

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.023 OF 2023**  
**ARISING FROM BUGANDA ROAD CRIMINAL CASE NO.0174 OF**  
**2023**  
**ETENGU JOSEPH-----APPELLANT**  
**VERSUS**  
**UGANDA-----RESPONDENT**  
**BEFORE HON: JUSTICE ISAAC MUWATA**  
**JUDGEMENT**

This is an appeal arising from the decision of Grade One magistrate Owomugisha Siena delivered on the 27<sup>th</sup> day of February 2023 wherein the appellant was convicted of the offence of theft on his own plea of guilty and sentenced to a term of imprisonment of 12 months

The appeal is premised mainly on two grounds namely;

- 1. That the learned trial magistrate erred in law and fact when she disregarded the mitigating factors and thereby arrived at an excessive sentence**
- 2. That the learned trial magistrate erred in law and fact when she sentenced the appellant to 1-year imprisonment which was excessive in the circumstances.**

The appellant prayed that the sentence be set aside and a fair and reasonable sentence be given

Selwanga Geoffrey appeared for the appellant while Ainebyona Happiness appeared for the respondent

I have considered the submissions made and the main issue for determination in this appeal is the sentence handed down to the appellant

**Ground one**

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.”**

The appellant contends that the trial magistrate while sentencing the appellant did not consider the mitigating factors raised by the appellant. The mitigating factors raised in the lower court were that the appellant pleaded guilty and did not waste courts time, secondly that the appellant is a family man with children to look after and lastly that the appellant prayed for leniency.

An appropriate sentence is a matter for the discretion of the sentencing Judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this Court will not normally interfere with the discretion of the trial Judge unless the sentence is illegal or unless Court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice: See: **Ogalo s/o Owousa vs. R (1954) 21 E.A.C.A. 270**

Before a convict can be sentenced, the trial court is obliged to exercise its discretion by considering meticulously all the mitigating factors and other pre-sentencing requirements as elucidated in the Constitution, statutes, Practice Directions together with general principles of sentencing as guided by case law. **See: Aharikundira v Uganda Supreme Court Criminal Appeal No. of 2015)**

In the instant case the learned trial magistrate noted that the appellant had pleaded guilty and not wasted courts time. On page 9 of the record, the learned trial magistrate also noted that the appellant was a family man and had prayed for leniency. She also considered that the maximum sentence under section 261 of the Penal Code Act but opted to impose a term of 12 years. She also considered the fact that the appellants action would have led to mob justice at the detriment of the accused

The appellant on the other had prayed for leniency and was willing to pay back the 25,000/=. The fact that the appellant was willing to pay back

the 25,000/= in my view was not considered. The appellant had no past criminal record but the prosecution noted that he was a habitual criminal. There was no evidence of the appellant being a habitual criminal.

Had the trial magistrate considered the fact that the appellant was will to pay back the 25,000/= and the fact that the appellant had been remorseful, she would not have imposed a sentence of 1 year on the appellant who had pleaded guilty to stealing stocks. She should have considered this mitigating factors in light of the circumstances of the case.

## **Ground two**

The appellant contends that the sentence of 1 year was harsh and excessive. As already observed above, an appropriate sentence is a matter for the discretion of the sentencing Judge. Each case presents its own facts upon which a judge exercises his discretion. The courts will be reluctant to interfere with such discretion if in its view the right principles were applied.

The maximum sentence for the offence of theft under section 261 of the Penal Code is 10 years' imprisonment. The appellant herein in light of all the mitigating factors was sentenced to 1-year imprisonment. A term of imprisonment of one year for a person guilty of stealing one dozens of socks valued at 25,000/=, coupled with the fact that he was willing to pay back the same is very harsh. By stating that he was willing to pay back the 25,000/= and not wasting courts time by pleading guilty, it meant that he was remorseful enough to accept his wrongs.

Accordingly, I allow the appeal and vary the sentence imposed by the learned trial magistrate from 1 year to 3 months in light of the mitigating factors. But since he has already served the three months, he should be released unless his being held on other lawful charges.

I so order.

**JUDGE**

**13/09/2023**