

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 01 – CR – CN – 008 OF 2021
(ARISING FROM CRIM CASE NO. 164 OF 2021)

5 **1. HABIMANA SABANITAH**
 2. SABOMANA AUGUSTINE ::::::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

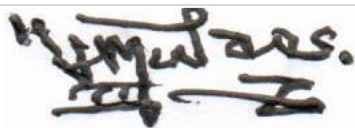
Introduction:

This was an appeal against the sentence imposed by His Worship Nambozo Joy, Ag. Chief Magistrate, Kyenjojo Chief Magistrate’s Court for being harsh and excessive.

Background:

The appellant who are both refugees in Uganda and who were resident at Rwamwanja in Kyenjono District were both charged with two counts: (1) Illegal entry into the protected area contrary to Section 30 and 70 (a) of the Uganda Wildlife Act of 2019; (2) Unlawful killing of wildlife specimen contrary to Section 29 (1) (a) and 71 (a) of the Uganda Wildlife Act 2019.

On the 30th day of June 2021 when the appellants were presented for plea taking, each of them pleaded guilty on both counts. On the first count, the appellants were each convicted and sentenced to a fine of 100 currency points in default to serve 4



years' imprisonment. On the second count, they were each convicted and sentenced to a fine of 10,000 currency points in default to serve 12 years' imprisonment. The appellants being aggrieved by the sentences passed lodged this appeal.

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Grounds of appeal:

The appellants framed one ground of appeal for consideration by Court thus:

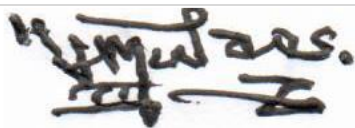
The trial Magistrate erred in law and fact when he passed a harsh and excessive sentence that caused a miscarriage of justice.

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CONSIDERATION BY COURT:

Section 30 (1) of the Wildlife Act 2019 prohibits entry into a wild life protected area without permission from the authority. It provides thus: *“A person who, except in accordance with this Act, attempts to enter into, enters into, resides in, or attempts to reside in a wildlife protected area without permission by the Authority, commits an offence.”*

The above section does not provide the punishment for the said offense. Section 70 provides for the general punishment for offenses whose sentences are not provided for under the Act. The Section provides thus: *“Subject to this Act, a person convicted of an offence under this Act for which no penalty is provided is liable—*

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(a) *in the case of a first offence, to a fine not exceeding three hundred and fifty currency points or to a term of imprisonment not exceeding ten years or both; and*

5 (b) *)in the case of a second or subsequent offence, to a fine not exceeding five hundred currency points or to a term of imprisonment not exceeding twenty years or both.*” [emphasis added]

Section 29 (1) (a) of the Act provides that: *a person who in a wildlife conservation area hunts, takes, kills, injures or disturbs any wild plant, wild*
10 *animal or domestic animal commits an offense*. Under section 71 (a) the offense is punishable upon conviction to a fine of not exceeding ten thousand currency points or to life imprisonment or both.

In this case, the appellants were sentenced in Count 1, to a fine of **100** currency
15 points and in default to serve a sentence of **4** years. They were sentenced in Count 2, to a fine of **10,000** currency points and in default to serve **12** years.

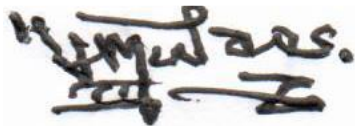
The appellants in this case were first offenders who pleaded guilty to the offense
the first time they were presented in court and thus never wasted court’s time.
20 Secondly, they indicated to the trial magistrate that they were refugees from Congo who had fled their home country to Uganda for safety and were resident in Rwamwanja camp.

It appears to me that the trial magistrate did not consider or sufficiently consider
25 the personal circumstances of the appellants being refugees, new to the country and

the environment in which they found themselves and presumably being persons of limited means.

Therefore, taking into account the personal circumstances of the appellants arising
5 from their historical background, I find the sentence in Count 1 of 100 currency points or in default to serve 4 years harsh and excessive. I also find the sentence in Count 2 of a fine of **10,000** currency points and in default to serve **12** years harsh and excessive.

10 I thus set aside the said sentence in Count 1 and replace it with a sentence of 25 (Twenty-Five currency points) and in default to serve a sentence of one year from the date of conviction. I also set aside the sentence in Count 2 and replace with a sentence of 2500 currency points and in default to serve a sentence of 4 years from the date of conviction. The sentences in both counts shall run concurrently. The
15 appeal therefore succeeds in these terms. I so order.



Vincent Wagona
High Court Judge
FORT-PORTAL

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DATE: 31/8/23

