

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA**

*(Coram: Elizabeth Musoke, JA, Christopher Gashirabake, JA, Eva K.  
Luswata, JA)*

**CRIMINAL APPEAL NO. 0170 OF 2020**

**BETWEEN**

**UGANDA:: APPELLANT**

**AND**

**1. KAKWERERE JAMES**

**2. MWESIGYE EDWARD:: RESPONDENTS**

**(Appeal from the Judgment of the High Court sitting at Kampala in  
Criminal Appeal No. 06 of 2020 by Hon. Justice J.W. Kwesiga  
delivered on 25/08/2020)**

**JUDGMENT OF THE COURT**

**Introduction**

1] This is an appeal from the decision of the High Court of Uganda sitting at Nakawa in which the 1<sup>st</sup> Appellate Court quashed the conviction and set aside the sentence against the respondents. The respondents had been charged on two counts of stealing cattle contrary to Sections 254(1) and 264 of the Penal Code Act, and theft contrary to Section 254 (1) and 261 of the Penal Code Act (PCA). It

was stated in Count one, that the respondents and others still at large on 27/6/2017, stole 13 cows all valued at Ugx 17,550,000 in Lufura Industrial Area, the property of Kajuna Abel. In Count two, the respondents were charged with stealing Ugx 8,000,000 at the same place, the property of Kajuma Abel.

- 2] The respondents were tried and convicted. The trial Magistrate sentenced them to pay a fine of Ugx 1,000,000/= and in default, to serve an imprisonment term of six years, on Count I. On count II, the trial court convicted and sentenced the respondents to pay compensation to the complainant in the sum of Ugx 19,000,000/= (each of them to pay UGX 9,500,000/=). Ugx 2,000,000/= was to be deposited in Court to be paid to the complainant.
- 3] As far as we could discern from the record, the facts admitted at trial are that on the 27/06/2017, Kajuma Abel, the complainant brought to the Meat Packers (Luful/abattoir) in Kampala, cattle from Hoima for purposes of selling. However, after selling some cattle, the complainant was approached by the respondents who had no identification but informed him that they were the managers of the place. The 1<sup>st</sup> respondent introduced himself as the District Police Commander at Jinja Road while the 2<sup>nd</sup> respondent introduced himself as the District Veterinary Officer (DVO). The respondents informed the complainant that they had arrested him for the reason that he was selling stolen cows. They proceeded to confiscate the complainant's 13 heads of cattle and the money that he had so far received from the sale of ten heads of cattle amounting to Ugx 8,000,000/=. The complainant stated that he gave the respondents

Ugx 2,000,000/= while still in Meat Packers, and Ugx 6,000,000/= at the Total Petrol Station where they had driven him in a white Ipsum registration No. UAS 042C.

- 4] Kajuma then stated that he subsequently returned to Hoima to confirm from one Kayango John and Kikungwe Siraje whether they had sold to him stolen cattle. However, he was informed that the said cattle were not stolen as they belonged to one Kayangwe. Kajuma then returned to Meat Packers but did not find the cattle that he had left behind. He was then referred to the office of the Meat Packers where he was informed one by Magumba Paddy the chairperson, that he had been cheated. The chairperson then called for a meeting during which the respondents refunded Ugx 2 million, but denied ever receiving Ugx 6 million or retaining 13 heads of cattle. The matter was then forwarded to Jinja Road Police Station. The respondents were subsequently arrested and charged on two counts of stealing cattle and theft, for which they were convicted and sentenced as earlier stated.
- 5] The respondents being dissatisfied with the decision of the trial court, appealed to the High Court, which quashed the conviction and set aside the sentence. Being dissatisfied with the decision of the 1<sup>st</sup> appellate court, the State lodged an appeal to this Honourable court premised on three grounds set out in the amended memorandum of appeal as follows:
  - i. The learned Judge erred in law and fact when he ignored the prosecution evidence and relied on fanciful theories thereby arriving at a wrong conclusion.



- ii. The learned trial Judge erred in law and fact when he held that the prosecution had failed in its duty of proving the ingredients of theft beyond reasonable doubt, thereby arriving at a wrong conclusion.
- iii. The learned trial Judge erred in law and fact when he held that the prosecution had failed to prove the offence of stealing cattle beyond reasonable doubt thereby arriving at a wrong conclusion

### **Representation**

6] At the hearing of the appeal, the appellant was represented by Mr. Joseph Kyomuhendo a Chief State Attorney of the Office of the Director of Prosecutions (DPP), while the respondents were represented by Mr. F. X. Ogwado. Counsel for the parties applied and were allowed to adopt their written submissions which this court will consider to decide the appeal.

