

Hon. Justice Tsekoko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL APPEAL NO.13 OF 1992

FROM CRIMINAL CASE NO. MJ 922 OF 1992(JINJA)

SELIMU KALADINI ::APPELLANT

V E R S U S

UGANDA ::RESPONDENT

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

J U D G M E N T

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This is an appeal by the appellant Selimu Kaladini against a sentence of 2 years imprisonment imposed upon him by the chief magistrate of Jinja.

The accused was charged with the offence of obtaining money by false pretences contrary to the provisions of section 289 of the Penal Code Act. He pleaded guilty to the charge and he was sentenced to 2 years imprisonment. He appealed against the sentence only.

The appellant through his counsel gave only one ground of appeal which is that the sentence of 2 years is excessive. Mr. Tuyiringire who appeared for the appellant argued that the sentence of two years was harsh and excessive considering the fact that the appellant is only aged 18 years, he is a first offender, he pleaded guilty to the offence and that the amount involved was only 20,000/=. Mr. Tuyiringire also wondered as to why the appellant plea for lincency was never considered. He suggested a sentence that would enable the accused to be released immediately.

Mr. Wamasebu who appeared for the respondent on his part did not support the sentence and he felt that a sentence of 6 months would have been appropriate.

...../2.

Section 289 of the Penal Code Act under which the accused was charged, convicted and sentenced to 2 years imprisonment carries a maximum of 5 years imprisonment. With due respect I agree with both counsel when they maintain that a sentence of 2 years was harsh and excessive. The appellant pleaded guilty to the offence thus saving court time, he was a first offender, he was a young man aged 18 years and the amount involved was not so much (according to the charge sheet the amount was 20,000/= but according to the facts as narrated in court it was 25,000/= it is not easy to tell which was the real amount, but whatever it was it is not much considering the value of our shilling,) All these facts do indicate that the appellant deserved a certain degree of leniency, which leniency he did not get. No reason was given for the imposition of the sentence, although section 134(5) of M.C.A. requires the court to give reasons for imposition of such a sentence.

As I have already pointed out elsewhere in this judgment I consider a sentence of 2 years quite harsh and excessive, it cannot be sustained. In coming to this decision I have found the two cases of: Uganda V Boniface Sebyambe (1977) HCB 288 and Uganda V Ali Katumba (1975) HCB 117 cited by Mr. Tuyiringire in this case, very helpful.

In these circumstances the appeal is allowed and the sentence of 2 years imprisonment is set aside in its place a sentence of 6 (six) months is substituted. So I order.

  
C.M. KATO

J U D G E

15/3/93.

15/3/93 - Later at 12.15 P.M.

Court: Court is as before except that Andrew Wangoola is holding brief for Mr. Tuyiringire who is said to have left for Kampala for court work.

Judgment is delivered.

C.M. KATO

J U D G E

15/3/93.