

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBALE

CRIMINAL APPEAL NO. 246 OF 2015

ABURA BEN WATSON:.....APPELLANT

VERSUS

10 UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Soroti before Justice H. Wolayo dated 25th June, 2015 in High Court Criminal Appeal No.016 of 2016)

CORAM: HON. MR. JUSTICE F.M.S EGONDA-NTENDE, JA

15 HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA

JUDGMENT OF COURT

This is a second appeal from the decision of the High Court sitting at Soroti in Criminal Appeal No.016 of 2016 delivered in June, 2015 by H. Wolayo, J in which
20 the appellant was convicted of criminal trespass contrary to section 302(a) of the Penal Code Act.

Briefly the facts as accepted by the trial court are that the appellant was charged with the offences of criminal trespass contrary to section 302(a) of the Penal Code Act, malicious damage to property contrary to section 335(1) of the Penal Code

5 Act and removal of boundary marks contrary to section 338 of the Penal Code Act.

During the trial, the appellant and the complainant, Akot Mary Grace entered into a reconciliation agreement which was filed in Court and based on the reconciliation agreement, the Magistrate Grade 1 found the appellant guilty of
10 malicious damage to property and removal of boundary marks but discharged him of criminal trespass.

The appellant appealed to the High Court to set aside the judgment of the lower Court but was not successful. The conviction on criminal trespass contrary to section 302(a) of the Penal Code Act was maintained and he appealed to this
15 Court on grounds that;

1. *The learned appellate Judge erred in law when she reversed the discharge of the appellant on the count of criminal trespass and held that the reconciliation agreement was a nullity.*
2. *The learned appellate Judge erred in law when she convicted the
20 appellant of the offence of criminal trespass c/ s 302(a) of the Penal Code Act.*

At the hearing of the appeal, Mr. Tony Okweny appeared for the appellant while the respondent was represented by Ms. Nyanzi Gladys Maclean, Assistant DPP. Counsel prayed that this Court adopts their written submissions which was
25 granted.

5 Counsel for the appellant submitted that this appeal is against the conviction of the appellant on the offence of criminal trespass. That the learned appellate Judge found that the reconciliation agreement was null yet the parties had entered into it freely. According to counsel, reconciliation has taken on special significance in criminal law as a means of conflict resolution. It acknowledges that that the hearts and minds of the parties have reached an agreement on a particular subject and aims at putting the past behind and creating amicable future relationship. He relied on Article 126(2) (d) of the Constitution for the proposition that in adjudicating cases of both civil and criminal nature, the Courts shall ensure reconciliation between parties.

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15 Counsel further submitted that on the 12th of September, 2013, there was a reconciliation meeting at the respondent's home which was attended by the Chairman, the Secretary and members from both the appellant's side and the complainant. In the said meeting, the parties agreed that the criminal case against the appellant be withdrawn and the ownership of the disputed land on plot M1 should be vested in the complainant. Counsel relied on section 160 of the Magistrates Courts Act which provides that in criminal cases the Magistrate's Court may promote and facilitate the settlement in any amicable way in proceedings for assault or for any offence of the person or private nature not amounting to a felony and the Court may order that the proceedings be stayed.

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25 According to counsel, the offence of Criminal trespass is an offence of a private nature not amounting to a felony.

5 Counsel further submitted that the appellant and the complainant had amicably agreed to the terms of the agreement thus making it valid and binding. He added that the complainant received the sum of UGX 3,000,000/= as compensation in respect of the criminal case and the property in dispute is now vested in her. According to counsel, the appellant did not renege on his withdraw of any claim
10 over the disputed property which he made during the reconciliation meeting.

Counsel for the appellant submitted that the evidence of the appellant regarding his non-participation in the trespass was not challenged during cross-examination and the ingredient of intention to intimidate or annoy was not proved by the prosecution. That the defence of claim of right they presented was
15 not negated by the prosecution. Counsel further submitted that the conviction of the appellant was not lawful because the ingredients of the offence of criminal trespass were not proved beyond reasonable doubt by the prosecution. That the evidence was riddled with contradictions and inconsistencies which did not favor the appellant. He therefore prayed that the appeal be allowed and the conviction
20 of criminal trespass be set aside.