### **Ground one, two and three**

#### **Submissions for the appellant**

7] Counsel for the appellant argued all three grounds concurrently. He did so, through submissions that the prosecution did prove all the ingredients of the offences of stealing cattle and that of theft.

#### **Ingredient 1.**

8] Appellant's counsel began by drawing our attention to PW1's testimony that on 27/06/2017, he purchased 26 heads of cattle from Hoima and brought them to the Meat Packers for sale. He sold 10 of



them and remained with 13 heads of cattle and Ugx 8,000,000/= that had been realized from the sale of the animals. That the respondents challenged PW1 to prove ownership of the cows as he did not have a movement permit which prompted PW1 to return to Hoima to confront the persons who sold to him the cows. The vendors confirmed that the cows belonged to them. It was counsel's submission then that the cows that were stolen had value and it was for that reason that the complainant brought them to the market for sale. He contended that some of the cows had actually been sold by the time the remaining ones were stolen.

9] In conclusion, counsel submitted that the 13 cows and the Ugx 8,000,000 were valuable property.

#### **Ingredients 2, 3 and 4**

10] For the next part, appellant's counsel again referred to PW1's testimony on page 12 of the record that on 27/06/2017, as he went about his business of selling his cows, the 1<sup>st</sup> and 2<sup>nd</sup> respondents introduced themselves to him as DPC at Jinja Road Police station and the District Veterinary Officer, respectively. That both arrested him for the offence of selling stolen cows which they then confiscated and in addition demanded from him Ugx 2,000,000 as money for the ten cows that had been sold. He then requested one Sirage for Ugx 2,000,000/= which he handed over to the respondents. That the respondents then directed the complainant to join them in their car, Reg. No. UAS 042C (Toyota Ipsum White in Colour) which they drove to a Total Petrol Station, where the complainant handed over Ugx 6,000,000/= to the Respondents. It was at that point that PW1 returned to Hoima from where he had bought the cows to ascertain

their ownership and he was assured by the sellers, that they were the right owners of the cows. Upon his return, the complainant found his cows missing from the abattoir.

11] Counsel added that when the complainant lodged a complaint with the chairperson of the abattoir, he was informed that the respondents were not the DVO and DPC but traders who had cheated him. That testimony was corroborated by PW2 who testified that he knew the respondents as business men dealing in cattle, and that the complainant's cattle were never recovered. Appellant's counsel continued that the chairperson convened a meeting during which the respondents accepted receipt of Ugx 2,000,000/= but denied taking 13 cattle and Ugx 6,000,000/=. Counsel also drew our attention to the evidence of PW3 that the respondents refunded Ugx 2,000,000/= in the presence of the chairperson of the abattoir. That it was also PW3's evidence that the complainant brought 22 cows into the abattoir that were entered in a book, but in contrast, the 2<sup>nd</sup> respondent slaughtered 12 cows on the 27/06/2017, yet he did not bring any cows in as per the entry and slaughter book.

12] It was counsel's submission that the learned Judge failed to properly evaluate the above evidence by ignoring very crucial aspects of the prosecution case which could have changed the course of his reasoning. In particular, that the Judge did not take into account the uncontroverted evidence of PW2. In addition, counsel submitted that the respondents' version that the complainant sold his cows to them did not add up because they did not explain why they refunded Ugx 2,000,000 to the complainant, if he had no claim or right to the cattle. Counsel contended then that the only plausible explanation



is that the respondents refunded the money because they had stolen it from the complainant.

13] The appellant's counsel also considered the defence evidence as contradictory which pointed to false hoods that went to the root of their case. He for example pointed out that DW2 had testified at page 34 of the record that he found the complainant and Siraje Kikungwe selling cows but he had no mone, and for that reason, he called DW1. Further that DW3 contradicted DW2 when he testified that A2 bought a cow from the complainant. In regard to the theft of cattle, the appellant's counsel submitted that the complainant was consistent that the respondents confiscated his cows, which evidence was not challenged during cross examination. He continued that the complainant left the abattoir with his cows under the constructive possession of the respondents. However, that the learned Judge seemed to suggest that for them to be culpable, the respondents needed to have taken actual possession of the cows. It was counsel's submission that the respondents took over the cows under the guise of investigating the complainant for a case of theft.

