THE HIGH COURT OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-CN-0038-2007

(Arising From RUK-00-CR-CO-03 14-2007)

Al ATUGARIREHO PRINCESS alias MBOGOYA)

A2 BITEINE CHARLES) …….APPELLANTS

VS

UGANDA …….RESPONDENT

BEFORE: THE HON. MR. JUSTICE P K MUGAMBA

JUDGMENT

Both Atugarireho Princess alias Mbogoya, the first appellant, and Biteine Charles, the second appellant appeal the judgment of the Grade I Magistrate, Rukungiri, delivered 29th October 2007. In the trial court the appellants were jointly charged with Theft contrary to sections 254 and 261 of the Penal Code Act in the first count. They were both convicted and each sentenced to a term of 15 months imprisonment. In the second count the two appellants were jointly charged with criminal trespass, contrary to section 302 of the Penal Code Act. Both were convicted and sentenced each to 12 months' imprisonment. Further the first appellant was in the third count charged with disobedience of lawful orders, contrary to section 117 of the Penal Code Act. She was convicted of the offence and sentenced to 6 months' imprisonment. The sentences were to run concurrently.

In their appeal the appellants set forth the following five grounds:

1. The trial Magistrate erroneously relied on the so called Judgment of the LC 1 Court Magoma which was a nullity and illegal and as such came to a wrong conclusion when she convicted the appellants of the offences charged.

2. The trial Magistrate failed to appreciate that the purported LC1 Court Judgment did not affect the 1st appellant and as such erred in dismissing her defence claim of right.

3. The trial Magistrate failed to appreciate that this was a civil matter and as such erred in criminalizing the same.

4. The trial Magistrate erred in law and on evidence when he convicted the appellants of the offences charged when the prosecution had failed to prove its case on the prerequisite standard.

5. The trial Magistrate sentences were harsh, excessive and unconscionable.

This being the first appellate court it behoves it to re-evaluate the evidence on record and come to its own conclusion bearing in mind of course that it lacks the advantage of commenting on the demeanours of the witnesses that appeared before the trial court.

See ***Pandya v R*** [1957] EA 336, 338. Needless to say the judgment of the trial court too has to be considered as a whole for effect.

It is contended in the first ground of appeal that the trial court should not have taken into account the purported judgment of the LC 1 Court of Magoma on the footing that it was a nullity and illegal. It is further contended court reached a wrong conclusion thereby when it convicted the appellants of the offences charged. From the record it is evident the first appellant took the matter before the LC 1 Court herself. Her claim failed as it was dismissed and no appeal was made. This was the finding of the trial court which I find properly heeled on available evidence. The trial court then proceeded to note that such evidence of the finding of the court in addition to other evidence on record gave a lie to accused's claim of right. In other words even if the impugned finding of the LC 1 court had been omitted there was other evidence to extinguish accused's claim of right. The second ground of appeal by this finding is also taken care of.

It was the prosecution which preferred the charges that were proffered before the learned trial Magistrate. It has not been seriously urged that those charges are not properly on the statute book. That there could have been an option for civil proceedings is an argument for another day.

Suffice it to say that the seemingly hybrid charges were properly before court. This ground also should fail.

Concerning the fourth ground of appeal I find no reason to fault the trial court's conclusion of the evidence generally. Perhaps I must comment on count 3. Section 117 of the Penal Code Act relates to disobedience of lawful orders. Before they can be disobeyed the orders must be in existence. I find no evidence of the existence of any purported orders by the LC 1 Court on the record and would consequently conclude that the third count, which is against the first appellant alone, lacks basis.

The appeal against the third count succeeds.
The conviction against the first appellant is quashed and consequently the sentence is set aside.

Count 5 relates to sentence which is stated to be harsh, excessive and unconscionable. There is no doubt the trial court did not give maximum penalties for the offences the appellants were found guilty of. I agree with the learned State Attorney on this. Nevertheless the offences arose out of a dispute which could have been resolved in a civil court. I have taken into account the circumstances of this case and while agreeing that the trial court properly found on count 1 and count 2. I should exercise this court's discretion under S.34 of the Criminal Procedure Code Act. The period of imprisonment imposed by the trial court for counts 1 and 2 is to be set aside. Instead the appellants' sentences are to be suspended. In addition the two appellants are together to pay Shs. 400,000/= to the complainant as compensation for the stolen beans. Payment to be effected within three months of today.

P. K. Mugamba
Judge
13th February 2008