

THE REPUBLIC OF Uganda

HIGH COURT OF UGANDA HOLDEN AT Kampala

CRIMINAL SESSION CASE NO 0477 OF 2010

Uganda.....PROSECUTION

VERSUS

OKOT ALEX & 12 OTHERS.....ACCUSED.

RULING

The accused persons namely Okot Alex Langwen referred to as A1, Komakech Patrick a student A2, Otim Patrick Opoka A3, Otim John A4, Okello Patrick alias Ocii A5, Oceng Jimmy alias Billy A6, Olanya Alfred Lubel A7, Akena Francis A8, Lieutenant Okello Philip Onekomon Aka Kikoko A9, Obol Michael A11, Sergeant Menya Deovelente A12 and Abong Frank nick A15 stand charged on two counts in the alternative.

It is necessary to note that charges against two other persons namely Lieutenant Emmy Oryem Mwaka and Kidega alias Billy A10 and A14 respectively were withdrawn by the Director of Public Prosecution through nolle prosequi dated 13th February 2012 and 14th February 2012.

The relevant provisions of the Penal Code Act under which the 13 accused persons were charged in the first count read as follows:

Section **23(1) (c)** and **(d)** of the Penal Code Act

23(1) “Any person who,

(c) contrives any plot, act or matter and expresses or declares such plot, act or matter by any utterances or by any overt act in order, by force of arms, to overturn the government as by law established;

(d) aids or abets another person in the commission of the foregoing acts, or becomes an accessory before or after the fact to any of the foregoing acts or conceals any of those acts, commits an offence and shall suffer death.

The particulars of the offence as charged were that the above named persons and others who were still at large;

“between the years 2006 and January 2009 in the districts of Gulu, Pader, Kitgum, Masindi, Nebbi, Apach, Amuru and Kampala contrived a plot to overthrow the government of Uganda as by law established by force of arms and expressed such a plot by conducting meetings on 14, 15th July 2007 and August 2008, mobilizing logistical support such as satellite phones, solar panels, global positioning system(GPS) machines, rolls of black polythene sheets, gumboots, walkie talkie radios, laptop computers, firearms and recruiting personnel into the ranks of the Popular Patriotic Front(PPF) a rebel organization they had formed for the purposes of fighting to overthrow the government of Uganda as by law established”.

The other count with which the accused are charged namely Concealment of Treason has its provision in section 25 of the Penal Code Act as hereunder;

“Any person who knowing that any person intends to commit treason does not give information thereof with all reasonable dispatch to the Minister, an administrative officer, a magistrate or an officer in charge of a police station, or use all reasonable endeavors to prevent the commission of the offence of treason commits the offence of misprision of treason and is liable on conviction to imprisonment for life”.

The particulars of the offence of concealment were that

“the accused persons named herein above and others who were still at large between the year 2006 and May 2009 in the districts of Gulu, Pader, Kitgum, Masindi, Nebbi, Apach, Amuru and Kampala knowing of a plot to overthrow the government of Uganda by force of arms did not give information thereof with all reasonable dispatch

to the minister of justice, an administrative officer, a magistrate or a police officer in charge of a police station”.

The overt act which is an important and essential element of the commission of the offence of treason is provided for and defined in section 32 of the Penal Code Act as:

“For the purposes of any offence defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act in furtherance of the commission of the offence defined or every act of conspiring with any person to effect that purpose and every act done in furtherance of the purpose by any of the persons conspiring shall be deemed to be an overt act manifesting the intention”.

While no specific overt acts were spelt out, I found the following from the particulars as the acts that the prosecution intended to establish and prove to sustain the convictions it sought.

The first and foremost was the overt act of the meeting held on 14th, 15th July 2007 and how the resultant conspiracy between the people who met would in effect act in furtherance of the act of treason that the accused are alleged to have planned.

The other overt act was the meeting held on an unknown date in August 2008 which expressed the plot to overthrow the government of Uganda as by law established.

Other overt acts were meetings were allegedly held at Kireka in 2008. These were named the Kireka Project organized and executed by Achenga Hitler Eregu Pw28

The other overt acts were the purchase and acquisition of satellite phones, solar panels, global positioning system (GPS) machines, rolls of black polythene sheets, gumboots, walkie talkie radios, laptop computers, firearms and relating them to the furtherance of the commission of the offence.

The burden lay squarely on the shoulders of the prosecution to prove the case to the required standards. At this stage of the proceedings it is not courts duty to find out whether the accused are guilty or not. The duty of the court is to find out whether the prosecution evidence as

presented would call for an explanation from the accused persons. Simply put the question to be answered at this stage is

“if court was to put the accused persons on their defense and they opted to remain silent would it proceed to convict the accused of the offences they are charged with?”.

