

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)
HCT-00-CR-CF-0034-2023

5 **(ARISING FROM CHIEF MAGISTRATES COURT OF MAKINDYE CRIMINAL CASE**
NO. 034 OF 2023)

UGANDA.....APPLICANT

VERSUS

10 **AMUNYO PHILO RESPONDENT**

CONFIRMATION OF SENTENCE
BEFORE JUSTICE GADENYA PAUL WOLIMBWA

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1.0. Introduction

On behalf of HW Patience Lorna Tukundane, this case was forwarded to the High Court by the Chief Magistrate of Makindye, HW Basemera Sarah Anne, to confirm the sentence under section 173 of the Magistrates Courts Act.

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2.0. Background to the Application

On 7th January 2023, Amunyo Philo, hereinafter called the convict, was charged with theft contrary to Sections 254(1) and 261 of the Penal Code Act. The prosecution case was that on 15th October 2020 at Nsambya Kevina in Makindye Division, the convict stole various items
25 belonging to Mutuwa Joy Catherine, i.e. a 32-inch TV, a fridge; a gas cylinder; a Philips flat iron, a hot plate; a water heater; a handbag; a wallet; 4 pairs of bedsheets; 9 kitengi dresses; a bed cover; 4 pillow covers; catering uniform; 3 gomesi's; 15 pairs of female suits; 7 pairs of trousers; 15 other dresses; a padlock; a towel; 12 T-shirts; 7 skirts; a popcorn machine; a Techno phone; 9 blouses; 18 pants; 12 bras; a set of table clothes; a blanket; a metallic box, a flash, a project
30 proposal; and, a TV guard. All the property stolen was valued at UGX. 9,640,000. The convict denied the charges. She was tried and subsequently convicted. On conviction, the Trial

Magistrate sentenced the convict to a three-year term of imprisonment and ordered her to pay UGX 9,640 000. as compensation to the complainant. The case is before me for confirmation of sentence in accordance with section 173 of the Magistrates Court Act.

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3.0. Issue for Determination

Whether the sentence of the Trial Magistrate should be confirmed.? Under this issues I will consider the legality of the conviction , sentence and compensatory order.

40 4.0. Resolution

Section 173(1) & (2) provides that:

“*(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*
45 *two years or over...*”

Sentences of two years imprisonment and above imposed by Magistrates Grade I and II require confirmation by the High Court after the court is satisfied that the conviction and sentence are lawful. In **Turyatunga 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*
50 *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.*’

Turning to the instant case, the lower courts’ record of proceedings shows that the convict was charged with the offence of theft contrary to sections 254 (1) and 261 of the Penal Code Act. Section 254 of the Penal Code Act provides that:

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“*(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.*

60 Section 261 of the Penal Code provides that:

“Any person who steals anything capable of being stolen commits the felony called theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment not exceeding ten years.”

65 Theft is committed when the prosecution proves the following elements of the offence beyond reasonable doubt: That the property taken is capable of being stolen; that the property taken belongs to another person; that the property was taken without a claim of right and with the intention of permanently depriving the owner of it and that the accused person is responsible for taking the property. See the cases of **Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of**
70 **1993 and Uganda v Opio (Criminal Case 112 of 2014) [2017] UGHCCRD 36 (10 February 2017).**

The trial court found that the prosecution had proved all the ingredients of theft to the required standard. The Trial Magistrate at pages 4 and 5 of the Judgement held as follows:

75 *I have evaluated the evidence of the alleged theft. Prosecution brought four witnesses. Court was convinced by PW1’s testimony on how the accused stole her belongings. Her evidence was supported by PW2 Muzamir Luwalira who placed the accused at the scene of crime. He told court that the accused came with a pickup and parked at a different parking lot. The act of parking at a different park yard when there was parking space specifically for their house shows*
80 *that the suspect was hiding from prying eyes. The accused went into hiding from her family and friends which points to the guilt of the accused person...*

The trial Magistrate also observed that:

85 *PW1(the complainant) testified that on 15th October 2020, her, and the convict both went to church. After a while, the convict left church. When the complainant returned home later that day, she found her house was empty. She was informed by PW2 that the convict had taken her property. PW2 also testified and stated that he is a tenant at the premises the convict and the complainant lived at. He further testified that on 15th October 2020 at around 11am to mid-day,*
90 *the convict brought a pickup and took away 4-5 boxes and one of the boxes was too heavy...that there 100metres between his house and where the accused lived with the complainant. That the*

accused parked the vehicle at the parking allocated to his house and not the one allocated to the house resided in by the complainant and the convict. The record shows the convict was tracked and arrested one year later in Soroti District.

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The above summary of evidence points to the fact that property of value belonging to another was taken; the said property was unlawfully taken and without claim of right, with an intention to permanently deprive; and the accused participated in the commission of the theft.

