

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
(CRIMINAL DIVISION)**

**CRIMINAL APPEAL NO. 030 OF 2022**

*(Arising from Kajjansi Chief Magistrates Court Criminal Case No. 224 of 2020)*

<b>MASINDE NICHOLAS</b>	.....	<b>APPELLANT</b>
	<b>VERSUS</b>	
<b>UGANDA</b>	.....	<b>RESPONDENT</b>

**BEFORE: THE HON MR JUSTICE MICHAEL ELUBU  
JUDGMENT**

The Appellant, **Masinde Nicholas**, brings this Appeal against sentence and a compensation order made by **HW Nakitende Juliet**, Chief Magistrate Kajjansi Chief Magistrate's Court. She convicted him on one count of the offence of Manslaughter, c/s 190 of the **Penal Code Act**. He was also directed to pay compensation of Twenty Million Shillings (20,000,000/-), to the family of the deceased, within three months of the date of his release.

The background to this matter is that the Appellant was a security guard with JIKO, a Security Company. On the 2<sup>nd</sup> of July 2020, PW1, **No. 43696 Sgt Ongom Richard**, was on duty at Lumuli Police station near Kajjansi. At 8:00 pm when he booked out of the station in charge of a foot patrol, he received a call from the Local Council 1

Defence Secretary of a village called Makandwa, informing him that a security guard deployed at a building called Mutyaba Plaza, had shot someone.

As PW 1 got to the scene of crime, he met the Appellant heading towards Lumuli Police station. The Appellant was disarmed, arrested and taken to Lumuli Police station. PW1, then headed to the scene of crime where he was informed that it is the Appellant who had shot the deceased, identified as one Babu. The body was thereafter taken to the mortuary.

The Appellant was subsequently charged with the offence of Manslaughter c/s 190 of the **Penal Code Act**. Initially, he pleaded not guilty to the charge.

After the testimony of PW1 the appellant changed his plea to a plea of guilty.

The facts agreed were that the appellant had lent the deceased six thousand shillings (6,000/-) who had only paid back four thousand shillings (4,000/-). On the fateful day, the appellant made a demand for the money. The deceased responded by putting the appellant in a strangle hold. That the appellant hit the deceased with the gun first, and then shot him through the eye.

After confirming these facts, the appellant was convicted and sentenced to a term of imprisonment of eight years. The court also made an order of compensation for Twenty Million Uganda Shillings (20,000,000/-) to be paid to the family of the deceased within three months of the release of the convict.

The Appellant being dissatisfied with the sentence filed this Appeal on the following grounds:

1. The Learned Trial Magistrate erred in law and fact in imposing a harsh and severe sentence of eight (8) years imprisonment on the Appellant.



2. The learned Trial Magistrate erred in law and fact when she failed to consider the remorsefulness of the Appellant who never wasted the court's time by pleading guilty to the charges.

### **Submissions**

The parties were granted leave to file written submissions and the same are on court record. They have been considered and will be referred to in the determination of the Appeal.

### **Grounds 1 & 2**

**The Learned Trial Magistrate erred in law and fact on imposing a harsh and severe sentence of eight (08) years imprisonment to the Appellant.**

**The learned Trial Magistrate erred in law and fact when she failed to consider the remorsefulness of the Appellant who never wasted court's time by pleading guilty to the charges.**

I have considered the two grounds jointly.

On Ground 1, the Appellant's complaint is that although the trial court in sentencing the Appellant held that he did not waste the Court's time by pleading guilty, it nevertheless imposed a harsh sentence. That this was a misdirection which occasioned a miscarriage of justice.

On Ground 2, it was argued for the Appellant that the trial court did not consider the remorsefulness of the Appellant and consequently imposed a harsh sentence on him.

The Respondent, in reply, submitted that the sentence was legal and even lenient given the circumstances of the case. That the Trial Magistrate took into consideration

the mitigating factors in favour of the Appellant including the Appellant's remorsefulness before arriving at the sentence.

### **Determination**

This is an Appeal against sentence only.

Appeals of this nature, where the appellant has entered a plea of guilty are regulated by Section 204 (3) of the **Magistrates Courts Act** which stipulates:

(3) No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate 's court except as to the legality of the plea or to the extent or legality of the sentence.

The appellant's complaint is that the sentence was illegal because the trial court did not take into consideration his remorsefulness before passing sentence.

From the proceedings, the sentencing hearing was held immediately after conviction. The convict stated that he did not shoot the deceased intentionally.

Following submissions made by all sides, the trial court in passing sentence took into consideration the appellant's plea of guilt and stated that he looked remorseful. That he was a young man who had been entrusted with a gun. Nevertheless, he acted in anger and took a life in a situation where he was not shown to be in mortal danger. The trial court thereafter sentenced him to a term of 8 years in prison after taking the period spent on remand into consideration.

In *Livingstone Kakooza v Uganda S.C.C.A No. 17 of 1993*, the Supreme Court held that:

An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if

the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration.

The trial court in this case clearly considered all factors in aggravation and mitigation before passing sentence. It specifically noted that the appellant had pleaded guilty and appeared remorseful. Clearly the complaints made by the appellant are dispelled by the evidence on record.

Additionally, in view of the circumstances, the sentence was neither harsh nor excessive. An appellate court will only interfere with the exercise of discretion by a trial court, in sentencing, where the above factors are present. They are absent in this matter.

In the result and for the reasons stated, this Appeal has no merit and is dismissed. The sentence and orders of the lower court are confirmed.



**Michael Elubu**

**Judge**

**28.08.2023**