14] In conclusion, the appellant's counsel prayed that this honourable court finds that all the ingredients of the offence of theft and stealing cattle were proved beyond reasonable doubt. He further prayed that the respondents' acquittal be set aside and the complainant be compensated for the loss he suffered.

### **Submissions for the Respondents**

#### **Ground one**



15] The respondents' counsel opposed the appeal. She cited the decision of **Areet versus Uganda, SC Criminal Appeal No. 20 Of 2005** where it was held that an appellate court is not expected to re-evaluate the evidence except where it is evident in the lower court the evidence was not evaluated or re-evaluated at all, or where the Court made manifestly wrong findings of fact. That save for claiming that the judgment of the High Court was based on fanciful theories, which were in fact not identified, nothing was shown that there was a manifestly wrong finding of fact. Counsel then prayed that ground one fails.

**Ground two.**

16] With regard to the second ground, the appellant's counsel relied on the decision of **Sekitoleko versus Uganda, (1967) EA 531** to argue that, throughout the trial, the burden of proof lies on the prosecution to prove their case beyond reasonable doubt. That the accused never has the duty to prove their innocence. Counsel then contended that the appellant's failure to prove its case is manifest in the failure to prove all the ingredients that constitute the offence of theft. In particular, that they failed to prove that the complainant was owed any money at all, and there was no corroboration to support the evidence that the complainant received from one Siraje and then paid Ugx 6,000,000/= to the respondents, since the said Siraji was never called as a prosecution witness.

17] Counsel continued that the facts of ownership of the money and its asportation by the respondents was not proved by the

complainant. Regarding the alleged 13 heads of cattle that were left in the abattoir by the complainant, it was on page ten of the record shown that both the complainant and respondents interacted outside the abattoir while the cattle remained inside the abattoir. Counsel argued that that evidence was supported by the statement of PW2 at Page 13 of the record of proceedings, that once an animal was placed inside the abattoir, it is never moved out and in addition, that there was no evidence to show that the appellants slaughtered any animals.

18] In conclusion, counsel for the respondent submitted that the ingredients of theft of property, and that of asportation were not proved by the prosecution. He then prayed that this ground of appeal should fail as well.

### **Ground three**

19] In opposing this ground of appeal, the respondent's counsel referred to part of the complainant's evidence on page 12 of the record which he considered contradictory. In particular, that the complainant testified that he went to the abattoir with 26 heads of cattle, sold off ten, and 13 were stolen by the respondents, which was not mathematically possible. Counsel also referred to the evidence of PW3 on page 18 of the record, where he testified that another book for recording slaughter of animals was available and that the cows that were slaughtered belonged to Mwesigye for they were marked No. 6 MSG (12 Cows). Counsel contested the book that was brought to Court which he considered a forgery. Counsel then argued that the 2<sup>nd</sup> respondent admitted to slaughtering one cow and thus, even if the appellant's evidence that the 2<sup>nd</sup> respondent



slaughtered the missing 12 cows, was to be believed, there was no basis for convicting the 1<sup>st</sup> respondent.

20] In conclusion, counsel prayed that the third ground of appeal ought to fail as well, and that the appeal be dismissed.

### **Decision of court**

21] This is a second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction. Under Rule 32(2) of the Judicature (Court of Appeal Rules) Directions (hereinafter COA Rules), this Court has powers to appraise the inferences of fact drawn by the trial court, but have no jurisdiction to hear additional evidence. Further, we may not re-evaluate the evidence except in the clearest of cases where the Judge on appeal did not in a satisfactory manner, re-evaluate the evidence. Where he or she did, this Court may not interfere with the decision of the trial court<sup>1</sup>. Our mandate was thus restated by the Supreme Court decision in **Kifamunte Henry Vs Uganda Criminal Appeal No. 10 of 1997** that:

*“on a second appeal, the Court of Appeal is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those findings, though it may think it possible, or even probably, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law”.*

22] We shall keep the above principles in mind while resolving the grounds of appeal. We shall in addition consider the submissions of counsel, the record of appeal, the precedents and the law provided

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<sup>1</sup> Criminal Justice Bench Book 2017. 1<sup>st</sup> Ed at pages 283 and 284



by counsel. We are mindful of the fact that the first appellate Court disagreed with, and reversed the decision of the trial Court.