In my opinion if the answer is in the negative the accused should be acquitted. To do otherwise would be turning court into a gambling stock.

In other words to put an accused on his defense, the evidence must go beyond one which on full consideration might possibly be thought sufficient to sustain a conviction. It should be evidence where the court directing its mind to the law and evidence could convict if no explanation is offered by the defense. As held in **Bhatt v R [1957] EA 332**

“A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence” suffice to put an accused on defense.

NAIROBI MEETING

The key witness to attend the alleged 14th and 15th July 2007 meeting was Francis Anywar Pw20. He told court that he had known Otim Patrick A3 since 2006. That Otim A3 was his personal journalist whose duty was to politically popularize Pw20. They were so close that on the 11th July 2007 when A3 invited him to a meeting in Kampala Pw20 did not hesitate even when A3 did not tell him what the meeting was all about. They are said to have traveled to Kampala on the 12th July 2007 but on arrival in Kampala A3 told him that the venue of the meeting had been changed to Nairobi. That A3 still not telling him what the meeting was all about asked him to go with him to Nairobi. That A3 undertook to meet all the expenses. Pw20 accepted and went with him through Busia whereat he obtained for Pw20 a Temporary Travel Permit. They then left Malaba Uganda aboard a Gateway Bus on the evening of 12th July 2007 arriving at Nairobi 6 am on the 13th July whereat they were received by Okot Alex A1 who took them to Rosa Spiritual Center the hotel where they were to be accommodated for the duration of the meeting. Pw20 told court that it was not until the evening of the 14th July 2007 that A3 told him that the meeting they were to attend was one of a series in planning the overthrow of the government of Uganda. “He told me just before supper. It was around 6 pm. He told me about one hour before the meeting” he said.

The following day was a day for introductions and interaction until the evening when the meeting begun after supper. According to Pw20 the chair person of the meeting was A1 Okot Alex who welcomed them and told them that this was a new rebel group called Uganda Peoples’ Front formed to overthrow the government of Uganda. That the motto of the Front was *Defense for Our Motherland*. He said a prayer led by Pastor Mala Mungu was conducted which was followed by formation of leadership were Otim Patrick was appointed leader of Kitgum and Pader. Pw20 himself was put on the monitoring team for Acholi sub region. He did not remember the members of the Disciplinary Committee but he said he had noted all the appointments in a note book Exh P14. Reading from Exh P14, he named Tony from lira, Otim Okulo from Kenya, James Locol as the membership of the Disciplinary Committee.

In Exh P14 he also listed the membership of the monitoring team as Komakech Charles head whose face he could not remember, Omwony Patrick and himself.

According to Pw20 the supreme body to oversee all the activities of the rebellion was called Commando and would be headed by Abong Joshua A15, Alex Okot Langwen A1, Okoya Charles, tony, Michael Obol of Nairobi, Lubel Olanya whose country of origin he did not know and Otim Okulo, with professor Komodo as coordinator.

Pw20 also told court that after a discussion of their welfare, they were shown Global Positioning Systems, Satellite Phones, Walkie Talkies, and Portable Solar Panels as tools for locating positions of soldiers in the field and communication. He said all the display was done by A15. Shs 120,000 was given to them as transport back to Uganda and they were also given hand phones complete with safaricom line cards to facilitate communication.

According to the amended indictment, all the accused persons are said to have attended the meeting. The indictment failed to point out who of the accused attended the meeting. Pw20 specifically names A1, A3, A7 and a15. Of all these he specifically says that A1 addressed them on the purpose of the meeting while A15 displayed the phones, walkie talkies, GPS and instructed them on how to use them. It would seem that at the meeting A3 and A7 never uttered a word. If they did Pw20 did not say what they said. He even did not say what A15 said as to indicate treasonable intent. Neither did Pw20 tell court what the other accused said if at all they attended.

In a case of treason the utterances of an accused at the meeting are key to the overt act. The crime lies in the words. Mere presence is of no evidential value to the act of attendance. As was held in **Githea v R [1956] 23 EACA 440**

“Treason lay in what was said at the meeting and not the meeting themselves”.