For the it was submitted that on the 14th of September, 2013, the complainant, Akot Mary Grace and the appellant entered into a reconciliation agreement but on the 23rd of September, 2013 the complainant withdrew from it and stated that she did not wish to resolve the matter outside Court. That the complainant
25 having withdrawn from the reconciliation agreement by letter which was received it Court on 30th September, 2013, it was wrong for the trial Magistrate to hold

5 that the reconciliation agreement was still valid yet the complainant had withdrawn from it.

Counsel submitted that the offence of criminal trespass has four ingredients to wit; entry into a property, property is in possession of another, with an intention to commit an offence and the participation of the accused. He added that
10 although the appellant alleged a claim of right under Section 7 of the Penal Code Act, he had no claim of right because the land in issue belonged to the complainant, Akot Mary Grace neighboring that of Acheng Getrude, a sister to the appellant.

Counsel for the appellant in rejoinder submitted that the appellant and the
15 complainant entered into a reconciliation agreement with the guidance of one Ochom Jonathan, a Legal Officer with Uganda Land Alliance. That settlement was entered following rule 6(4) of the Judicature (Reconciliation) Rules, 2011. That the rules do not provide for any procedure for setting aside the agreement or the grounds which a party may rely on to set aside the agreement but once a
20 reconciliation agreement has been signed, it binds the parties to it. He invited Court to hold that the reconciliation agreement was valid.

Counsel referred to the provisions of section 7 of the Penal Code Act which provide that a person is not criminally responsible for an offence relating to property if the act was done in exercise of an honest claim of right and without
25 intention to defraud. That the disputed property belonged to the late Acheng Getrude, a biological sister to the appellant and in counsel's view, this gave the

5 appellant a claim of right as a beneficiary to the estate with an interest in it. Counsel prayed that the conviction of the appellant of the offence of criminal trespass be set aside.

This is a second appeal and this Court is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those
10 findings. Court can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law. **See Kifamunte Henry V Uganda, Criminal Appeal No.10 of 1997.**

The learned appellate Judge is faulted for reversing the discharge of the appellant on the offence of criminal trespass and for holding that the reconciliation
15 agreement was a nullity.

It was the case for the appellant that the Judge erred in finding that the reconciliation agreement was null yet the parties had entered into it freely. He stated that the parties agreed that the criminal case against the appellant be
20 withdrawn and the ownership of the disputed land on plot M1 be vested in the complainant. Counsel based his arguments on section 160 of the Magistrates Courts Act.

The Judicature (Reconciliation) Rules, 2011 define reconciliation as the bringing of two parties into harmony who would have otherwise been unable to settle their differences. Further the **Black's Law Dictionary, 8th Edition** defines
25 reconciliation to mean restoration of harmony between persons or things that had been in conflict.

5 By the provisions of rule 2 of the Judicature (Reconciliation) Rules, 2011, the rules apply to reconciliation under section 160 of the Magistrates Courts Act and offences contrary to the provisions of Penal Code Act specified in the schedule to these rules where the offences are listed and criminal trespass is listed thereunder.

10 Section 160 of the Magistrates Courts Act provides that;

"In criminal cases, a magistrate's Court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature, not amounting to felony and not aggravated in degree, in terms of payment of compensation or other terms approved by the Court, and may, thereupon, order the proceedings to be stayed."

The learned appellate Judge held that under section 160 of the MCA, Magistrates Courts are mandated to promote reconciliation. The practice is the parties in open Court verbally communicate to the trial magistrate their desire to reconcile.

