THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORTPORTAL

CRIMINAL APPEAL NO. 08 OF 2022

ARISING FROM CRIMINAL CASE NO. 516 OF 2022 OF KYENJOJO CHIEF MAGISTRATE'S COURT

1. **ADIGA ALOYSIUS**
2. **KALYE BI DENIS==========APPELLANTS**

VERSUS

UGANDA==========RESPONDENT

BEFORE HON. JUSTICE VINCENT WAGONA

JUDGMENT

Introduction

This judgment follows an appeal against the conviction and sentence by Her Worship Nimungu Ociba Gloria, Chief Magistrate of Kyenjojo Chief Magistrates Court delivered on 4/11/2022 that was based on a ***plea of guilty***.

Background

The 1st Appellant was charged in counts 1, 2, 3, and 4 with forgery of official documents c/s 349 of the Penal Code Act and uttering them c/s 351 of the Penal Code Act. The documents were appointment letters and posting instructions attributed to the Education Service Commission and the

Permanent Secretary of Ministry of Education and Sports purporting to appoint and post the 1st Appellant as Assistant Instructor (Plumbing).

The 2nd Appellant was charged in counts 5, 6, 7, 8, 9 and 10 with forgery of official documents c/s 349 of the Penal Code Act and uttering them c/s 351 of the Penal Code Act. The documents were an appointment letter, introductory letter, and posting instructions attributed to the Education Service Commission and the Permanent Secretary of Ministry of Education and Sports purporting to appoint and post the 2nd Appellant as Instructor (Welding & Fabrication).

Each Appellant was convicted on his own plea of ***Guilty*** and sentenced. The 1st Appellant was sentenced to 2 years imprisonment on each of the 4 counts to run concurrently, totaling to 8 years. Additionally, he was required to refund the salary earned totaling to UGX 15,230,732/= or in default to serve 5 years imprisonment. The 2nd Appellant was sentenced to 2 years imprisonment on each of the 6 counts to run concurrently, totaling to 10 years. Additionally, he was required to refund the salary earned totaling to UGX 15,230,732/= or in default to serve 5 years imprisonment.

The Appellants being dissatisfied with the convictions and sentences, appealed to this court on the following grounds:

1. That the learned Chief Magistrate erred in law and fact when she convicted the appellants on their plea of guilty without following the right procedure.

2. That the learned Chief Magistrate erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 1st Appellant.
3. That the learned Chief Magistrate erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 2nd Appellant.
4. The Trial Magistrate erred in law when she issued and unlawful and illegal sentence.

It was prayed that the appeal be allowed; the conviction of the 1st and 2nd appellants be quashed; the sentences be set aside and or reduced; and the appellants be set free.

Representation

The appellants were represented by Ms. A. Mwebesa & Co. Advocates. The Office of the DPP was represented by Robert Arinaitwe (State Attorney). On 9.2.2023 both parties were given a schedule for filing written submissions by 16.2.2023 that happened to fall on a public holiday. Counsel for the appellants filed written submissions on 17.2.2023 followed by additional submissions on 23.2.2023. There is an affidavit of service showing that the office of the DPP was only served with the written submissions of the appellants on 23.2.2023 and there is no evidence of service of the additional submissions. Counsel for the appellants caused a delay in adherence to the timelines set by court and as a result, the Office of the DPP had not filed their submissions by the time of writing this judgment.

Submissions of the appellants

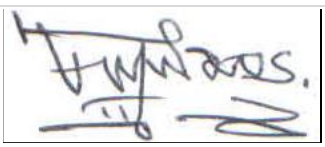
Ground 1: That the learned Chief Magistrate erred in law and fact when she convicted the appellants on their plea of guilty without following the right procedure.

It was submitted for the appellants relying on the authority in **Adan Versus Republic [1973] E.A 446** that sets out the procedure for recording a plea of *guilty*, that in this case the correct procedure was not followed. It was submitted that there was no evidence that the essential ingredients of the offences were explained to the appellants who had no legal representation. It was thus contended that the plea of *guilty* was hastily entered and was not unequivocal.

CONSIDERATION BY COURT

Duty of First appellate Court

The duty of this court as a first Appellate Court was stated in the case of **Kifamunte Henry V Uganda, S.C criminal Appeal No. 10 of 1997** where court held that; *"The first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."* This Court therefore has a duty to re-evaluate the evidence to avoid a miscarriage of justice as it mindfully arrives at its own conclusion. I will therefore be guided by these principles.



Ground 1: The learned Chief Magistrate erred in law and fact when she convicted the appellants on their plea of guilty without following the right procedure.

The correct procedure for recording a plea of guilty was settled by SPRY V.P (as he then was) in **Adan Versus Republic [1973] E.A 446** in the following terms:-

> ***"When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The Magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the Magistrate should record what the accused has said, as nearly as possible in his own words, and then formerly enter a plea of guilty. The Magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts which, if true, might raise a question as to his guilty, the Magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the Magistrate should record a conviction and proceed to hear any further facts relevant to sentence"***

In this case the record states that the charges were read and explained to the accused persons. Thereafter, the Trial Chief Magistrate recorded a ***Plea of Guilty*** in respect of each Count for the 1st Appellant, followed by a ***Plea of Guilty*** in respect of each Count for the 2nd Appellant. This was followed by the Prosecution stating the brief facts of the case against the 1st Appellant followed by the brief facts of the case against the 2nd Appellant. The Trial Chef Magistrate then asked each of the appellants whether the facts were correct and they each answered in the affirmative and this was recorded. The Trial Chief Magistrate then went ahead to record a ***conviction*** against each of the appellants in these terms:

I hereby convict you of the charges against you accordingly.