It means that even if all the accused persons traveled to Nairobi and sat in the room where the meeting took place, those who uttered nothing would not have committed any treasonable act. In Cpl Mike Muwonge and 5 Oths Cr App 6 of 1990 there Lordships of the Supreme Court while considering the participation of the appellants at a meeting planning treason held;

“In our view even if these witnesses had arranged the places and even persuaded the appellants to go there that alone could not amount to treason. Treason lay in what was said at those meetings and not the meetings themselves if the alleged treason was

***discussed by the appellants then PW1 and Pw2 could not be guilty of any impropriety.
The actors would have been the appellants”***

From the foregoing holding even if the court found out that A3 Otim persuaded Pw20 to attend the meeting but he A3 uttered nothing treasonable at the meeting he could not be guilty of impropriety. There is no evidence that he said anything in the meeting. Pw20's evidence that A3 told him an hour before the meeting that they were going to discuss treason is not tenable. A3 was in a servitude relationship with Pw20. He was what Pw20 called “*my political journalist who promoted my political career*”. He did Pw20's bidding whenever required. Superiority lay with Pw20. They had allegedly traveled and stayed together, crossing borders to Kenya for 3 days without Otim telling him why they were going to Kampala and then suddenly changing to Nairobi. According to Pw20 himself, he is a man who is conscious of his surroundings, fears for his life and careful of what he does. He could not have allowed A3 to drag him around like sheep without telling him where exactly they were going and what they were going to do.

Pw20 told court that he made notes in the meeting Exh14. That when he returned to Uganda he did not return to Kenya for another meeting. Neither did he make any other notes in Exh 14 again. If one takes him by his words, it would mean that he last made notes in the note book on the 15th July 2007. Pw20 further said under cross examination that he did not follow up or was not aware of any subsequent meeting. Surprisingly the second entry in Exh 14 found on the first page and in different ink reads;

“Next meeting took place on the 6/09/2007”.

It is in past tense which means that the entry was made after 6th September 2007. Furthermore one cannot even say it is something that was later written in an empty space that had been left blank on 14th July 2007. I say so because the writing on the second page which purports to be a continuation of the 14th July 2007 is also in different ink. Furthermore names like Abongo are added there in different ink. Unless this was a fine art class where various shades of colours were required to produce a colourful text, these notes cannot, taking into account the second entry about the meeting of 6th September 2007 that Pw20 said he did not follow up, be a true record of a proceeding of 14th, 15th July 2007 in Nairobi.

What this means is that Exh P14 was a record made much after July 2007 when the alleged Nairobi meeting is supposed to have taken place. In any case in view of that entry it was after 6th September 2007. This also explains why Pw20 did not hand in the note book together with the mysterious report when he reported to Mr. Chanda at the CMI. The record was not there.

That being the position, I now turn to the question, “did Pw20 travel to Nairobi and having traveled did he attend the meeting in question? I shall first deal with his Temporary Travel Permit. Pw20 said when A3 suggested that they proceed to Nairobi he had no passport so a temporary travel document was acquired at Busia boarder. The permit Exh P14 that was tendered in court had many short comings.

First of all it was not signed by the issuing officer at Busia Immigration point. It is trite that a permit must be issued by an issuing officer. The permit has provision of where the officer signs and stamps. These requirements are mandatory and in their absence one may not proceed.

Secondly an immigration officer must sign at the departure point. Exh P14 shows that at the time of the purported departure no one appears to have flagged of Pw20 because no Immigration Officer signed the permit.

Thirdly Pw20’s photograph which was a requirement was not there. The partial remnant of the immigration stamp at the space reserved for the photograph was proof that it had been removed. Exh P14 was an exhibit and proof of travel to Kenya. Why would a witness who was bent to prove the journey to Nairobi and had indeed already reported to the authorities in Uganda decide to destroy the evidence of travel? Pw20 when cross examined told court that he removed it to use it in opening a bank account. Further cross examination showed that he was not even certain of the bank in which he had used it. First he said he had used it in Stanbic Bank, and then he said he had used it in DFCU. The other thing that raises eyebrows is how banks of the caliber of Stanbic and DFCU which he said he went to, would accept an adulterated photo covered in official Immigration Directorate stamp to be used in opening an account

Fourthly Exh P14 shows that the Temporary Permit holder was a resident of Kampala village in the District of Kampala. These were deliberate lies which he conceded to and he added that at the boarder he had also carried the lie that he was going for fellowship; “I told a lie” he said under

cross examination by Mr. Kasirivu. A person who talks of fellowship religious meetings with lies can just as well tell lies after holding the bible in court.

