

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL APPEAL NO. 12/99

(Arising out of Kabale Cr. Case No. 161/1998)

A1 AGABA A.)

A2 BAJA D.)

A3 KANYAMUNYU).....APPELLANTS

A4 KAMWEGYEMA)

AS KABIGUMIRA)

VERSUS

UGANDARESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

The appellants herein were charged before the Chief Magistrate's Court at Kabale with four counts namely malicious damage to property, contrary to section 315(1) of the Penal Code, store breaking, contrary to section 284 of the Penal Code, theft, contrary to sections 245(1) and 252 of the Penal Code and malicious damage to property, contrary to section 315(1) of the Penal Code. The Grade 1 Magistrate who convicted them made the following observations prior to conviction:

'It is evident from the above analysis that none of the accused can be directly implicated with commission of any of the above charges. What is on record and what can be proved against them is that they were participants in inciting into the commission of the said crimes either at planning level or even directly.

S. 143 of the Magistrates' Courts Act provides that when a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he was not charged with it.

In this instant case the accused persons conspired and incited the commission of the offence of malicious damage to property of Baryaruha Boniface and Byaruhanga Matias contrary to section 23(2) of the Penal Code Act and I hereby convict them accordingly.'

It was contended by counsel for the appellants that there is no cognate offence of conspiracy to damage property. From the text quoted above it should be clear that the lower court found the offences charged not proved. It convicted the appellants of conspiracy as a minor cognate offence of malicious damage to property since there was evidence of the appellants having attended a meeting where plans to damage the complainants' property were discussed.

Consequently, I find no merit in this appeal and I dismiss it.

P. Mugamba

Judge

19/02/2002

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Mr. Kasirivu for the appellants

Appellants in Court.

State Attorney absent.

Mr. Turyamuboona Court Clerk.

Court: Judgment read in open Court.

Right of appeal explained.

P. Mugamba

Judge