100 The Trial Magistrate sentenced the convict to three years' imprisonment instead of the maximum sentence of ten years. In justifying her sentence, she stated that, "*considering the circumstances in which the items were stolen and considering that the convict is not remorseful. She breached the trust of her friend and betrayed her friend in the worst possible way.*"

105 The sentence of imprisonment imposed was appropriate and fair for the offender, except that the Trial Magistrate contravened Article 23(8) of the Constitution when it did not deduct the five months and nine days the convict had spent on remand from the final sentence. The Trial Magistrate, in her sentencing order, stated that:

110 *...she is hereby sentenced to 3 years of imprisonment. Time spent on remand inclusive.*

This order was problematic for two reasons – firstly, it was unclear whether the Trial Magistrate knew or took the trouble to find out how long the convict had spent on pre-trial remand. Secondly, it is unclear whether the Trial Magistrate even considered the pre-remand period in sentencing her to three years imprisonment. The Trial Magistrate should have followed the guidance of the Supreme Court on how to deal with the pre-remand period in sentencing as laid out in **Rwabugande Moses v Uganda, SCCA No. 25 of 2014**. In this case, the Court guided as follows:

120 *"we have found it right to depart from the Court's earlier decisions mentioned above in which it was held that consideration of the time spent on remand does not necessitate a sentencing court to apply a mathematical formula. It is our view that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with*

*certainty and precision; consideration of the remand period should therefore necessarily mean
125 reducing or subtracting that period from the final sentence...We must emphasise that a sentence
couched in general terms that court has taken into account the time the accused has spent on
remand is ambiguous. In such circumstances, it cannot be unequivocally ascertained that the
court accounted for the remand period in arriving at the final sentence.”*

130 Having found that the sentence pronounced by the Trial Court is ambiguous and could easily be interpreted as illegal, this Court, under Section 50 of the Criminal Procedure Code Act, shall set aside and substitute the trial court’s sentence with an appropriate one containing deductions of the time spent on remand.

The record shows that the convict was first remanded on 11th January 2023 and was never
135 granted bail. The judgment was delivered on 20^h June 2023. Pursuant to section 50 Section of the Criminal Procedure Code Act, the Court finds a three-year term of imprisonment, less five months and nine days spent on remand, to be an appropriate sentence. The convict will, therefore, serve a net sentence of two years, six months, and twenty-one days.

140 **The Legality of the Order of Compensation**

The Trial Magistrate made an order of compensation against the convict as part of the sentencing order. The Court can order compensation to victims of wrongs in appropriate cases. Section 197(1) of the Magistrates Courts Act provides that :

145 *When any accused person is convicted by a [magistrate’s court](#) of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the [court](#), recoverable by that person by civil suit, the [court](#) may, in its discretion and in addition to any other lawful punishment, order
150 the convicted person to pay to that other person such compensation as the [court](#) deems fair and reasonable.*

S197(1) of the Magistrates Courts Act gives the court discretion to award compensation to victims of wrongs if the following conditions are satisfied-

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- a) The victim of the wrong must have suffered either personal or material loss as a result of the accused person's actions;
- b) There is sufficient evidence before the court to verify the injury or loss. The prosecution bears the legal burden to establish the value of the lost property or damages that may be recoverable in the case of personal injury, either as special damages or general damages, and,
- c) Damages for personal injury or loss are recoverable in a civil action.

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In this matter, the Trial Magistrate awarded compensation of UGX 9,640,000 to the complainant to compensate her for the loss of household materials she lost at the hands of the accused person. Apart from the prosecution listing the items and their value in the charge sheet and the complainant testifying that she lost the items, no evidence was produced to show the value of the stolen items. The prosecution should have led evidence of the complainant or, from a witness with knowledge about the lost items, either by way of receipts or any other credible evidence, the value of each of the stolen items. This evidence would have given the court a fair view and estimation of the age of the property and its value at the time of the theft. For example, the complainant lost a TV set. In this case, the prosecution should have asked the complainant when and at what price she bought the TV, and let us say the TV set was five years old; its value would have been depreciated to arrive at its current value. Similarly, the prosecution should have called evidence about the remaining items to prove their value to assist the Trial Magistrate in arriving at the right compensation for the complainant. In **Uganda vs. Ojandu [2017]UGHCCRD 72(19 April 2017)**, Justice Mubiru declined to award compensation under section 286(4) of the Penal Code Act because the prosecution did not furnish the court with evidence to establish the value of the stolen property. Therefore, the order of compensation made by the Trial Magistrate in the absence of critical evidence about the value of the lost property has no merit and is accordingly set aside. The complainant is well advised to file a civil claim against the convict, where she can prove special and general damages against her.

5.0. Decision

185 The sentence of the Trial Magistrate is set aside and substituted with a net sentence of two years, six months, and twenty-one days. The order of compensation is set aside.

I so order.



190 Gadenya Paul Wolimbwa
JUDGE
6th September 2023

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



195 Gadenya Paul Wolimbwa
JUDGE
6th September 2023

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