

*The* Hon Mr Justice J.W.N. Tsekooko

THE REPUBLIC OF UGANDA

*Cr. Appeal*

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 8 OF 1990  
(Original Crim. Case No. U540/90 of  
Buganda Road Court).

*Reduced  
sentence*

SIRAGI BUKENYA ..... APPELLANT

versus

UGANDA ..... RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE C.M. KATO

J U D G M E N T

This is an appeal against conviction and sentence by the Chief Magistrate sitting at Buganda Road Court. The appellant is a young man called Siragi Bukenya.

The brief facts of the case are that the appellant was on 15/5/90 charged before the Chief Magistrate with the offence of theft c/s. 252 of the Penal Code. He pleaded guilty to the charge and was sentenced to 15 months' imprisonment.

The learned counsel for the appellant Mr. Emesu gave some 4 grounds for his appeal but looking at the Memorandum of Appeal there are in fact 3 grounds of appeal. The first ground is that the appellant's plea did not amount to a plea of guilty to the offence of theft. The second ground is that the learned trial magistrate did not take into consideration the age of the accused before passing sentence on him. The third ground is that the sentence of 15 months' imprisonment was harsh and excessive.

Arguing the first ground of appeal Mr. Emesu submitted that the accused did not admit commission of the offence of theft. With due respect to the learned counsel I do not agree with him on this point. The facts as narrated in court clearly reveal that the offence of theft had been committed and when these facts were put to the

accused he agreed that they were correct. I therefore find nothing wrong with the plea as recorded by the trial court.

Regarding the second ground of appeal Mr. Emesu was of the view that the learned trial magistrate did not consider a number of facts which he ought to have considered before passing the sentence, on this point he relied on the case of: Uganda v Charles Eliba (1978) HCB 273, where this court listed facts which the court should take into account before passing any sentence.

On her part the learned State Attorney Miss Morine Owor argued that the learned trial magistrate had in fact considered lack of trust on the part of the accused and his age before he passed the sentence but Mr. Emesu further argued that the accused was younger than 18 years when he was sentenced.

While I agree with Mr. Emesu's submission that the learned trial magistrate did not take into account certain facts, I do not agree with him on the issue of age because in the court the appellant himself told the court that he was 19 years old and the charge sheet indicates that by the time of his arrest he was 18 years. The affidavit sworn by appellant's mother regarding his age is in my view something of an afterthought intended to save the appellant, as it was sworn after the filing of this appeal. The point raised on this issue, therefore, is not valid. As to the facts which the magistrate ought to have considered, I agree with the learned counsel that the court did not seriously address its mind to a number of points one of which is that this young man was a first offender and he had pleaded guilty to the offence thus saving the court's time, the court did not also seem to have considered the issue as to whether or not the property had been recovered. It is my view that if the learned trial magistrate had considered these points he possibly would have come to a different

decision regarding the sentence to be imposed. In the case of: Uganda v Latim s/o Latim (1978) HCB 324 the accused ~~was~~ charged with the offence of theft to which he had pleaded guilty and he was sentenced to 2 years' imprisonment. I consider that the sentence of 15 months' imprisonment which the lower court mated upon the appellant, was harsh and excessive that puts to an end the last 2 grounds of this appeal.

In these circumstances the conviction by the Chief Magistrate is upheld but the sentence of 15 months is set aside and a sentence of 4 months imprisonment is substituted thereto. The appeal to that extent is allowed.

*[Signature]*  
C.M. KATO

JUDGE.

13/8/90.