### **Ground 1**

23] The appellant claimed that the Judge ignored the prosecution evidence and instead relied on fanciful theories. Counsel omitted to enumerate those theories and how they led the trial Judge to reach a wrong conclusion. It appears counsel left it to this Court to determine the fanciful theories which is not our duty. The drafting of this ground is in fact made in contravention of Rule 66(2) of the COA Rules that requires an appellant to concisely point out the points of law or mixed law and fact, which are alleged to have been wrongly decided.

24] We find no merit in the first ground, and it accordingly fails.

### **Decision on grounds 2 & 3**

25] We find that grounds two and three though differently framed, amounted to the same thing. The appellant contests the decision by the High Court that the prosecution had failed in its duty of proving the ingredients of the offence of theft, and that of stealing cattle, beyond reasonable doubt. We shall therefore resolve the two grounds together.

26] We agree with appellant's counsel that the prosecution has the burden of proving the case against the accused, beyond reasonable doubt. That burden does not shift to the accused person for they can

only be convicted on the strength of the prosecution case, and not because of any weaknesses in the defence. See: **Ssekitoleko versus Uganda, [1967] EA 531**). At the trial, by offering a plea of not guilty, the respondents put into issue each and every essential ingredient of the offences with which they are charged. As such, the prosecution had the onerous duty to prove each of the ingredients of the two offences beyond reasonable doubt. Although proof beyond a reasonable doubt does not mean proof beyond a shadow of doubt, the standard is satisfied once all evidence suggesting the innocence of the accused, at its best, creates a mere fanciful possibility, but not any probability that the accused is innocent. For example see: **Miller v. Minister of Pensions [1947] 2 ALL ER 372**).

27] The offence of theft is created by Section 254(1) and 261 of the Penal Code Act. Section 254(1) provides as follows:

*“A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing”.*

It was therefore incumbent upon the prosecution to prove the following ingredients of theft:

- i. That at the material time, the complainant owned property that was capable of being stolen.
- ii. That the respondents had no claim of right to that property
- iii. That there was asportation of the property
- iv. That the respondents had a fraudulent intent to permanently deprive the owner of that property.
- v. That the respondents participated in commission of the theft.



See: **Kizito Ronald versus Uganda, HC Criminal Appeal No. 14 of 2008 [2008]UGHC7.**

28] Further, prosecution had a similar burden to prove that the same ingredients existed for the offence of stealing cows or cattle. Since the ingredients of the two offences are similar, we shall similarly resolve them together.

29] The property stolen in this case is alleged to be money worth Ugx 8,000,000/= and 13 heads of cattle. It was the testimony of PW1 that on 27/06/2017, he came with 26 heads of cattle from Hoima to the Meat Packers abattoir in Kampala where he met the respondents who confronted him and informed him that they were arresting him because he was selling stolen cows. PW1 further testified that the respondents confiscated the 13 heads of cattle that had not been sold and asked PW1 to give them the money that he had received from the sale of the other cows. That he handed over Ugx 2,000,000 to the respondents while still at Meat Packers, and Ugx 6,000,000 at a Total Petrol Station where the respondents had driven him in a white car registration No. UAS 042C Ipsum.

30] PW1's evidence was corroborated with the evidence of PW2 the chairman of the abattoir (Lufula). PW2 testified that PW1 lodged a complaint before his office and to resolve it, he summoned the respondents. Once before him, the respondents informed PW2 that they thought the cattle was stolen property. They admitted having received Ugx 2,000,000 from the complainant, but denied taking any cows or Ugx 6,000,000 from PW1. It was also the testimony of PW3 that when animals are brought to the abattoir, they are received by



the veterinary doctor, and the number of cows and the owner of the cows are recorded by..... PW3 testified further that PW1's cows making a total of 22 heads, were entered in the book of entry on 27/06/2007 under UAZ 530B.

31] The respondents denied ever stealing any cattle from the complainant. DW1 Kakwerere James testified that he negotiated to purchase cattle from PW1. However, that he changed his mind after PW1 requested that the cattle be slaughtered. At that point, the respondents requested for a refund of Ugx 2,000,000. In the same vein, DW2 Mwesigye Edward testified that they did not agree to the slaughter of the cows since they had no place to sell the meat, and they therefore rescinded the sale. DW3 supported that defence by testifying that he purchased four cows from the complainant and also saw the respondents purchase two cows from the complainant, but because the complainant wanted the cows to be slaughtered immediately, the respondents demanded for a refund.

