THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HCT -00-CR-CF - 0026- 2023 (ARISING FROM ENT-00-CR-CO-0027-2022)

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UGANDA

VERSUS

NAKANWAGI SHARON

CONFIRMATION OF SENTENCE RULING

BY JUSTICE GADENYA PAUL WOLIMBWA

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Nakanwagi Sharon, from now on called 'the convict', was charged and convicted by the Magistrate Grade I at the Chief Magistrates Court, Entebbe, of thefts contrary to section 245 of the Penal Code Act.

- 25 The prosecution alleged that they accuse the password on 31 December 2021 at Lunyo East, Entebbe municipality in Wakiso district, stole one wireless speaker and one hundred and nine seven thousand and five hundred shillings of the property of Ruth Achieng Monica. Initially, the convict pleaded not guilty; however, after three prosecution witnesses testified, she changed her plea to guilt. The trial magistrate sentenced her to three years' imprisonment.
- 30 The file is before me for confirmation of sentence under section 173 (1) and(2)(a) of the Magistrates Courts Act.

For brevity, confirmation aims to assess the legality of the conviction and sentence of two years and above imposed by a Magistrate other than a Chief Magistrate. I have read the record
and am satisfied that the trial magistrate rightly convicted the accused person of theft, contrary to section 245 of the Penal Code Act. Therefore, for purposes of this confirmation, I will restrict myself to the legality of the sentence.

The law on reviewing sentences on confirmation is the same as the law on reviewing sentences on appeal. The High Court and a first Appellate Court will only interfere with the sentence of the trial magistrate if the sentence is manifestly harsh, excessive and unjust or if the sentence is contrary to the sentencing principles. In this case, the prosecution asked for a 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

- 45 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
- 50 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
- 55 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.

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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.

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

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80 Gadenya Paul. Wolimbwa

JUDGE

15th August 2023

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

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Gadenya Paul. Wolimbwa JUDGE

90 15th August 2023