20 That in this case this did not happen. Instead, defense counsel relied on an agreement reached outside Court that was repudiated by prosecution and the complainant. That there was no reconciliation in law and the trial was to proceed but instead, the trial magistrate recorded that parties had reconciled on count one. This entry was a nullity and is of no effect.

25 Rule 8 of the Judicature (Reconciliation) Rules, 2011 provides that reconciliation under these Rules shall be conducted by a Magistrate, a Bar Course Student or

5 any other person appointed by the Court. A bar Course Student being a student enrolled at the Law Development Centre, Kampala or any other post graduate institution accredited by the Law Council for a post graduate course in legal practice.

10 Rule 5 of the said rules provide for the appointment of a reconciliator who may be appointed by a Magistrate, if both parties agree to the person appointed or the Magistrate may preside over the proceedings personally or any person appointed in accordance with sub rule (1).

15 Counsel for the appellant submitted that in September, 2013, there was a reconciliation meeting at the claimant's home which was attended by the Chairman, the Secretary and members from both the appellant's side, the complainant and with the guidance of one Ochom Jonathan, a Legal Officer with Uganda Land Alliance.

20 We have looked at the reconciliation agreement dated 14th September, 2013. It was witnessed by Akot Mary Grace, the complainant, signed by Alir Charles and Abura Ben Watson, the appellant and in the presence of Oscar Okech Kanyangareng, Chairperson of the meeting and Kelli Emmanuel Lobedi as Secretary. The attendance list indicates that Ochom Jonathan was in attendance however, there is no evidence that the said Chairperson and Ochom Jonathan, the Legal Officer with Uganda Land Alliance were ever appointed by Court
5 because had it been the case, the trial Magistrate would have noted it in his judgment.

5 We therefore agree with the learned appellate Judge that if parties intend to
reconcile, the practice is that they communicate to the trial magistrate their
desire to do so. Rule 7 of the Judicature (Reconciliation) Rules, 2011 provides
that any party requesting for reconciliation may make an oral or written
application to the magistrate stating his or her intention to reconcile with the
10 other party and propose the name and address of the reconciliator. In the instant
case, this did not happen.

The learned appellate Judge further held that defense counsel relied on an
agreement reached outside Court that was repudiated by the complainant and
as such, there was therefore no reconciliation in law and the trial had to proceed.

15 We have looked at a letter dated 30th September, 2013 in which the complainant,
Akot Mary Grace withdrew her consent from the said reconciliation agreement.
The reason for the withdrawal is that at the time of signing she was ill and she
signed under pressure. She further stated that the reconciliation meeting failed
to resolve a number of issues and therefore wished that the law takes course.

20 Rule 9(3) of the Judicature (Reconciliation) Rules, provides that where the
reconciliation fails, the reconciliator shall refer the matter to the Magistrate to
continue with the trial.

We therefore find that the reconciliation agreement was a nullity because it was
not executed legally.

25 Ground 1 of the appeal fails.

5 On the second ground of the appeal, the learned appellate Judge is faulted for convicting the appellant of the offence of criminal trespass contrary to section 302 (a) of the Penal Code Act. The section provides that;

"Any person who-

10 *(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person; or*

(b) having lawfully entered into or upon such property remains there with intent thereby to intimidate, insult or annoy any person or with intent to commit any offence,

15 *Commits the misdemeanor termed criminal trespass and is liable to imprisonment for one year."*

The learned appellate Judge held that she had found from re-evaluation of the evidence that A4 directed the covering of a foundation that had been dug up by the complainant. That the said foundation was on her side of the land. He 20 directed several witnesses including PW5, Lyotang and PW6 Lolee to cover the foundation. That this upset the complainant Akot Mary who reported to police. That the ingredients of criminal trespass were therefore satisfied.

Counsel for the appellant submitted that the evidence of the appellant in regard to his non-participation was not challenged during cross-examination and the 25 ingredient of intention to intimidate or annoy was not proved by the prosecution.