32] There was no contest to the fact that heads of cattle and money would amount to valuable property that is capable of being stolen. The Complainant testified that he brought the cows to the abattoir for sale, and managed to sell some for Ugx 8,000,000 before being approached by the respondents. There was also no contest that both the cows and the proceeds of sale of some of the cows, were the property of the complainant. Before meeting the respondents, he had a right of claim to both properties which were at that material time in his possession. Thus the fact of the existence of valuable property owned by the complainant having been proved, the prosecution was

under duty to prove the fact of asportation without a claim of right, and intention to permanently deprive the complainant of that property, by the respondents.

33] For the second and third ingredients to be satisfied, there must be proof of unlawful taking of property capable of being stolen without legal justification by the accused person, and also an intention by the accused person, to permanently deprive the owner of certain valuable property. Prosecution relied on the evidence of PW1 who testified that

*"... they told me that they were confiscating the remaining cattle and for the sold one that I give them the money. They confiscated 13 heads of cattle. They demanded for the money sold from the 10 heads. It was Ugx 8,000,000 in total".*

He went on to explain how he first handed over to the respondents Ugx 2,000,000 and then the balance of Ugx 6,000,000 in a car at an unspecified Total Petrol Station.

34] The appellants denied those facts. DW1 testified that he did not pick any money from the complainant. Instead, he had paid Ugx 2,000,000 to the complainant for the purchase of an unspecified number of cows, but when the complainant insisted that the cows had to be slaughtered, DW1 objected and the complainant refunded the money to him. DW1 further testified that when a cow is brought for sale in the abattoir, marks of both the seller and the buyer are inserted and only then can that particular cow be okayed for slaughter after which it is registered in the book of slaughtered cows. That a fee of Ugx 15,000 is levied for slaughter of each cow. That after slaughter of animals, the cow hides and heads, are listed in the



names of the owner of the cows. DW1 further testified that on the material day, he did not slaughter any cows, and admitted that he heeded the summons of the LCI chairperson to attend a reconciliatory meeting at which he denied stealing 13 cows and Ugx 8,000,000 from the complainant. He countered that the Ugx 2,000,000 which he gave to the chairman of the abattoir, was the money which was refunded to him by the complainant after the sale of cows failed.

35] DW2 also denied stealing the complainant's cows. He repeated the reasons advanced for the failed sale and added that the complainant a UPDF soldier, who was not pleased with how the sale turned out, vowed to get even with the respondents. He added that the Meat Packers abattoir is a very organized place with a lot of security. That there are over five gates which are used from the time of entry, up to the time when the cows are slaughtered. He added that the cows brought into the abattoir are marked at the entrance, and the heads and hide of the slaughtered cows are kept aside and compared at the end of the day for transparency. Therefore, it was not possible for 13 heads of cattle to be stolen without being detected. He claimed the slaughter book showing that he had slaughtered 12 cows on the fateful date, was forged.

36] The respondents presented five other witnesses to support them. DW3 admitted that he observed the respondents buying two cows from the complainant. He admitted buying four cows from the same complainant and observed the complainant making the refund inside a kraal. DW4 who also claimed to have purchased three cows from the complainant. He added that he saw the respondents



requesting for a refund from the complainant for the reasons they gave. DW5 also claimed to have been present when the respondents purchased cows from the complainant for Shs. 1,000,000 each, and the fact that the respondents claimed for a refund. DW6 also admitted purchasing cows from the complainant and also mentioned other purchasers like Ntama, Elia and Kayizzi. He too supported the evidence that a refund of Ugx 2,000,000 was made by the complainant to the respondents. DW7 who claims to have purchased four cows from the complainant, was likewise aware of the refund made to the respondents.

37] In his judgment the trial Judge found that both counts were not proved. He considered at true, the evidence that once the cows enter the abattoir, they are put under its management and as such, it was not possible that the respondents interfered with the processes. He found further that there was no evidence that the respondents ever had custody of the cattle or that they took them outside the abattoir, or that the cows that the 2<sup>nd</sup> respondent sold, were the same cows that were claimed as stolen from the complainant.

