

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

D.R. CRIMINAL APPEAL NO. KB-00-CR-CA-0007-2000

(From Cr. C. No. 516/99 of Kabale Court)

BYOMUGABE RONALD..... APPELLANT

VERSUS

UGANDARESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against both conviction and sentence, the appellant having been convicted of criminal trespass, contrary to section 286(a) of the Penal Code and sentenced to a fine of Shs. 100,000/= in default of which he was to serve a term of imprisonment of 12 months.

Counsel for the appellant combined grounds 1 and 2 of the appeal and argued that prosecution did not prove ingredients of criminal trespass beyond reasonable doubt and in particular the aspect of ownership of the land in issue and how the appellant came to be on it. It is not disputed that the land at one time belonged to the father of the appellant, but that belongs to the realm of civil actions. Criminal trespass is within criminal law and the prosecution must prove its case beyond reasonable doubt. The onus is not on the accused to prove his innocence and where doubt obtains in the case of the prosecution the accused must be given the benefit of doubt.

I do not see on available evidence how the learned trial magistrate could have decided that there was criminal trespass as there was no proof that the accused ever entered on land belonging to the complainant. There was no documentary evidence to show ownership. Even the statement allegedly made to Police is not helpful as it is not certain Byomugabe could communicate in English.

In the result the appeal will be allowed, the conviction is quashed and the sentence set aside.

P. Mugamba

Judge

19/02/2002

19/02/2002

Mr. Beitwenda for the appellant.

Appellant absent in Hospital.

State Attorney absent.

Mr. Turyamuboona Court Clerk.

Court: Judgment read in open Court.

P. Mugamba

Judge

19/02/2002