HON JUSTICE TSEKOOKO.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL APPEAL NO.3 OF 1994

FROM ORIG.MJ NO.3 OF 1994 - IGANGA COURT

YAKUBU NABALA :::::::::::::::::::::::::::::::::::::ACCUSED/APPLICANT

VERSUS

UGANDA ::: PROSECUTOR

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

JUDGMENT

This is an appeal against the decision of the learned magistrate grade I sitting at Iganga court. The appellant Yakubu Nabala was charged before a magistrate grade one with the offence of being an accessory after the fact contrary to the provisions of section 378 of the Penal Code Act. He is purported to have pleaded guilty to the charge, he was convicted and sentenced to 6 months imprisonment or 100,000/= in default.

The appellant appealed against both the conviction and sentence. By Provisions of section 216(3) of the M.C.A. as amended by Decree 17 of 1971 an accused person can only appeal against the extent or legality of the sentence where such an accused has pleaded guilty to the charge, which means the accused who has been convicted on his own plea of guilty is not supposed to appeal against the conviction. Here the law assumes that the plea of guilty was properly and legally recorded, but Iam doubtful if the law intended to prevent an accused from complaining where his plea of guilty has been obtained illegally. It would seem the legislature had in mind the provisions of section 341(5) of criminal Procedure Act as amended by Act 23 of 1969 which provides that any person who feels aggrieved by any finding of magistrate's court may petition the High court for revision. Since the first ground of this appeal is basically complaining against the manner in which the plea was taken and the conviction based upon that plea, this court would be failing in its duty if it kept a blind eye to the obvious illegal manner in which the appellant's plea was recorded.

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According to the records of the learned trial magistrate the accused(appellant) simply said;"I have understood the charge. It is true." These words did not amount to a plea of guilty as they did not comply with the rules laid down in the case of: Adan v Republic /1973/ EA 445 and the provisions of section 122(2) of M.C.A. Since his words did not amount to a plea of guilty within the meaning of section 122(2) of M.C.A. there was no plea of guilty and the appellant cannot be said to have been caught up by the provisions of section 216(3) of M.C.A. which tends to limit those who plead guilty only to appealing against sentence but not conviction. In my view the appellant acted within the ambit of the law when he decided to appeal against a conviction which had been based on a non existent plea of guilty although he could as well have utilised the provisions of section 341(5) of the criminal procedure Act.

Having found that the alleged plea of guilty was not properly entered and in full agreement with the views expressed by both counsel who appeared before me in this appeal, I find that the first ground of this appeal must succeed.

As regards to the second and last ground of appeal, it is being said that the learned trial magistrate passed a sentence which was harsh and excessive. Considering the fact that the accused was a first offender, he had purportedly pleaded guilty, he was a young man of 20 years of age and the offence he had committed was an ordinary misdemeanour, I take a sentence of 6 months imprisonment which was meted upon the accused to he harsh and out of proportion to all the circumstances of the case. The sentence was not only harsh and excessive but was quite illegal. The accused was sentenced to imprisonment and in default of his going to prison he had to pay a fine of 100,000/=, this kind of expressing the sentence was contrary to sentecing policy in this country whereby an accused is fined and in default of paying the fine he goes to prison for a stated period:

Uganda v Charles Olet and another /1991/ HCB 13 at page 14 and section 192 of M.C.A. An accused person should not be given an option of going to prison first and then be asked to pay fine if he did not wish to go to prison. The second ground of appeal was well taken and it is according upheld.

In all these circumstances the appeal is allowed, the conviction is quashed and the sentence imposed by the court below is set aside. The accused who has already served part of his illegal sentence is to be set free unless he is being kept in prison for some other lawful purposes. So be it done.

C.M. KATO
J U D G E
25/2/94

25/2/94 Appellant present.
Wamasebu for respondent.
Okalang for appellant absent
Baligeya court clerk.

Appellant: I do not mind the judgment being delivered in the absence of my counsel.

Court: Judgment is delivered.

C.M. KATO
J U D G E
25/2/94