38] In addition the Judge rejected the evidence with regard to theft of Ugx 8,000,000. He was not convinced that the complainant, a UPDF soldier who had traded regularly for four months at the abattoir, could be robbed by persons who were not strangers in the area, in the presence of five gates, without raising any resistance. He noted that although it was not in contention that Ugx 2,000,000 was exchanged between the contending parties, its purpose differed. Finally, he preferred the defence to find that the transaction between

the complainant and respondents was “a sale that did not go well”, and as such, the offence of theft and theft of cattle was not proved. We proceed therefore to confirm or disprove those findings in the first appeal.

39] As already pointed in the lower Courts, the prosecution was under a strict duty to prove all the ingredients of theft of cattle and theft of money, both being the property of the complainant. There is no doubt in our minds that both the cash and cows that the complainant claims were stolen, were goods capable of being stolen. It was not clear, how many cattle the complainant brought into the abattoir in the first place, but it was never contested that he owned them. The respondents admitted attempting to buy from him cattle and five of the defence witnesses admitted purchasing varying number of cattle from him. However, it remained in contention whether the Ugx 2,000,000 was part of the money he collected from those sales, and whether the respondents stole both the cash and cattle from him.

40] In the case of **Sula Kusiira versus Uganda, Criminal Appeal No. 20 of 1993**, the learned Justices of the Supreme court recognized asportation as an ingredient of the offence of theft and referred to **Halsbury’s Laws of England**<sup>2</sup>, for a statement which reads as follows:

*“....There must be what amounts in law to an asportation (that is carrying away) of the goods of the prosecutor without consent; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they*

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<sup>2</sup> 3<sup>rd</sup> Edition, Vol 10 Paragraph 1484



*are not entirely carried off the removal, however short the distance may be from one position to another upon the owner's premises is sufficient aspiration, and so is a removal one part of the owner's person to another. There must, however, be a complete detachment of the goods if attached. In cases where aspiration cannot be proved, but where the prisoner intended to steal and did some act in furtherance of that object, he may be convicted of attempting to steal. The offence of larceny is complete when the goods have been taken with a felonious intention, although the prisoner may have returned them and his possession continued for an instant only.*

41] PW1 in his evidence stated that he left his cows in the custody of the respondents. He was not clear on how and when he handed over the cows. He later testified that the same respondents drove him to an undisclosed Total petrol station where he in addition gave them Ugx 6,000,000. It was not explained how people who were at an address outside the abattoir could at the same time be in custody of cows that were left at the abattoir. Indeed, it should have been prudent for the complainant to return to the abattoir to check on his heads of cattle. Instead, he travelled to Hoima allegedly to check on the persons who sold the cattle to him. It was not shown that at any point, the respondents took custody of the cows and removed them from the abattoir. There was neither severance of the cows from their owner, nor proof that the respondents moved them from where the complainant had placed them in the abattoir.

42] There was other evidence to strengthen the above argument. Evidence was adduced mainly by the defence to explain the procedures followed at the abattoir from the time the cows are received, up to the time they are slaughtered. PW3 and the respondents explained and it was not contested that a records book

is maintained into which cows entering into the abattoir are registered in the seller's name, the number of cattle delivered, the registration number of the car in which they are delivered, and the number of cattle to be slaughtered. In addition, that there are five gates on the premises with security which would make it very hard for cows to be stolen or taken out of the abattoir undetected.

43] It would follow that if the respondents stole the 13 cows, any attempts of removing the cows from the abattoir would have been detected. No evidence was adduced by prosecution to show that the cattle had been taken out of the abattoir. Although PW3 adduced documentary evidence to show that A2 slaughtered 12 cows, he was not led to show that they were the same cows that belonged to, and were stolen from the complainant. With the strong evidence that the complainant's cattle would be marked, then it would not be possible for the 2<sup>nd</sup> respondent to sell them at the abattoir without raising any suspicion. In our view, the prosecution was clearly silent on the issue of ownership of those cows.

44] It is our finding then that the ingredient of theft of 13 heads of cattle, the property of the complainant by the respondents, was not proved beyond reasonable doubt. We find no fault with the decision of the learned Judge in appeal in that regard. Accordingly, the second ground fails.

