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

HCT-00-CR-CF-0031-2023

(ARISING FROM CHIEF MAGISTRATES COURT OF ENTEBBE CRIMINAL CASE

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NO. 603 OF 2022)

UGANDA.....APPLICANT

VERSUS

KIYAGA BURUHANI RESPONDENT

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**CONFIRMATION OF SENTENCE
BEFORE JUSTICE GADENYA PAUL WOLIMBWA**

1.0. Introduction

20 HW Stella Okwong Paculal forwarded this case to the High Court for confirmation of sentence under section 173 of the Magistrates Courts Act.

2.0. Background to the Application

25 On 21st September 2022, Kiyaga Buruhani, (the convict), was charged with attempted theft contrary to Sections 387 and 261 of the Penal Code Act. The prosecution case was that on 18th September 2022 at Ndyango Cell in Wakiso District, the convict attempted to steal a water pump belonging to Twesiime Fredrick and valued at UGX. 10,000,000. He pleaded guilty to the charges, was convicted on his plea of guilty, and sentenced to three years’ imprisonment.

30 **3.0. Issue for Determination**

Whether the sentence of three years imprisonment imposed by the Trial Magistrate be confirmed?

4.0. Resolution

1. The Law of Confirmation

35 Section 173 of the Magistrates Courts Act requires sentences of two years or more imposed by either a Magistrate Grade I or Grade II to be confirmed by the High Court. Confirmation ensures

that convicts serving specified sentences were rightly convicted and appropriately sentenced. Section 173(1) & (2) of the Magistrates Courts Act provides that:

40 “(1)Where any sentence to which this section applies is imposed by a magistrate’s court (other than by a magistrate’s court presided over by a chief magistrate), the sentence shall be subject to confirmation by the High Court. (2) This section applies to - (a) a sentence of imprisonment for two years or over...”

In **Turvatunga vs Uganda (Criminal Appeal 16 of 2016) [2017] UGHCCD 130 (22 September 2017)**, the High Court held that ‘*the requirement for confirmation was intended to ensure compliance with the judicial process by the trial magistrate, which is an equivalent to the Revision set out in section 50 of the Criminal Procedure Act.*’

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It is worth noting that the High Court enjoys the same powers of revision while confirming sentences. Therefore, the High Court can either reduce or enhance a sentence or alter or reverse an order of the Trial Court where a material error or miscarriage of justice has been occasioned.

2. Confirmation of Sentence

50 The convict was charged with attempted theft contrary to Sections 387 and 261 of the Penal Code Act. Section 386 (1) of the Penal Code Act defines an attempt as “*When a person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfillment, and manifests his or her intention by some overt act, but does not fulfill his or her intention to such an extent as to commit the offence, he or she is deemed to attempt to commit the*

55 *offence.*”

In simple terms, an attempt means an inchoate crime where an individual, with the intent to commit a crime, undertakes an action in furtherance of that crime but ultimately fails. Attempt is therefore comprised of three elements: (1) intent to commit a crime, (2) conduct that constitutes a substantial step toward completing the crime, and (3) a failure to complete the crime.

60 In the instant case, the convict was arrested by his co-workers while trying to carry away the complainant’s water pump and handed over to the police. He had used a spanner and hand saw machine to unscrew the water pump from the complainant’s home. This part of the convict’s

actions points to his guilt of attempted theft, i.e., he had an intention to commit the offense of theft and took substantial steps toward completing the crime but failed to complete it.

65 At trial, the charges were read out and explained to the convict in Luganda. He acknowledged the commission of the offence and was convicted on his guilty plea. The brief facts were read out to him, and he admitted their truthfulness. The Trial Magistrate sentenced the convict to three years' imprisonment after weighing the aggravating and mitigating factors. The aggravating factors were that the offense of theft is rampant and a deterrent to private investment. The mitigating factors
70 included the convict's plea of guilty which saved court's time and the convict being a first offender.

I have reviewed the record and I am satisfied that the convict was rightly convicted of attempted theft contrary to sections 387 and 261 of the Penal Code Act and given a reformatory sentence of three years imprisonment, which I considered appropriate for the convict. The sentence of the Trial Magistrate is therefore confirmed.

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5.0. Decision

The sentence imposed by the Trial Magistrate is confirmed.



80 Gadenya Paul Wolimbwa
JUDGE
7th September 2023

I request the Deputy Registrar to deliver this decision on 11th September 2023 and thereafter notify the appropriate court.

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Gadenya Paul Wolimbwa
JUDGE
7th September 2023
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