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

**HCT-00-CR-CF-0032-2023**

**(ARISING FROM CHIEF MAGISTRATE COURT OF NABWERU CRIMINAL CASE**

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**NO. 407 OF 2023)**

**UGANDA.....APPLICANT**

**VERSUS**

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**MALIMBE BRODUS ..... RESPONDENT**

**CONFIRMATION OF SENTENCE**

**BEFORE JUSTICE GADENYA PAUL WOLIMBWA**

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**1.0. Introduction**

This case was forwarded to the High Court by Senior Magistrate Grade I, HW Kabugho Elizabeth, under section 173 of the Magistrates Courts Act for confirmation of sentence.

**2.0. Background to the Application**

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Malimbe Brodus, hereinafter called the convict, was charged with Doing Grievous Harm contrary to Sections 219 of the Penal Code Act. The prosecution case was that on 5 May 2023, the convict at Namulanda Cell in Wakso District assaulted his two-and-a-half-year-old son Ngome Josan aka Jose. The child cried so much, attracting neighbours who went to the accused's house. They found the accused seriously beating the child. As a result of the violence, the child sustained injuries in the back, arms and face. The neighbours reported the matter to police. He was examined and found to be in severe pain. On 15 May 2023, the convict pleaded guilty. He was sentenced to 2 years' imprisonment.

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**3.0. Issue for Determination**

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Whether the trial courts' two-year term of imprisonment should be confirmed?

#### 4.0. Resolution

##### 1. The Law on Confirmation of Sentence

Under section 173(1) of the Magistrates Courts Act, sentences of two years and above imposed by either a Magistrate Grade I or Grade II require confirmation by the High Court. Section 173(1) 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 two years or over...”*

The rationale for confirmation of sentences is founded on **Article 23** of the Constitution, which protects the right to liberty of every individual. The right to liberty can only be interfered with in exceptional circumstances. On account of this, sentences of more than two years’ imprisonment by the subject Magistrates can only be served by the convict(s) upon satisfaction by the High Court that he/she/they were lawfully convicted and the sentence imposed is lawful. Expressed differently, when confirming a sentence, the High Court shall examine the propriety of the proceedings that led to the sentence and whether the sentence imposed is appropriate.

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 ensure compliance with the judicial process by the trial magistrate, which is equivalent to the Revision set out in section 50 of the Criminal Procedure Act.’* Of importance, too, is Section 174(4) of the Magistrates’ Court Act which provides that:

*“Subject to section 50(2) of the Criminal Procedure Code Act, the High Court may exercise the same powers in confirmation as are conferred upon it in revision by Part III of that Act.”*

Analysis of this provision reveals that in confirming any sentence passed by a magistrate under section 173 of the Magistrates Courts Act, the High Court enjoys similar powers as if it is conducting Revision under Section 50 of the Criminal Procedure Code Act. Therefore, by virtue of those powers, the High Court can enhance a sentence, alter an order, or reverse an order where it appears that in those proceedings, an error material to the merits of any case involving a

miscarriage of justice has occurred. Because of the same powers, the court can call for further  
65 evidence where necessary.

## 2. Confirmation of Sentence

### i. Propriety of Sentence

The trial courts' record of proceedings indicates that the convict was charged with the offence of  
Doing Grievous Harm contrary to section 219 of the Penal Code Act. The ingredients of grievous  
70 harm are contained in section 2 (f) of the Penal Code Act, which provides that: "*Grievous harm  
means any harm which amounts to a maim or dangerous harm or seriously or permanently injures  
health or which is likely so to injure health, or which extends to permanent disfigurement or any  
permanent or serious injury to any external or internal organ, membrane or sense.*"

75 Doing Grievous Harm means severe physical injury intentionally inflicted on the complainant's  
body. The harm must be serious, fundamentally affecting the health of the complainant's body.  
Thus, for the prosecution to secure a conviction against an accused person based on the charge of  
Doing Grievous Harm, they must prove that: 1). The complainant was assaulted; 2). As a result of  
that Assault, the complainant suffered very serious harm to his or her body; 3). That the harm  
80 fundamentally affected the health of the complainant. 4)The accused is responsible for the harm.

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. Brief facts were read out to him,  
and he admitted their truthfulness. The convict was sentenced to two years' imprisonment. The  
Magistrate adhered to Section 124 of the Magistrates Court Act and the case of **Adan V The**  
85 **Republic [1973] EA 445**, which elaborately laid down the procedure of recording pleas in a  
Magistrate's Court.

The Trial Magistrate, however, did not calculate the days spent on remand by the convict. The  
Court stated, "*The convict is hereby sentenced to two years' imprisonment.*" This contravenes  
Article 23(8) of the Constitution, which requires the court to consider the period spent on remand  
90 by the convict. Article 23(8) provides that "*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 trial magistrate should have deducted one month and 24 days from the sentence as the period spent on remand by the Convict. This court shall do this.

95           **ii.       Appropriateness of Sentence Imposed**

Section 219 of the Penal Code Act states, “Any person who unlawfully does grievous harm to another commits a felony and is liable to imprisonment for seven years.”

100           On page 7 of the record, the trial court stated, *“I have listened to both prosecution and convicts allocutus. The offence committed against the child was uncalled for more so by a parent who has the duty to care for and protect the child. The convict, as a deterrent measure and in a bid to protect the child against further violence or harm, is sentenced to 2years imprisonment.”*

105           For an offence whose maximum sentence is seven years imprisonment, a sentence of 2 years is appropriate. It serves the dual purpose of deterring the perpetrator from continuing with the criminal behaviour and acts as a source of protection for the child from further violence. However, as required by Guideline 49 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, the Trial Court did not inquire into the effect of the custodial sentence on the child since the convict was his primary caregiver. The court also never considered whether  
110           the child would adequately be cared for while the caregiver was serving the custodial sentence.

115           Had this been done, maybe a non–custodial sentence would have been preferred to ensure that the child was not deprived of the care and support of the primary caregiver. By stating that *“...The convict as a deterrent measure and in a bid to protect the child against further violence or harm is sentenced to 2 years imprisonment...,”* it goes without saying that the trial Court selectively, rather than holistically, considered the child's welfare.

120           Be that as it may, this court will not interfere with the trial court's sentence because there is no guarantee that if the convict is given a non-custodial sentence this early, he will not resume his violent behaviour toward his son. Temporarily separating the offender and the victim seems like the most viable option under these circumstances. On the one hand, it will give the offender time

to introspect and reform. On the other hand, it will provide the victim some time to heal from the emotional and physical trauma inflicted upon him.

125 **5.0. Decision**

The sentence imposed by the Trial Magistrate is set aside and substituted with a net sentence of one year, 11 months, and six days. It is so ordered.



130 Gadenya Paul Wolimbwa  
**JUDGE**  
31<sup>st</sup> August 2023

135 I request the Deputy Registrar to deliver this decision and communicate it to the relevant court to give effect to the confirmation order.



140 Gadenya Paul Wolimbwa  
**JUDGE**  
31<sup>st</sup> August 2023