45] In relation to the theft of money, it was still incumbent upon the prosecution to prove that the money belonged to the complainant, and was taken by the respondents with no claim of



right, or intention of its return. PW1 testified that the respondents stole his money to the tune of Ugx 8,000,000 that he handed over upon their demand at two different places. PW2 testified that the respondents admitted to have taken Ugx 2,000,000 which they then returned in the presence of PW2 and that of PW3. Conversely, DW1 testified that Ugx 2,000,000 which was returned to the complainant was money that the latter refunded to the respondents after they declined to continue with the purchase of the cattle. The learned Judge preferred what was offered in defence when he rejected the evidence that the respondents stole the complainant's money. In his view, the transaction between the parties was a sale that did not end well as there was proof of exchange of Ugx 2,000,000 between the complainants and the respondents, but the reasons for its exchange differed. We agree with that finding for the following reasons.

- 46] The fact that the complainant had by the time he encountered the respondents sold off some cows was not strongly contested. Several defence witnesses admitted to have purchased cows from the complainant and one Siraje. However, nothing was adduced by the prosecution to confirm that he had with him Ugx 2,000,000 from the sale of cattle at the material time he met the respondents. Further, no witness was called to corroborate his story that he handed over Ugx 2,000,000 to the respondents while still inside the abattoir. All other prosecution witnesses admitted to have come to learn of the theft as a result of the complaint lodged with PW2 after the incident. In the same vein, no witnesses supported the complainant's story that he handed over Ugx 6,000,000 to the same respondents at an undisclosed Total Fuel station. Siraje Kikungwe from whom he

claims to have received the Ugx 6,000,000 was never called to testify. Without proof that the respondents had taken that money from the complainant, it is not conceivable that the ingredient of asportation could be proved. Save for the complainant's testimony, there was no other evidence to support it.

47] In contrast, there was strong evidence supporting the respondent's defence. The first respondent explained that the reason the complainant required an expeditious slaughter of the purchased animals was because he did not have in his possession the proper documentation. This would tally with PW2 and PW3's evidence that although the complainant had no movement permit for his cattle, he was still permitted to bring them into the abattoir. Further DW3, 4, 6 and 7 who admitted purchasing cows from the complainant and Siraje, invariably stated that they were present when the respondents' attempts to purchase cattle from the complainant failed after the latter requested for their immediate slaughter. They also testified about the respondents' request for a refund of Ugx 2,000,000 which the complainant respected and handed back the money. Although PW2 claimed the respondents admitted having stolen and then refunded Ugx 2,000,000 to the complainant, PW3 appeared to contradict that testimony. He stated that after the respondents handed over Ugx 2,000,000, the parties failed to come to an amicable settlement, and for that reason, the matter was reported to police. That testimony connotes a situation of mediation but not handling a possible crime. It was thus correct for the Judge to believe the defence witnesses in contrast to the prosecution




witnesses who did not actually witness the facts of what he deemed a failed sale.


48] We also find the complainant's actions during the material time, as strange. Being a UPDF soldier at a high rank, it is inconceivable that he agreed without contest, to hand over money to total strangers who had not shown him any identification to confirm their stated identities. No other witnesses saw him get into a car and leave the abattoir. Also after handing over more money, it is strange that he did not immediately report the matter to the police or authorities of the abattoir but instead returned to Hoima to confirm the source of the cattle. We do agree with the learned Judge that in contrast, the actions of the respondents would not raise suspicion that they stole money and cattle from the complainant. When summoned by PW2 for a meeting to resolve the complaint, they showed no resistance and answered those summons and explained their side of the story. We are inclined to believe the respondents' testimony that the Ugx 2,000,000 mentioned by PW2 was money they readily handed over to him as an exhibit of the refund the complainant made after the botched sale. We would, as the trial Judge, not believe PW2's testimony that Ugx 2,000,000 was a refund by the respondents of part of what they had stolen from the complainant.

49] We therefore come to the conclusion as the High Court did that the prosecution failed in its duty to prove the ingredients of theft of money in the sum of Ugx 8,000,000 by the respondents as was alleged. Ground three accordingly fails as well.

50] We therefore find no merit in all three grounds, and consequently, this appeal fails.

Dated at Kampala this 16<sup>th</sup> day of May 2023

  
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**ELIZABETH MUSOKE**  
**JUSTICE OF APPEAL**

  
.....  
**CHRISTOPHER GASHIRABAKE**  
**JUSTICE OF APPEAL**

  
.....  
**EVA K. LUSWATA**  
**JUSTICE OF APPEAL**