



deterrent sentence because the accused had wasted court time by first pleading not guilty and then changing her plea to guilty after the prosecution had incurred the cost of presenting three witnesses in court. Secondly, the stolen items were never recovered. The accused person in mitigation asked for a lenient sentence because she did not have money to compensate the complainant. After considering the aggravating factors, the Trial Magistrate sentenced the convict to three years imprisonment, less the time she had spent on remand. The court's sentence was informed by the need to reform the convict and deter others from committing this rampant crime in the area. When sentencing, the trial magistrate is the best person to sentence the accused. This is because the trial magistrate can observe the accused through the trial, which a confirming or an appellate court does not have. However, there are exceptions to this general rule. The confirming court can interfere with the discretion of the trial Magistrate if the sentence is manifestly unjust, harsh or contrary to the general sentencing principles. **See: Kyalimpa Edward Versus Uganda, Criminal Appeal No.10 of 170 1995.**

In this case, I find that while the trial Magistrate considered the aggravating factors in sentencing the convict, she did not consider the mitigating factors of the convict. The convict may have wasted the court's time by initially pleading not guilty to the charge, but this did not give the court the license to ignore mitigating factors in favour of the convict, which included a plea for leniency, change of plea to guilty, the value of the property stolen and her youthfulness. The sentence imposed by the trial Magistrate lacked key imperatives of sentencing and is, therefore, unfair, unjust and excessive.

Given the shortcomings in the sentence of the Trial Magistrate, the sentence is now set aside. The convict will be sentenced afresh. Considering the aggravating and mitigating factors, the convict deserves a reformatory sentence to regain her moral campus in society. Therefore, I consider an eighteen-month imprisonment a fit and proper sentence for the convict. Considering that the accused had been on remand for eight months before the sentence, I shall deduct eight months from her sentence. The convict will serve a net sentence of ten months imprisonment.

#### **Decision.**

The sentence of the trial magistrate is set aside and substituted with a sentence of ten months. It is so ordered.

Gadenya Paul. Wolimbwa

**JUDGE**

15<sup>th</sup> August 2023

85 I request the Deputy Registrar to communicate the court's decision to the lower court for  
noting and implementation.



Gadenya Paul. Wolimbwa

**JUDGE**

90 15<sup>th</sup> August 2023