has other family obligations could have been raised at the level of the trial court as issues for consideration in mitigation.
>
> We note that the trial judge considered both mitigating and aggravating factors raised by the appellant and the prosecutor before arriving at the sentence awarded …
>
> At this level we would not be in position to reconsider the mitigating and aggravating factors that were considered by the two lower courts

In determining this appeal this court is reminded that the principle on appeal against sentence to first appellate court has been stated as follows:

> The Supreme Court in **Kiwalabye versus Uganda (Criminal Appeal No. 143 of 2001)** stated:
>
> *The appellate court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where the trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle*

It was also stated by the Supreme Court in **Kamya Johnson Wavamuno vs. Uganda, Criminal Appeal No. 16 of 2000 at p. 17.**

> *It is well settled that the Court of Appeal will not interfere with the exercise of the discretion unless there has been a failure to exercise discretion, or a failure to take into account a material consideration or an error in principle was made. It is not sufficient that members of the court would have exercised their discretion differently before passing sentence.*

The matters raised during the sentencing of the appellant were that the appellant was a first offender. That he had had prayed for forgiveness and a lenient sentence. That he did not know his action was a crime.

A sentence is a matter for the discretion of the trial court which applies its judicial mind to the law, facts and what is just in the circumstances of the matter before that court.

According to Section 6 (a) of **the Narcotic Drugs and Psychotropic Substances Act** an offender is liable on conviction, to a fine of not less than twenty four currency points but not exceeding one hundred and twenty currency points or to imprisonment of not less than one year but not exceeding five years, or both.

In this case the trial magistrate stated at sentencing that the convict was a young offender and risks becoming an addict. That the appellant and his co accused needed to be kept away in a bid to be rehabilitated. He also considered the need for deterrence to others considering that the crime was rampant in the area. He passed a sentence of 23 months.

Having reviewed the mitigating factors mentioned, it is the finding of this Court that the sentence given by the trial court was manifestly harsh in the circumstances. Considering all the elements laid out, a more lenient sentence was appropriate in the

circumstances. This court may interfere with the sentencing discretion of the trial court where it finds the sentence imposed was manifestly harsh or excessive.

This Court therefore sets aside the sentence of 23 months imposed on the appellant and substitutes it with a sentence of 12 months in prison. It is so ordered.

…….

Michael Elubu

Judge

15.03.2022