Pw20 found no difficulty when asked by Mr. Opwonya, for how long he had interacted with A3 after his return from Nairobi to say “4 to 5 months” which he later changed to;

“We continued to relate for about one year”

The same Pw20 had no qualms when Mr. Rwakafuzi put the same question to reply;

“I however continued dealing with Otim for 2 years”

Pw20 said he reported to CMI about the Nairobi meeting and submitted a report in the second week of his return which might at the latest have been the first week of August 2007. Interestingly it was not until 9th September 2009 that he made his statement. He hid the issue of the phone he allegedly received which replaced his own he had donated to his wife. The report like the phone was not exhibited and no attempt was made by police or CMI to find out what sort of interaction had taken place between Pw20 and A3 if any, which they would have done easily by obtaining a communication print out. They must have been left out because there was no communication. Just as they left out the print out so did they leave out the travel history of the 14th, 15th July 2007 of the accused persons. The other thing is that Pw20 said that in Nairobi he formerly registered at the reception. Court was also told by Pw30 Jackson Tweheyo that Pw19 and Mr Wacha went to Nairobi to investigate whether the said meetings had taken place. Pw19 did not come back with any proof of hotel bookings, reservations, or registration of Pw20 or any of the accused persons. On the contrary in cross examination he said he had no concrete proof of the meetings having taken place.

Lastly Pw20 was an accomplice and so his evidence required corroboration as a matter of practice see **Davis v DPP [1954] AC. 378 and Uganda v Prof Kyesimira criminal case 134** of 1983. The uncorroborated accomplice evidence had to be so exceptionally cogent as to satisfy the court beyond reasonable doubt, **Leo Mabuzi v Uganda [1974] HCB 81**. This corroboration as I shall show later is nonexistent and in any case Pw20s evidence is so incurably dented that the best corroboration would do to it is to embalm it other than resuscitation.

The principle established by **Alfred Tajar v Uganda [1969] EACA Cr. Appeal No 167/69** is that;

“a witness or witnesses whose evidence by itself or with others are grossly tainted with grave contradictions or inconsistencies unless satisfactorily explained, their evidence may be rejected. That being the case even

“Evidence tainted with minor contradictions or inconsistencies which point to deliberate falsehood may also be rejected” Tajar v Uganda.

From the foregoing Pw20 depicts himself as a witness who has contradicted himself, is inconsistent and by his own admission a deliberate liar on material evidence going to the root of the matter that subjecting his evidence to the scale put in place by Tajar’s case above only spell its demise. The court finds his evidence so unreliable that if it was the only evidence available the prosecution cannot possibly make out a case sufficient to put the accused persons on their defense.

To turn to the meeting which the prosecution said took place in Hotel Shalon in the month of August 2008, Pw19 said it took place 6th to 8th August 2008. The prosecution produced and tendered Exh P7 the travel history of A1 which showed that he crossed Busia Border on 12th August 2008. Ex P8 the travel history of Justine Odong which showed that he crossed Busia Boarder on the 7th may 2006, Exh P9 the travel history of Otim Okulo which showed that he crossed Busia Border on the 7th may 2006, 8th April 2008, and 11th July 2008, Exh P10 travel history of Patrick Komakech which showed he crossed Malaba Border on 10th June 2008, Exh P38 which showed that Otim John returned to Mbale, Uganda on the 17th August 2008, and Exh P 39 refering to one Deo Maaya as having crossed travel to Nairobi on 14th august 2008. These dates of travel and putting in context the alleged meeting dates of 6th to 8th August do not add any value to the prosecution case in respect of the said meeting as an overt act. They are not so proximate to the alleged meeting dates. The one in respect of A1 shows that he did not leave the border point of Busia for more than two and half hours since he first arrived there at 07:22 and returned 09:42 the same day which was exactly 2hours 20 minutes. He could not even have gone as far as Kisumu. That having been said there is no proof what so ever that the accused persons

checked into Hotel Shalom or any other within the dates in issue. There is no evidence to show that they met, or having met, they discussed rebellion during which this accused said this or the other. Moreover Pw19 told court that the investigation did not reveal concrete evidence that the meetings took place. In the premises the prosecution has not placed sufficient evidence before court as would require the accused to explain to clear their name. In this it is always remembered that they have no burden to prove their innocence since it is not the weakness of their defense but the strength of the prosecution case that is important in such a criminal trial.

KIREKA PROJECT

Turning to the Kireka Project, the prosecution relied heavily on the evidence of Pw28 Achenga Hitler Eregu.....Pw28 told court that on the instructions of Col Chanda, he infiltrated the meetings of A1 and A12 Deovelente Menya. This meeting was in Victoria club opposite Sports View Kireka. He went with Odong and Otto Sande who were allegedly in contact with LRA and the new group in Nairobi.

