THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

AT GULU

HCT – 02 – CO – CA – 0008 – 2007

(Arising from Apac Grade I Court Criminal Case Number 266/2006)

1. **ANGULU GEORGE**
2. **ANGULU ALFRED ::::::::::::::::::::APPELLANTS**

VERSUS

REPUBLIC OF UGANDA::::::::::::::::::RESPONDENT

BEFORE: JUSTICE REMMY KASULE

JUDGMENT

The two appellants, together with three others who were acquitted on a no case to answer were tried and convicted by Grade I Court, Apac, of the charge of Criminal Trespass c/s 302 (a) of the Penal Code Act.

The original criminal case is No. 266 of 2005. Judgment, the subject of this appeal, was delivered on 19.01.2006.

The particulars of offence were that, during April, 2005, at Ajuri village in the Apac District, the appellants (and the three acquitted) entered into the land of Adea Maxwell with intent to intimidate, insult or annoy him.

The appeal is premised on three grounds of appeal: failure of the trial court to properly evaluate the evidence and thus reaching a wrong decision, failure to find that the prosecution had not proved the case beyond reasonable doubt and failing to hold that the second appellant enjoyed immunity as a judicial officer, having been a member of the Local Council Court.

The court will deal with the first and second grounds together and then the third ground on its own.

It is a fact that Adea Maxwell, who is stated in the charge sheet as the one the appellants had intention to intimidate, insult or annoy never testified in court throughout the whole trial.

It was therefore never proved at all that the appellants intended to intimidate, insult or annoy the said Adea Maxwell. An essential ingredient of the charge was thus never proved beyond reasonable doubt, or at all. The appellants, like was the case of the other three accused who were acquitted, ought to have been acquitted on a no case to answer. It is the duty of the prosecution to prove the case against the accused beyond reasonable doubt: the accused does not have to establish his innocence: the burden is upon the prosecution throughout the trial, unless statutory law provides other wise: **See: WOOLMINGTON VS DPP: (1935) AC 462; WIBIRO alias MUSA V. R (1960) EA 184**

and

BOGERE MOSES & ANOTHER VS UGANDA: SUPREME COURT (UGANDA) CRIMINAL APPEAL NUMBER 1 OF 1997.

This court, being the first appellate court, has also the duty to re-evaluate the evidence adduced at trial, make its own inferences and reach its own conclusions, bearing in mind that it did not see the demeanour of witnesses at trial, and thus being guided by the observations of the trial court on the issue of demeanour: **See: SUPREME COURT OF UGANDA CRIMINAL APPEAL NO. 10 OF 1998: BOGERE CHARLES VERSUS UGANDA**

and also

PANDYA VERSUS R. (1957) EA 336

On the review of the evidence adduced at trial there was no criminal trespass proved, in the considered view of this court. All that happened is that PW1, Barcolina Akidi, who looks after the land of Adea Maxwell, who stays in United Kingdom, constructed a kraal, for cattle keeping, in the land of Adea Maxwell, but just at the border with the land of and where the first appellant, Angulu George, was cultivating, growing food crops.

The first appellant saw this as a source of future misunderstanding because due to the nearness of the kraal of cattle to his land and his crops, a possibility of the cattle escaping from the kraal to his farm and thus destroy his crops was always there.

He therefore took the matter to the local leaders and those others in the neighbourhood, who in all comprised of the accused, and some prosecution witnesses. In April, 2005, this group came to the area, stated to PW1 why they had come, and PW1 without any objection, allowed them to look to examine the locus in quo, and thereafter were allowed to sit at the home of PW1 where an agreement, exhibit "A" was reached and was reduced in writing by prosecution witness Ogwang Bosco. Every one at the meeting signed this agreement, except PW1 who declined, and nothing was done to her there and then, or soon thereafter.

The agreement was to the effect that the kraal be removed from where it had been built by the 9th May 2005. No evidence was given as to whether anything was done to the complainant, on or after the 9th May 2005.

On the basis of the above facts, which was the evidence adduced before the trial court, it cannot be said that any criminal trespass was proved beyond reasonable doubt against the appellants. Yet, like in a charge of forcible entry, mens rea, has to be proved beyond reasonable doubt on the part of the appellants, in a charge of criminal trespass: see **UGANDA V. SAM SALONGO SEPUYA: (1988-1990) HCB 79.** No mens rea was proved.

Grounds one and two of the appeal therefore succeed.

As to the third ground of appeal, the evidence adduced is not clear whether the local council officials, including the second appellant were acting as an LC court or not, when the decision to remove the kraal was taken on the 26.04.2005. It is however not disputed that the group went to PW1's place to look at the place, and resolve the matters in dispute. This is what was done with an agreement to remove the kraal by a certain date being reached, albeit PW1 refused to sign the same. If they were acting as an LC court, then the second appellant would enjoy immunity from prosecution under Section 33 of the Executive Committees (Judicial Powers) Act, Cap. 8, which was in operation at the material time, i.e. 26.4.2005, before it was repealed by the Local Council Act, 13 of 2006.

Since the case against the second appellant is criminal in nature, the doubt, as to whether or not the LC officials were acting as a judicial organ on 26.4.2005 has to be resolved in favour of the second appellant. The third ground of appeal also succeeds.

The appellants appeal is allowed. Each of the appellants is acquitted of the charge of criminal trespass c/s 302(a) of Penal Code Act. Each one's conviction and sentence is hereby set aside.

If any of the appellants had paid the fine of shs. 300,000/= as ordered by the trial court; it is hereby ordered that the said money be forthwith refunded to the appellant who paid the same.

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Remmy Kasule

Judge

29th August 2008.