THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CR-SC-82-2008

UGANDA……..……..……PROSECUTOR

VERSUS

NABENDE ODUCH……..…….ACCUSED

BEFORE: THE HON. MR. JUSTICE E.K. MUHANGUZI

RULING

This is a ruling, under section 73 of the TIA, on whether, at the close of the prosecution case, there is sufficient evidence that the accused committed the offence.

Briefly, the accused was indicted, initially for murder contrary to sections 188 and 189 of the Penal Code Act. Subsequently, on 17.02.2009 before the accused pleaded to the murder indictment the prosecution sought and by consent of the defence obtained permission to amend the indictment from that of murder to that of receiving stolen property contrary to section 314 (1) of the Penal Code Act. Following that amendment the accused pleaded not guilty to the offence of receiving stolen property. The prosecution called three witnesses to prove the offence and closed its case. **Mr. Mudangha**, learned counsel for the accused, did not make any submission of no case to answer and left court to make the requisite finding.

Court has carefully considered the prosecution evidence so far on record against the relevant law. The law of this country is that every accused is presumed innocent until proved or he/she pleads guilty. See Article 28 (3) (a) of the Constitution. In the case

before court the accused pleaded not guilty. The law lays the burden of proving every accused guilty upon the prosecution who must prove every essential ingredient of the offence beyond reasonable doubt. See: - ***Woolmington v. D.P.P. [1935] A.C. 462***.

However, at this stage of the trial the standard of proof which the prosecution has to attain is that which is known as making out or establishing a *prima facie* case against the accused. That is the standard upon which a reasonable tribunal, properly directing its mind on the law and the evidence, will convict if no explanation or defence is offered by the accused. See:- ***Rananlal T. Bhatt v. R [1957] E.A. 332***.

To prove the offence of receiving stolen property prosecution must prove the essential ingredients, namely:-

a) Theft;
b) Ownership of the stolen property; and
c) Participation of accused in receiving the stolen property.

PW.1, **No.18458 D/C Olupot Peter**, stated that he saw the accused pass on the stolen phone to another suspect with whom the accused and three others were already under arrest.

PW.2 **Wamboza Hussein** stated that he was the owner of the stolen phone and did identify it when it was recovered. PW.3, ***No.22153 D/CPL Omuron Davis*** received the stolen phone at Mbale CPS from PW.1 and kept it in the store at the police store and exhibited it in court (exh.P.3).

On the basis of the above evidence court finds that the essential ingredients of theft and ownership of the phone were proved.

Regarding the participation of the accused in receiving the stolen phone, court observes that the available evidence is exclusively circumstantial. The accused was apparently arrested together with four other suspects, namely: **Kakungulu, Kayongo Nasur, Apio** and **Mafabi.** The person who arrested them, one **Lt. Siraji**, did not testify. As such the circumstances leading to and under which their arrest was effected were not stated and remain unknown. After the accused and the aforesaid four others had already been arrested PW.1 only saw the accused pass the phone to one of the four other suspects from whom the phone was subsequently recovered. No evidence was led to show that the accused received or when or how he received the phone. All that PW.1 stated is that he saw the accused pass the phone to one of the other suspects. It is also necessary to show that at the time the suspect received the phone he knew the phone to have been stolen. Without evidence of that knowledge the necessary *mens-rea* that constitutes the offence is lacking. In this particular case it is important to ask the question:- Is the circumstantial evidence that the accused was seen passing the phone to another suspect when all the suspects were already under arrest sufficient evidence to support a conviction? The law on circumstantial evidence is that in a case depending exclusively on circumstantial evidence, the court, before deciding upon a conviction, should find that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt. See:-

1. ***Teper v. R[1952] 2 ALLER 447, [1952] A.C.450***;
2. ***Simon Musoke v. R [1958] E.A. 715***.

Upon carefully considering the evidence of PW.1 court finds nothing to show that the accused was arrested with the stolen phone or indeed who of the five suspects had the phone at the time. PW.1 only witnessed the movement of the phone from the accused to one of the five suspects when all the five suspects had already been arrested. It is possible that the phone was received by either the accused or the one whom the

accused was seen passing it to. It is equally possible that even if the accused is the one who received that phone he may not have known it to have been stolen. No evidence was led to prove that he knew the phone to have been stolen.

For this reason court finds that the prosecution failed to prove the essential ingredient of the accused's participation in receiving the stolen phone let alone with knowledge that the phone was stolen.

Consequently, court finds the accused not guilty, acquits him and sets him at liberty, unless he is held on other charges.

E.K. Muhanguzi

JUDGE

09.3.2009

10.3.2009

Accused present.

Mr. Mudangha for accused.

Ms. Ogwang State Attorney for State.

Wanale Court Clerk.

Court: Ruling delivered.

E.K. Muhanguzi

JUDGE

10.3.2009