

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

CRIMINAL APPEAL NO. KAB-OO-CR-CN-0006-2001

(From Criminal Case no. 27/2001)

KANYIMA STANLEYAPPELLANT

VERSUS

UGANDA..... RESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against the decision of the Chief Magistrate, Kabale delivered on 2/8/2001 whereby the appellant was convicted of arson contrary to section 307 of the Penal Code on the first count and sentenced to a fine of Shs.600,000/- or, in default, to imprisonment for 12 months. He was also convicted of malicious damage to property, contrary to section 315(1) of the Penal Code on the second count and sentenced to a fine of Shs. 400,000/= or, in default, to six months' imprisonment. This appeal is against both conviction and sentence.

The memorandum of appeal contained two grounds:

1. The learned trial magistrate misdirected himself on the law governing;
 - (i) identification
 - (ii) alibi
2. The learned trial magistrate did not properly (sic) the evidence on record thus reaching a wrong decision.

Counsel for the appellant elected to argue all the grounds together. While I agree that the learned trial magistrate irregularly admitted in evidence the statement purportedly made at Police by A2 given that it was wrongfully produced, I find it had no adverse import in her final decision. The same goes for the evidence relating to the identification parade which was faulty.

See *Y. K Ssentale - vs- Uganda* [1968] EA 36.5 and
Order 59 Uganda Police Standing Orders, Vol. II

I am satisfied that so far as evidence of the appellant and another being in the vicinity of the scene of crime on the morning in issue the finding of the learned Chief Magistrate cannot be assailed.

There is no direct evidence linking the appellant with the offences he has been convicted of. He left the place which was later engulfed by fire at a time no one was witness to. Indeed no one saw him in the vicinity after the fire started. No one saw him ignite the fire. There is absence of direct evidence. What he was convicted on is circumstantial evidence because he had been around earlier on and this inference does not establish the guilt of the appellant beyond reasonable doubt. In order to convict the appellant the circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt.

See *Taylor On Evidence, 11th Edition at page 74*. Similarly in *Teper - vs- R (2)*, [1952] AC 480.489 the Privy Council had this to say:

‘It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.’

See *Uganda - vs- Richard Baguma* [1988-90] HCB 74.

It is possible the fire started through an agency independent of the appellant.

This appeal must consequently succeed. The convictions are accordingly quashed and the sentences set aside.

Appellant is acquitted.

P. Mugamba
Judge
19/02/2002

19/02/2002

Beitwenda for the appellant.

Appellant in court

State Attorney absent.

Mr. Turyamubona, Court Clerk

Court: Judgment read in Court.

P. Mugamba

Judge

19/02/2002