IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CN 33/2015

Appeal from Magistrates Court decision 524/2014

[2016] SCSC

JUDE JULIE

Appellant

versus

THE REPUBLIC

Heard: 8 June 2016

Counsel: Mr Lucas for appellant

Ms Rongmei, Assistant Principal State Counselfor the Republic

Delivered: 8 June 2016

JUDGMENT

Akiiki-Kiiza J

[1] The Appellant was charged with 2 counts in the lower Court. The first count was house breaking Contra Section 289 of the Penal Code and the second count was of stealing Contra Section 260 of the same code. He pleaded guilty and was convicted on both counts. He was also sentenced to a term of 4 years of imprisonment on the first count and 3 years of imprisonment on the second count. Both Sentences was ordered to run concurrently.

[2] He was however not satisfied with these Sentences hence this Appeal. The Appellant raised the following grounds in his Memorandum of Appeal;

1) That the Sentences passed were wrong in law and principle.

2) That the learned Magistrate erred in principle in that he failed to give due weight to the mitigating factors raised in favour of the Appellant and take into account matters which should have been taken with consideration when Sentencing the Appellant.

3) That the learned Magistrate erred in that he took into account matters which he should not have done when sentencing the Appellant.

4) That in all circumstances of the case, the Sentences were harsh and manifestly excessive.

[3] At the Hearing of the Appeal, Mr Lucas appeared for the Appellant and Ms Rongmei represented the Respondent/Attorney General. The main contention of the Appellant is that the learned trial Magistrate did not consider properly the mitigating factors and that he should not have proceeded to accept the plea of guilty in absence of the Appellant's counsel which deprived him of the services of legal counsel while mitigating. This last point in my considered view was raised as an afterthought as it was not specifically raised in the Memorandum of the Appeal, but was raised orally at the Hearing by Mr Lucas the learned counsel for the Appellant.

[4] Be it as it may, Ms Rongmei the learned counsel for the Respondent opposed the appeal and submitted to the effect that the minimum Sentence of the offence of house breaking was 8 years imprisonment, but that the learned trial Magistrate used his discretion and imposed only 4 years imprisonment, despite the absence of the Counsel for the Appellant, which meant that he had taken into account the mitigating factors in favour of the Appellant. She prays for the dismissal of the Appeal.

[5] The lower Court record shows the following during Sentencing:

"(6) In deciding the appropriate Sentence that will do justice in this case, I have taken into account that the convict has pleaded guilty avoiding wasting Court's precious time and resources, and his past criminal record. I have also taken into account the principle of proportionality in Sentencing given that most of the items

stolen were retrieved and returned back to the rightful owner. I have also taken judicial notice that the convict is being sentenced before this Court in two separate cases in both of which the custodial sentences are being imposed.

(7) Having taken all these matters into account, I find it just to depart from the minimum mandatory Sentence for the two offences of which this convict has been convicted in reliance on the Court of Appeal case of <u>Frederick Ponoo vs The Attorney General</u>". The learned trial Magistrate thereafter sentenced the Appellant to 4 years on the First Count and 3 years on the Second Count, which he ordered to run concurrently – which he meant that the Appellant would eventually serve a total of 4 years imprisonment.

[6] Given the circumstances of this case, I don't see any valid ground to faulter the learned trial Magistrate. He gave reasons for the Sentence he imposed on the Appellant. He took into account the Appellant's mitigating factors, and he reduced the mandatory minimum Sentence. In the first count to 4 years, from 8 years and on the second count to 3 years. He also (rightly in my view) ordered them to run concurrently. It is therefore my considered view that although the Appellant did not have his lawyer at the time of plea, which should have been the case, this did not however, affect him adversely as the learned Magistrate had taken into account the mitigating factors, some of which were not even raised by the Appellant in his mitigation. In the circumstances, I do not think he was disadvantaged in any way by the absence of his counsel. In any case, he never applied for an adjournment to have been present.

[7] All in all, I find no merit in the Appeal and I dismiss it accordingly. I confirm the orders made by the learned trial Magistrate.

[8] Order accordingly.

Signed, dated and delivered at Ile du Port on

D Akiiki-Kiiza
Judge of the Supreme Court