

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CRIMINAL APPEAL NO.105 OF 2022  
ARISING OUT OF CRIMINAL CASE NO.1171 OF 2022**

**MUDEBO MARK-----APPELLANT  
VERSUS  
UGANDA-----RESPONDENT**

**BEFORE HON: JUSTICE ISAAC MUWATA**

**JUDGEMENT**

The appellant being dissatisfied and aggrieved with the decision of His Worship Kirya Martins magistrate grade one appealed to this court on the following grounds;

- 1. That the learned trial magistrate erred in law and fact when he passed a harsh sentence to the appellant thereby occasioning a miscarriage of justice**
- 2. That the learned trial magistrate erred in law and in fact when he passed a sentence relying on the offences committed by the relatives of the appellant to enhance the sentence hence occasioning a miscarriage of justice**

The appellant prayed that the appeal be allowed and sentence of the lower court set aside

The prosecution was represented by Mr. Amerit Timothy while the appellant was represented by Mr. Stephen Kiyaga

Both parties made written submission and I must note that the prosecution conceded that the sentence imposed by the trial magistrate was harsh.

I will jointly resolve ground 1 and 2 of the appeal because they both deal with sentence

### **Consideration**

An appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstance which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle **See: Kyalimpa Edward v Uganda SC Criminal Appeal No.10 of 1995.**

The court would also be justified in interfering with the sentence if it was convinced that there was an irregularity in the trial court's proceedings which directly led to the imposition of the impugned sentence which if not corrected will occasion prejudice to the appellant.

The appellant herein was charged and convicted on his own plea of guilt for the offence of assaulting a police officer in the execution of his duty contrary to section 238(b) of the Penal Code Act. The prosecution had alleged that he assaulted No.59529 detective constable Gadube Alex

The maximum sentence provided for under the above section is imprisonment for 2 years. The learned trial magistrate sentenced the appellant to 1 year and six months.

While it is wrong for anybody to assault a police officer on duty, I do not think that this sentence was justified considering the nature of the mitigating factors present at the time, the appellant was a first time offender who pleaded guilty hence not wasting courts time. A convict being a first time offender is a factor that should warrant a degree of leniency from the sentencing court

Although the appellant's conduct prior to his arrest could have been a factor in his sentence, the same cannot be justified as the appellant appeared remorseful and regretted his actions. There was no evidence to indicate that the warrant card grabbed by the appellant from the police officer was intended for wrongful purposes

I shall accordingly allow the appeal and impose an appropriate sentence considering the mitigating factors some of which were already presented by the appellant in the lower court and the prosecution own admission that the sentence was indeed harsh.

The sentence of 1 year and 6 months is substituted with a sentence of 6 month's imprisonment.

I so order.

**JUDGE**

**16/03/2023**

