

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)

CRIMINAL APPEAL NO.069 OF 2021

(ARISING OUT OF CRIMINAL CASE NO.1188 OF 2021)

ASABA RAMADHAN-----APPELLANT

VERSUS

UGANDA-----RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

JUDGEMENT

The appellant being dissatisfied with the sentence imposed by the trial Magistrate Her Worship Kamasanyu Gladys filed this appeal on the following grounds.

1. That the learned trial magistrate erred in law and fact when she failed to re-evaluate the mitigating factors of the appellant before sentencing him to 5 years' imprisonment
2. That the learned trial magistrate erred in law and fact when she did not provide the appellant with an alternative punishment of a fine thereby harshly and severely sentencing him to 5 years' imprisonment.

The appellant now seeks to have the sentence reduced and substituted with a fine owing to the fact that he was a first time offender, remorseful and did not waste courts time by voluntary pleading guilty.

Counsel Nabwire Juliet represented the appellant while Counsel Amerit Timothy was for the respondent.

Consideration

I have perused the record from the lower court and I have also considered the submissions from both parties. The only ground of appeal is the harshness of the sentence of 5years imposed by the trial magistrate on the appellant.

30 An appellate court is not to interfere with the 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 a trial court ignores to consider an important matter or circumstance which ought to be considered when passing the sentence or where the sentence imposed is wrong
35 in principle **See: Kyalimpa Edward v Uganda SC Criminal Appeal No.10 of 1995.**

I note that the trial magistrate considered both the aggravating and mitigating factors and considered that the appellant was a first time offender, she however added that the offences of unlawful possession of elephant ivory are on the increase in this country. In her sentencing notes, she further noted that the
40 offence of which the appellant was charged with attracts a maximum sentence of life imprisonment and found it not necessary to impose the maximum sentence but opted for a much lesser sentence of five (5) years.

The appellant was convicted of unlawfully possessing elephant ivory. These ivory tusks as noted by the trial magistrate weighed up to 79.5 kilograms. In order to
45 stamp out poaching our wildlife must be made a priority by all players in the country. Elephants are presently regarded as one of world's most threatened species because of the ivory. It is because of that that this court finds that the trial court's sentence cannot be faulted. It is lawful.

However, the appellant should have been given the option of paying a fine. The
50 sentence provided for in respect of this offence upon conviction is a fine not exceeding ten thousand currency points or to life imprisonment or both. The option of a fine in the circumstances of this case ought to have been considered owing to the fact that the appellant was a first time offender and pleaded guilty.

Accordingly, the sentence shall be altered by giving the appellant the option to
55 pay a fine, he shall pay a fine of 1,250 currency points or imprisonment as
ordered by the trial court.

I so order.

JUDGE

12/05/2022

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