

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

**HCT-05-CR-CN-0037-2003  
(From MBR-00-CR-CO-0020-2003)**

**UGANDA .....APPELLANT**

**-VS-**

**BARABA GEOFREY .....RESPONDENT**

**BEFORE: THE HON. JUSTICE P. K. MUGAMBA**

**JUDGMENT**

The State filed this appeal against the judgment of the learned Chief Magistrate, Mbarara, whereby on 20th June 2003 the respondent herein was acquitted of the offence of theft of cattle.

The memorandum of appeal contained the following 4 grounds which I quote as drafted:

1. The learned trial Chief Magistrate erred in law and fact to acquit the Respondent having made a finding that Theft had been committed
2. The learned trial Chief Magistrate erred in law and fact by holding that the Respondent acted in execution of a Court order.
3. (a) The learned trial Chief Magistrate did not properly evaluate the evidence before her  
(b) The learned trial Magistrate erred in law and fact by failing to consider the contradictions in the defence's evidence.
4. The learned trial Magistrate erred in law by failing to consider the both Counsels submissions.

From the outset I must note that this being the first appellate court it has the onus to evaluate the evidence in the trial court anew.

Concerning the first ground of appeal towards the end of her judgment the learned Chief Magistrate wrote:

‘There is evidence that the cows were stolen, and some were missing and both incidents were reported to the Police’.

It is contended by the appellant that having reached the conclusion that cows were stolen the Chief Magistrate ought not to have turned round and acquitted the respondent herein. According to prosecution evidence the respondent stole the cows from the kraal of PWI. Nevertheless the defence put forward evidence to the effect that four heads of cattle had escaped from a farm at Kakigani in Rwampara where DW1 had left them with some people. A report was later made to Police. Days later the remaining six heads of cattle were stolen at another place by gunmen. Once again a report was made to Police.

It is most probable that these two incidents are the ones referred to in the judgment and certainly there is no indication that the respondent was responsible for the theft of the cattle. This ground must therefore fail.

Regarding the second ground there is evidence of the judgment in the L.C.III Court at Nyabuhikye which was tendered as exhibit D. 2. At page 5 of that judgment court held that the complainant therein (Mr. Karwani S.) had lost with costs. Thereafter the Chairman L.C. III applied to the Chief Magistrate for consent to execute the order of the L.C. III Court. That consent was granted by the Chief Magistrate. Exhibit D. 1 refers. Thereafter a warrant of attachment addressed to Baraba Geoffrey (the respondent) was made in which the respondent was instructed to attach ‘ten local cows’. The execution report shows only ten heads of cattle were duly attached. The respondent did not know the cows but they were pointed out to him. The execution report was later certified by the L.C. III Chairman. In civil proceedings there is provision for objector proceedings but that does not concern this criminal court. All I can say is that I find nothing amiss with the procedure adopted by the respondent when he executed the warrant. Perhaps I should add that he was accompanied by police. I find the prosecution has not proved beyond reasonable doubt that when he acted the respondent was not executing a court order. Yet this is what the prosecution is duty bound to do.

See: Woolmington - vs- DPP [1935] A.C. 462.

Ground three boils down to what arguments there are in the earlier grounds. As I have earlier noted I find the Chief Magistrate properly evaluated the evidence before her. As for the

contradictions, I do not find them of significance where they exist. In any case they do not affect the way the case came to be decided which I endorse. In order for contradictions to be of significance they must be substantial and go to the root of the alleged crime. With respect, I find the contradictions pointed out to be cosmetic as the issue of vacant possession is of no moment to an accusation of theft. In the result I find no merit in this ground also just like I find no merit in the last ground.

Consequently I find no cause to disturb the judgment of the trial court and should dismiss this appeal.

P.K. Mugamba  
Judge

19<sup>th</sup> February 2004

Appellant in court

Mr. Kahungu-Tibayeita for Mr. Kwarisiima counsel for respondent

Ms Jenifer Ampeire State Attorney

Ms Tushemereirwe court clerk

Court:

Judgment read in open Court.

P.K. Mugamba  
Judge

