

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL REVISION NO. HCT-00-CR-CR-02-2006

(Arising from Kabale Criminal Case No. KAB-00-CR-CO-004)

UGANDA:..... PROSECUTOR

VERSUS

TIBEMANZI DEUS:..... ACCUSED

Before: The Honourable Mr. Justice E.S Lugayizi

REVISIONAL ORDER

This is a revisional order. Its background is as follows: On 2nd January 2006 the President of Uganda visited Kabale District on a campaign tour and held a rally at Nakayiba Printers. At that point in time, one Tubemanzi Deus (hereinafter to be referred to as "**the accused**") was part of the crowd at the said rally. He took a photograph of the President. The authorities, present, immediately arrested him and handed him to the Police for action. Two days later, the Police took him to a Magistrate's court in Kabale and charged him with the offence of being idle and disorderly contrary to section 167(d) of the Penal Code Act (Cap.120). The particulars of the said charge read as follows:

"Tubemanzi Deus on the 02nd January 2006 at Nakayiba Printers in the Kabale District publicly conducted himself in a manner likely to cause a breach of the peace when he photographed the President without permission."

In response to the above charges the accused had this to say:

"It is true".

In turn, the learned trial Magistrate (Ms. Irene Akankwasa) recorded a plea of guilty for the accused in respect of the charge. The prosecutor, then, narrated the facts of the case in roughly the same way this Court has recounted them above. The accused reacted to those facts as follows:

"Facts are correct".

Accordingly, the learned trial Magistrate convicted the accused on his own plea of guilty in respect of the above charge and sentenced him to a term of one month's imprisonment. Subsequently, one of the newspapers reported the proceedings of the above case. As a result, this Honourable Court called for the lower court's record to ascertain what transpired. After reading the lower court's record Court referred the matter to the Directorate of Public Prosecutions for an opinion on the propriety of the conviction and sentence. In his letter dated 28th September 2006, Mr. Wamimbi Jude who signed on behalf of the Director of Public Prosecutions had this to say:

"Reference is made to your letter dated 31st May 2006 requiring our opinion on the priority of the conviction and sentence in the above case.

We have carefully read through the record of proceedings in the lower court dated 4th January 2006 and observed that the facts read to the accused before conviction did not disclose the offence of being idle and disorderly contrary to section 167(d) of the Penal Code Act. In our opinion, photographing the President without his consent is not a conduct/action likely to cause the breach of peace within the meaning of section 167(d) of the Penal Code Act.

It is therefore our considered opinion that the learned trial Magistrate erred when she convicted the accused under section 167(d) of the Penal Code Act Cap. 120."

For the sake of clarity, Court will, below, reproduce the provisions of section 167(d) of the Penal Code Act (Cap. 120). Those provisions read as follows:

"167. Idle and disorderly persons.

Any person who-

(a)

(b)

(c)

(d) Publicly conducts himself or herself in a manner likely to cause a breach of the peace;

(e)....

(f)

(g) ...

shall be deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment ... "

Although the provisions of section 167(d) of the Penal Code Act (Cap. 120) show that a person commits the offence of being idle and disorderly when he or she "***publicly conducts himself or herself in a manner likely to cause a breach of the peace***", it is important to analyse the key words or phrases in that law in order to understand their full meaning and import.

The first word in paragraph (d) of the above law (i.e. the word "***publicly***") is not difficult to understand. It is an adverb that has its roots in the noun "***public***"; and it connotes the idea of "***doing or omitting to do something openly or before a gathering of persons or in full view of such persons***". However, the difficulty comes with the remainder of paragraph (d) of the above law, particularly the phrase "***breach of the peace***". For example, what ordinarily constitutes a breach of the peace?

According to **Collins English Dictionary and Thesaurus at page 133** the phrase "***breach of the peace***" means,

".... Causing an unnecessary disturbance of the peace".

In Britain certain offences against public order are referred to as offences relating to "***Breach of the Peace***". **BYRNE'S LAW DICTIONARY** at page 134 describes such offences as follows:

"Breaches of the peace are offences against public order. They are commonly divided into actual, constructive and apprehended.

Actual breaches of the peace include riotous and unlawful assemblies, riots, affray, forcible entry and detainer, etc.

Constructive breaches ... include ... sending challenges and provoking to fight, going armed in public without lawful occasion, in such manner as to alarm the public, etc.

An apprehended breach of the peace is where one man threatens another with bodily injury ... or where a man goes about with unusual weapons or attendance, to the terror of the people ... "

From the foregoing, Court could safely say that in law the phrase "***breach of the peace***" means the following: ***Causing an unnecessary disturbance of the peace by engaging in a riotous and unlawful assembly or a riot or affray or instilling fear or terror by sending challenges or provoking others to a fight or going about armed in public with unusual weapons or attendance without lawful excuse etc.,***

Be that as it may, the crucial question to answer now is this: Do the facts that were narrated and put to the accused (to admit or deny) just before he was convicted reveal that the accused was engaged in any of the acts described in the above definition? Certainly, not! Therefore in full agreement with the Director of Public Prosecutions, Court is of the opinion that the learned trial Magistrate erred in law in convicting the accused of the offence of being idle and disorderly contrary to section 167 (d) of the Penal Code Act (Cap. 120). In short, the conviction of the accused was bad in law. Merely taking a photograph of the President without permission does not constitute an offence under section 167(d) of the Penal Code Act (Cap. 120).

For the above reasons Court has no choice, but to quash the conviction and to set aside the one month's prison sentence that the learned trial Magistrate imposed upon the accused. It is so ordered.

Lastly, it is unfortunate that by now the accused must have already served the unlawful sentence. All the same, the Deputy Registrar (Crime) is hereby instructed to send a copy of this order to the accused through the lower court that handled the case in January 2006. At least, this will help the accused to know that he has no record of a previous conviction now.

E.S Lugayizi (**JUDGE**), 2/11/2006