

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA

CRIMINAL APPEAL NO.8 OF 1992

FROM ORIGINAL IGANGA NPT.262 OF 1992

MOHAMED MUKUNGU :::::::::::::::::::::APPELLANT

VERSUS

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

BEFORE: THE HON. MR. JUSTICE C.H. KATO

J U D G M E N T

This judgment is in respect of an appeal by the appellant Mohamed Mukungu, whom I shall hereinafter refer to as the appellant, against the sentence imposed upon him by the magistrate grade I sitting at Iganga magistrate's court.

At his trial the appellant was charged with two counts namely:-

Count 1, carrying passengers in unsafe manner contrary to sections 133(I) and 138(I) of the Traffic and Road Safety Act. Count 2 carrying passengers, in breach of conditions of a vehicle operator's licence contrary to section 113(I) of the Traffic and Road Safety Act. The appellant pleaded guilty to both counts. He was convicted and cautioned for count 1 but he was sentenced to 63 days in respect of count 2. He appealed against the sentence in count 2 only.

The learned counsel for the appellant Mr. Mutyabule gave 4 grounds which prompted the appellant to appeal. The 4 grounds are as follows:-

1. That the sentence of 63 days imprisonment without an option to pay fine was harsh and excessive.
2. That according to the circumstances of this case there was no reason for imposing a custodial sentence as the appellant readily pleaded guilty to the charges and had no previous record.

3. That the trial magistrate failed to give good reasons for imposing a custodial sentence without an option to pay fine.
4. That the sentence imposed by the trial magistrate occasioned miscarriage of justice.

Mr. Mutyabule the learned counsel for the appellant argued all the 4 grounds generally. I also propose to deal with them in the same way as he did. Looking at the first 3 grounds, one can correctly say that they are all complaining about the same thing which is that the learned trial magistrate should not have imposed a custodial sentence without first giving the appellant an option of paying fine. On this point Mr. Mutyabule argued that since the accused was a first offender who was aged 40 years and had pleaded guilty to the charge he ought to have been given a chance of paying fine instead of being sent to prison. The learned counsel pointed out that the reasons given by the learned trial magistrate to justify his imposition of a custodial sentence were not sound.

Mr. Wamasebu the learned counsel for the respondent, on his part supported the sentence of 63 days considering the fact that maximum sentence for the offence is 2 years.

Section 113(I) of the Traffic and Road Safety Act under which the appellant was sentenced gives the sentencing court 3 options: the first option is imposition of a fine of 5000/=, the second option is imposition of a maximum of 2 years imprisonment, the final and third option is to impose both the fine and imprisonment. In the instant case the learned trial magistrate exercised his discretion by choosing the second option. He gave quite a number of reasons why he made that choice, although some of the reasons relating to the conduct of the policemen on traffic duty appear to be more of an emotional nature on the part of the learned trial magistrate than rational. Be that as it may, I find most of his reasons quite convincing.

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I am satisfied that the learned trial magistrate exercised his discretion judiciously when he decided to imprison rather than fine the appellant. This finding disposes of grounds of appeal No.1,2 and 3.

Regarding the 4th ground of appeal, I have not been persuaded in any way that the sentence imposed upon the appellant has occasioned any miscarriage of justice. The reasons given by the learned trial magistrate suggest the contrary. It is not enough to state that a sentence has occasioned miscarriage of justice without more, there must be some proven facts showing or establishing the nature and degree of miscarriage. There were no such facts in the present case. The fourth ground of appeal cannot be sustained.

In all these circumstances I find no merit in this appeal, it is accordingly dismissed. The appellant is to serve the sentence of 63 days, which I consider not harsh or excessive, imposed upon him by the learned trial magistrate less the days he might have served before he was illegally released on bail after his conviction. So I order.

Before I take leave of this matter there is one important point upon which I feel I should make a comment. That point concerns appellant's release on bail by the learned chief magistrate after he (accused) had been convicted and sentenced by magistrate grade I. The release was purportedly carried out under the provisions of section 217 of the magistrates' Courts Act. The only court that can release a person on bail pending the hearing of his appeal under section 217 as amended by Act 4 of 1985 is the appellate court and nobody else. The chief magistrate has no appellate jurisdiction over matters decided by magistrate grade I. This case was handled by a magistrate grade I at Iganga court. The learned magistrate grade I at Iganga in his handwritten letter dated 15/6/92 addressed to the chief Magistrate when forwarding the file to her politely and in my view, correctly pointed out that the only court that had jurisdiction to deal with the matter

was the High court and he indirectly warned the learned chief magistrate against some advocates who were bent at misleading the court. In my view if that timely warning had been seriously considered by the learned chief magistrate possibly this unfortunate mistake of releasing the appellant illegally on bail after his conviction would have been avoided.

Since the learned chief magistrate had no jurisdiction to grant bail to the appellant pending the hearing of his appeal the whole exercise was a nullity. The illegal bail granted to the appellant is accordingly cancelled and if the appellant/accused paid any cash in respect of that bail his money is to be refunded to him forthwith.

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C.M. KATO

J U D G E

5-3-93

5-3-93 - Appellant present.

Mr. Mutyabule for the appellant.

Mr. Wamasebu for respondent.

Moses Baligeza court clerk.

Court:- Judgment is delivered, dated and signed.

C.M. KATO

J U D G E

5-3-93