

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

CRIMINAL APPEAL NO, MKA 9/97

(Arising from Cr. C. 84/96)

MERONS KAZAHURAAPPELLANT

VERSUS

UGANDARESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against the judgment of Mr. Ruhinda Ntengye, Chief Magistrate Kabale delivered on 19th February 1997 whereby the appellant was convicted of attempted murder, contrary to section 197(1) of the Penal Code and sentenced to 4 years' imprisonment. The appeal is against both conviction and sentence and comprises six grounds which are: -

1. The trial magistrate was biased.
2. PW1, PW2 and PW3 never corroborated the evidence.
3. The trial magistrate never bothered to ask or order for Paradise (Twesigye) who was revealed by the accused to have cut the complainant.
4. PW6 never saw the accused cut but heard people say 'Bamwita' but not 'Yamwita'.
5. The trial magistrate never considered the attack of 5(five) people to one but considered one to attack 5(five).
6. The sentence was harsh.

Regarding the first ground of appeal, I find no evidence of bias either in the trial magistrate's evaluation of the evidence before him or in the arguments advanced by the appellant in the appeal. I would therefore dismiss this ground.

Ground two is to the effect that PW1, PW2 and PW3 never corroborated the evidence. I suppose the appellant means that their evidence differed. While there is variation in the witnesses' recollection of the events surrounding the incident I find them to be variations of emphasis and detail not affecting the basis of the event in issue and this was the conclusion reached doubtless by the trial magistrate. There is no way this argument could affect the magistrate's finding which was proper. This ground also should fail.

The third ground is that the trial magistrate never bothered to ask or order for Paradise (Twesigye) to come before Court despite the fact that he was cited by the accused to have cut the complainant. As it was, court did not find it necessary to summon Paradise just as neither prosecution nor appellant himself required his presence. In the result I find this ground useless.

Concerning the fourth ground, the testimony of PW6 is to the effect that she saw what was going on although some distance separated her from where the appellant and complainant were. Having testified that she saw accused cut the complainant she also says she heard someone say; 'they have killed her'. In agreement with the finding of the learned trial magistrate I see nothing of note in this ground and would dismiss it.

I find ground five equally idle. There is sufficient evidence to show that the trial magistrate arrived at a proper conclusion regarding attack on the complainant by the appellant herein.

On the final ground of appeal appellant was convicted of attempted murder for which the convict is liable to be imprisoned for life. In the circumstances I do not find the four years custodial sentence harsh and I would dismiss this ground too.

Consequently this appeal stands dismissed.

P. Mugamba

Judge

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Mr. Walinda State Attorney for respondent.

Appellant absent.

Mr. Turyamuboona Court Clerk.

Court: Judgment read in open Court.

Right of appeal explained.

P. Mugamba

Judge

State Attorney: I pray that since the appellant has failed in his appeal, his bail be Cancelled and a Warrant of Arrest issues.

Court: Bail is accordingly cancelled and a Warrant of Arrest shall issue forthwith.

P. Mugamba

Judge

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