

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

HCT-05-CO-CN-070-2003
(From RUK-00-CR-CO-504-2003)

TUGABIRWE AMBROSEAPPELLANT

VS

UGANDARESPONDENT

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

JUDGMENT

This is an appeal against the decision of the Grade I Magistrate, Rukungiri, delivered on 16th December 2003 whereby the appellant herein was convicted of the charge of Injuring Animals, contrary to section 314 of the Penal Code Act and sentenced to 6 months' imprisonment or to a fine of Shs. 100,000/=. I must note for clarity that that particular offence is now defined under S.334 of the Penal Code Act but that the wording does not differ. The appeal is against conviction and sentence.

Following are the grounds as chronicled in the Memorandum of Appeal:

1. That learned trial magistrate erred in law in neglecting the glaring contradictory evidence adduced by the prosecution witnesses regarding the extent of injuries, time factor and other which contradictions would have been considered in favour of the appellant.
2. The learned trial magistrate erred in law and in fact in merely concluding that the animals were injured in the process of chasing them from the land without considering the accused's testimony in defence.
3. The learned trial magistrate erred in law in failing to analyze the evidence adduced by both parties but simply made a summary judgment without giving any reasons for the conviction.
4. The sentence was both excessive in the circumstances and illegal in some material particular due to lack of clarity.

This appeal was heard ex parte as the State elected not to be represented at the hearing.

It is the duty of the first appellate Court to reconsider and evaluate the evidence available and come to its own conclusions bearing in mind, however, the fact that there was no opportunity available to it to see the witnesses as they testified. See R vs Pandya [1957] EA 336.

In his submissions regarding the first ground of appeal counsel for the appellant did not address the contradictions and how they could have affected the outcome. Instead emphasis was on the failure by the trial magistrate to note at the end of the prosecution case whether she had made a finding of a case to answer or not. What appears on the record are the words 'close of P. C.' presumably meaning Close of the prosecution case and next following is the heading 'Defence Case'. The usual procedure would have been to make a distinct ruling as to whether or not there was a case to answer. That is what Ss. 127 and 128 of the Magistrates Courts Act are about. I have looked at the record in light of the provisions of the MCA and I am satisfied the irregularity in no way prejudiced the appellant. As for the alleged contradictions, I do not find them advanced by the appellant nor do I find any to be material. This ground of appeal should fail.

The second ground of appeal concerns evidence of injury to the animals by the accused. Both PW2 and PW3 testified that they had seen accused beating goats using a stick. According to PW4 the injuries which the goats he examined two days later bore could have been caused by a heavy instrument such as a stick. Clearly PW1 saw the goats after they were already at his home. He was not witness to accused in any way being with the goats. In his evidence in chief he stated that 'one (of the goats) was speared on the behind----'. There is no evidence to bear this out, the allegation that a spear was involved. PW3 said he saw accused untying the goats and beating them from a distance of 150 metres. It was his evidence accused and his wife were untying the goats and directing them towards accused's garden. That distance could not have enabled PW3 to see clearly what was going on between the accused, accused's wife and the goats. Such evidence is rather doubtful given evidence of both Accused and DW2 that they found the goats in their garden and chased them out. Next is the evidence of PW2, the wife of the complainant. I extract part of her testimony for close scrutiny, particularly the last five sentences of the first paragraph in her statement and the rest of the evidence in chief,

'---He told me that it's not me he wanted but my husband. He had a stick and was beating the goats. He looked angry. I raised an alarm and run to the chairman. He had taken all the 20 goats. I came with the chairman, we me (sic) accused who told the chairman that

out (sic) goats were grazing on his pasture. We agreed to check on that pasture. I don't know where he had left the goats. At around 7.00 p.m. the goats started coming back home one by one, till the morning. Three of them were injured, with broken legs; one was injured in its anus. It was bleeding from its anus---

From the evidence above I note that the accused had gone away with the goats and the chairman was summoned. Goats came in installments back home, it appears. No effort was made to locate where they could have been. Injury to the goats was observed when they had all come home. Incidentally according to PW1 three goats were injured with broken legs while one was bleeding from the anus but the person who injured the animals could have been other than the accused himself. The prosecution is under a duty to prove the case against an accused person beyond reasonable doubt. See Ssekitoleko vs Uganda [1967] EA 531. I am not satisfied available evidence points to accused as the person who injured the animals since another person could jolly well have done so. Perhaps if the chairman L.C. I had been called to testify he could have shed light on what transpired on the occasion. Sadly he was never called as a witness. I do not agree with the conclusion of the learned trial magistrate that to drive the goats from the garden per se required use of a stick and that use of a stick meant the goats would be injured. See Simon Musoke vs R [1958] EA 715. My conclusion however is that on the evidence available there is nothing to show accused inflicted the alleged injuries on the animals. This ground therefore succeeds and takes care of ground 3 also.

Having found as I have, ground 4 of appeal should also succeed.

This appeal succeeds and the conviction of the appellant on the charge is quashed while the sentence is set aside.

P. K. Mugamba

Judge

2nd February 2006