

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 24-25/2016**

**Appeal from Magistrates Court decision 194/2014**

[2016] SCSC

787

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**CHRISTOPHER JOUBERT**  
Appellant

versus

**THE REPUBLIC**

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Heard: 15<sup>th</sup> September 2016  
Counsel: Mr. J. Camille for appellant  
Mr. A. Asba, Principal State Counsel for the Republic  
Delivered: 22<sup>nd</sup> September 2016

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**JUDGMENT**

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**Akiiki-Kiiza J**

- [1] The appellant was charged with stealing *Contra Section 260 of the Penal Code* in 2 different files before the Magistrate Court. There were MC 194 and MC 196. He was convicted in both upon his own plea of guilty and sentences to 10 years imprisonment in each file, it being the mandatory minimum sentence as he had previously been sentenced to a term of 5 years imprisonment in a case of similar nature. This was done under *Section 27(i) a (ii) of Penal Code as amended by Act 5/12*. Both files were consolidated on appeal and were heard as one.

[2] His memorandum of appeal is in the following terms:-

1) *"That the learned Magistrate erred in law for having failed to record on the face of the record in the matter the explanation given by the appellant in mitigation for his sentence or an accused of account of appellant having given.*

2) *That the learned Magistrate erred in law and failed to take into consideration as a factor which ought to have been taken into consideration the mitigation factors on the face of the record. "*

[3] To me, both grounds for all intents and purposes mean the same thing, in that, the appellant's sentence was harsh and excessive and contrary to law, as it is alleged that the learned trial Magistrate never took into account the plea of guilty, and the mitigating factors and the proportionality principle of sentences while passing the 2 sentences.

[4] Mr. Camille appeared for the appellant and Mr. Asba represented the Respondent, during the hearing of the appeal.

[5] The learned trial Magistrate started as follows while passing the sentences:-

*" The convict is sentenced to serve the mandatory sentence of 10 years for forgery, having been convicted within 5 years from his last conviction for similar offense in accordance with Section 27 A (ii) of the Penal Code as amended by Act 5/12"*

This was in file MC 19414 (now CN 24/16).

[6] In file MC 196 (CN 25/16) the learned trial Magistrate stated as follows:-

*"Court: This is the sentence of the Court. The convict is sentenced to serve the minimum mandatory sentence of 10 years in prison having been convicted for the same offence within a period of 5 years from his last conviction in accordance with Section 237 A (ii) of Penal Code as amended by Act 5/12, to run consecutive to the his sentence in case number 195/2012"*

[7] It means that, the appellant has to serve a total of 20 years imprisonment for the 2 files. Since the case of **FREDERICK PONOVO VS THE REP SCA 38/2010** it is the law that, the Court's have a discretion to impose suitable sentences on an accused person in accordance with his personal attributes as an individual despite the mandatory nature of the legislation. The Courts therefore are not blindly bound by the mandatory nature of the legislation.

[8] The appellant pleaded guilty to the charges in both files. This goes in his favour as it tends to indicate repentance and remorse on his part. The property stolen amounted to about SR 12, 600 in total for both files. Both cases came before the same Magistrate on the same day. The appellant in his mitigation apologised to the complainant. He said he had a family and that his wife had a problem. These mitigating factors should have been expressly considered by the learned trial Magistrate and should have stated so in his ruling on sentence. (see **NIGEL ADONIS VS THE REPUBLIC [2014] SCSC 424.**)

[9] On the other hand the Courts must take into account the principle of totality and proportionality of sentences.

The sentence passed must be such as to show that there was fairness on the part of the Court. *Article 19 (i) of the Constitution* guarantees fairness while hearing case. This also includes passing a just sentence as well. (See **LENCLUME VS THE REP SCA NO 32/13.**) Had the learned trial Magistrate considered all the above possibilities, I have no doubt he should have imposed different sentences.

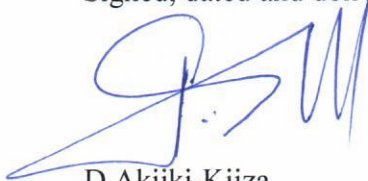
[10] In the premises therefore, the appeal succeeds and I make the following orders;

- a) The sentence of 10 years in both case CN24/16 and CN 25/16 is quashed and set aside.
- b) A sentence of 5 years imprisonment is substituted in each file.
- c) The order making the sentences run consecutive is also quashed and is substituted with an order of running concurrently.

A copy of this judgment should be put in both file CN 29/16 and CN 25/16.

Order Accordingly

Signed, dated and delivered at Ile du Port on, 22<sup>nd</sup> September 2016



D Akiiki-Kiiza  
**Judge of the Supreme Court**