5 PW1, Akot Mary Grace, the complainant testified that she knew all the three
accused persons and she met one Omara Foz Faustino who told her that there
was a short black woman covering her foundation. On reaching the site she
found Acuku Deborah (A1) and at that time she was the only one she saw. That
she rang the OC/CID who directed her to go to the Police Station and before she
10 could go to the Police Station, some of the workers told her there were many
people on the site and on looking she saw people helping to cover the foundation
under the order and supervision of Alir Charles, Alany Grace, Acuku and former
OC/CID Aburu Ben Watson, the appellant.

The above evidence was corroborated by the evidence of PW3, Obonyo Jimmy
15 Francis who testified that on reaching the site, he found A1 closing the
foundation using spades in the presence of Abura Ben Watson, Alany Grace and
Alir Charles who were supervising the closing of the foundation. Further PW5,
Lotyang Patrick and PW7, Lolee Lochan, testified that they were instructed by
former O/C Aburu Ben Watson and the other 3 accused persons to cover the
20 foundation using spades and a hoe and after covering it, they were each paid
3,000/= by Aburu Ben Watson.

We find that the above evidence implicated the appellant, Abura Ben Watson and
his participation was proved to the satisfaction of Court.

It was submitted for the appellant that the conviction of the appellant was not
25 based on law because the ingredients of the offence of criminal trespass were not
proved beyond reasonable doubt by the prosecution.

5 Counsel for the appellant further submitted that the evidence was riddled with contradictions and inconsistencies which did not favor the appellant.

The learned appellate Judge further stated that;

10 *“What I gather from this evidence is that the markstone was likely affected by the digging of the foundation. There is a contradiction between evidence of Obonyo Christine, PW4 that suggests the markstone was affected by the digging of the foundation, and that of PW5, Lyotang Patrick, that Abura removed the markstone and destroyed it.*

15 *While it is possible that A5 destroyed this markstone, it was with the intention to annoy, a key ingredient of criminal trespass given the circumstances of this case where there was a disagreement over the extent of Akot's land and Gertrude's land, the latter being a sister to Abura.”*

It is clear that the learned appellate Judge noted that the contradictions in the evidence of PW4, Obonyo Christine and that of PW5, Lyotang Patrick. We are therefore not persuaded by the submission of counsel for the appellant that the judge did not take into account the fact that there were contradictions and inconsistencies in the evidence.


25 The learned appellate Judge found and rightly so that the actions of the appellant were intended to annoy the complainant, PW1, Akot Mary Grace who reported the actions to Police. This established the ingredients of criminal trespass which were proved beyond reasonable doubt.

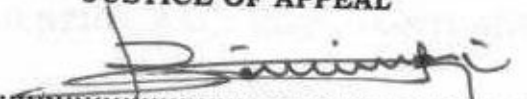
5 Ground 2 of the appeal fails.

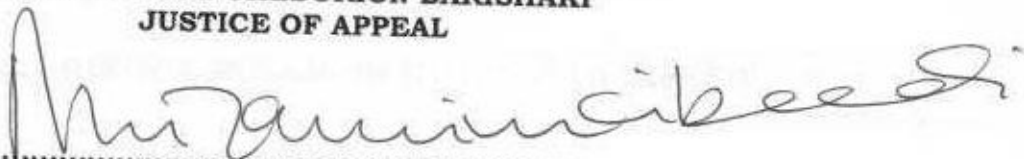
In conclusion, we find that the evidence on record proved beyond reasonable doubt that the appellant committed the offence of criminal trespass. We find no merit in the appeal, dismiss it and uphold the conviction and sentence by the lower Court.

10 **We so order**

Dated at Mbale this 15th day of September 2020.


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15 HON. MR. JUSTICE F.M.S EGONDA-NTENDE
JUSTICE OF APPEAL


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20 HON. JUSTICE CHEBORION BARISHAKI
JUSTICE OF APPEAL


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25 HON. JUSTICE MUZAMIRU MUTANGULA KIBEEDI
JUSTICE OF APPEAL

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