After all of the above procedure, the proceedings went on as follows:

"State: *Your Worship the offence of forgery of an official document is contrary to S.342 & 349 of the Penal Code Act has the following ingredients.*

1. *Someone made official document.*
2. *The document was false.*
3. *The intention was to deceive or defraud.*
4. *It was the accused person who made this document.*

Court: *Are these ingredients read what you did*

A1 *– Yes*

A2 *– Yes*

State: *Your Worship, the offence of uttering false documents c/s 351 and 349 PCA has the following ingredients:*

1. *There was a false/forged document.*
2. *A person knowing/ fraudulently uttered this false document.*
3. *It was the accused who uttered it.*

Court: *Are these ingredients read what you did*

A1 *– Yes*

A2 *– Yes*

State: *Allocutus*

"I have no previous record of the convicts present before court and I pray that they be taken as first time offenders……."

Accused A1: *I am not happy about what I have done wrong and I am remorseful.*

Accused A2: *I am praying for forgiveness.*

State: *I pray case is stood over to avail pay slips for the 2 accused persons.*

Court: Case stood over.

Court: *In the afternoon before the ruling.*

State: *Representation as before,*

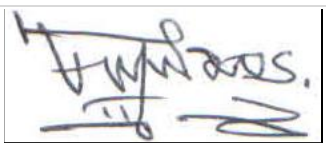
Case has been stood over so that state can adduce the pay slips salaries of the two convicts. They have been paid by the office of the Chief Administration Office amounting to 15,230,732/= which money they have been paid from the time that they started working. I am availing the summary of the salary payments and pay slips of each of them and I pray that Court considers this when making a ruling.

RULING:

Having listened to ……."

I have observed that under the procedure that was adopted by the Trial Chief Magistrate:

1. The appellants were not asked which language each of them spoke and understood, so as to ensure that the particulars were read out to each of



them, so far as possible in the appellants' own language, or in a language which each of them spoke and understood. Moreover the record does not show the language in which the charges were read and explained to the appellants.

2. The Magistrate did not explain to each of the appellants all the essential ingredients of the offence charged before they were made to answer to the charges that were read out to them. This was instead done by the Prosecution, when the Magistrate had already recorded a conviction against each of the appellants.

3. The Magistrate did not record what the appellants had to say or ask the appellants if they had anything to say, after the charges had been read out to them. The Magistrate just proceeded to formerly enter a ***plea of guilty***. Therefore, the plea was not recorded in the words of the appellants as required.

4. Some of the facts relied upon by the Prosecution and the Magistrate, were not included in the summary of the facts, thereby denying the appellants the opportunity to respond to them. These facts related to the pay slips of the salary already earned by the appellants that were adduced as evidence by the Prosecution and admitted and relied upon by the Magistrate, when the plea process was already concluded and the appellants had already been convicted, and they were not given a

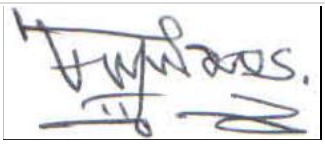
chance to admit or dispute the facts or the evidence. The evidence was relied upon in sentencing to order a refund of the salary when it had not been put to the appellants in the summary of the facts and the appellants had no opportunity to respond to it.

The above unsatisfactory features clearly demonstrate a failure to adhere to the established practice for recording a plea of guilty in order to ensure that the plea of guilty was unequivocal and rule out the possibility of convicting an accused person on a plea that is equivocal.

In the cited case of **Adan Versus Republic (Supra)**, it was further held that:

> ***"The courts have always been concerned that an accused person should not be convicted on his plea unless it was certain that he really understood the charge and had no defence to it. The danger of convicting on an equivocal plea is obviously greater where the accused is unrepresented, is of limited education and does not speak the language of the court. For this reason, it has long been a rule of practice that where a plea appears to be one of guilty, it must be recorded in the words of the accused……..The words "guilty" is one to be treated with the greatest caution: it is a technical expression…."***

In the circumstances of this case, this court is uncertain as to whether the appellants really understood the charges and had no defence to the charges. The appellants had no benefit of legal representation. Their level of education was not known. The essential ingredients of the offences were not explained to the appellants prior to pleading to the charges. The plea was not recorded in the words of the appellants.



Further, some of the facts of the alleged offence were not outlined to the appellants to have a chance to answer to them during the plea taking process, but only to the court to be used in sentencing them. It means that the statement of the facts put to the appellants was incomplete.

In the cited case of **Adan Versus Republic (Supra)**, it was stated that:

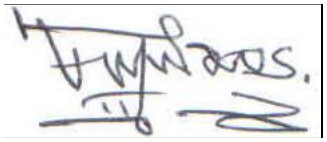
> ***"The statement of facts serves two purposes: it enables the magistrate to satisfy himself that the plea of guilty was really unequivocal and that the accused has no defence and it gives the magistrate the basic material on which to assess sentence. It not infrequently happens that an accused, after hearing the statement of facts, disputes some particular fact or alleges some additional fact, showing that he did not really understand the position when he pleaded guilty: it is for this reason it is essential for the statement of facts to precede the conviction."***

In this case, not only were some of the statements of the facts, as they related to the salary received and pay slips tendered, not made at the proper time, but the appellants were not given the opportunity to state whether they accepted or disputed the facts. The Prosecutor adduced the evidence when the plea taking process had been concluded to only be considered against the appellants in sentencing.

Based on the above considerations, the conviction cannot be allowed to stand. This ground of appeal therefore succeeds with the result that the conviction and the sentence are hereby quashed. This ground of appeal disposes of the appeal and I will not delve into the remaining grounds.

I order for a re-trial (new trial). The appellants will stay on remand but are at liberty to apply for bail before the trial court.

Dated at High Court Fort-portal this 27th day of February 2023.



Vincent Wagona

High Court Judge

FORT-PORTAL