On arrival they met Deus who told them to join a serious group and fight. That he already had a satellite phone he was using to communicate with people in the Diaspora and that he was the intelligence co-coordinator in Kampala. Deus also told them that he was expecting a big person and would call them on his arrival. That after two weeks Deus called and told them that the big person had arrived.

They went and found Deus alone but 30 minutes later Okot Alex arrived and on the suggestion of Okot they changed venue to Nambole Stadium.

That Okot then invited them to join a new group UPF. He wanted all LRA to join them. That some UPDF and police had joined. And that the Baganda had also joined. That they then took photographs.

PW28 said that after the meeting he made a report and submitted it together with photos to his boss. He said he also recruited two people named Ochen Bob and Geoffrey Komakech who would also work as spies. On the day of the second meeting the two slept in one room and Odong in another in Byakuleka inn.

Pw28 further said that the meeting of seven people which followed was secretly recorded by him. That is when A1 talked of his arrest and torture. He promised them satellite phones. A phone nokia 3310 was even bought for Ochan.

PW28 again gave a report and the photos they had taken. Later money was sent to Odong and Ochan by Deus. He said he had receipts in proof thereof. The tape was put in for identification as ID38.

During the hearing, the prosecution provided a copy of what was said to be a copy of the transcription of the recording but which was later discarded. The transcription does not talk of removal of a regime from power. The transcription should atleast have been at par with what PW28 said but it did not mention removal of the regime. On the contrary during cross examination PW28 told court that A1 had said during the meeting that “the leaders be left in their chairs. “

That as it may be, the testimony of PW28 is shaky because all the things he should have used to support it were left out.

He told court that Deus had sent money to Ochen and Odong to promote the rebel activity and he had the receipts to prove it. These were not produced in court.

He told court that they had taken photos and had submitted them together with his report. The photos were the key here because they would account for everyone’s presence.

These were not tendered in court.

He told court that he had recorded the meeting and indeed a tape was even put in identification ID38. The prosecution discarded the recording for unknown reasons.

PW28 was a government spy, an Agent Provocateur and so his evidence did not require corroboration **Ndibowa & Anor v Uganda Cr App 2/98, Mullins V R. 1848 3 cox 526, Githea v R (1956) 2B EACA440**. This evidence that did not need corroboration had however to be shown to be the truth **Mattaka v Rep [1971] EA 495**. Moreover, where the witness mentions the existence of pieces of evidence that would on the face of it be useful to the prosecution case, and

the prosecution leaves them out, the inference that emerges is that they would be damaging to whatever evidence the prosecution had earlier given.

Leaving out these key pieces of evidence in my opinion was because they were un favorable to the prosecution. Possibly that is why PW28 did not mention the tape recording in his police statement. Neither did he say in that statement what had transpired or been said in the alleged Kireka Project Meeting. While he is supposed to have played a key role in the case, one wonders where he got the information that 35 guns had been recovered.

He claimed to have met Deus and even arranged with him to meet A1 but in court he could not identify him, he pointed at someone else yet this is the Deus he said had briefed them the first day and invited them to join PPF and met him again two weeks later.

More surprisingly, asked when the Kireka meeting took place, he said 2001, which on further questioning he changed to 2003 and then doubled the years to 2006. While one can fail to be accurate, such failure cannot lead a person to spread such an important meeting as the Kireka Project to such diversity of the dates. The resultant doubt as to whether the meeting really took place can only be resolved in favour of the accused persons. That he did not make a police statement for four years after the alleged incident and about two years after the accused were in court leaves one wondering on what evidence the prosecution was going to base their case when they charged the accused.

FIRE ARMS

One of the overt acts was the acquisition of fire arms by the accused persons. The prosecution led evidence to the effect that A4 Otim John led a team of investigators namely Oryem Ceasor PW1, D/ASP Ochola George PW4, Major Richard Okello PW19, Capt. Bertin Adubango PW21, D/IP Ogen Mungu Lawrence PW29 and D/IP Tweheyo Jackson to Oyuku hills where they recovered 19 sub machine guns. While the defense could object to a confession because it was obtained by trick, threats or inducement, where exhibits are recovered even if it were through duress, the recovery of such an exhibit would be relevant. This exception however would only come into play when it's the accused who pointed out where the guns were.

There is conflicting evidence on record as to how the guns were recovered. While some of the witnesses said that it was A4 who led them to where the guns were, some say that a detector was used to locate the guns. PW1 told court that he saw a big machine and he assumed it was a gun detector. He then said that it was the same machine that was used to photograph them. These photos were however not exhibited possibly because they would not have added any value.

PW19 Major Okello said apart from a GPS, they did not carry any other equipment. And there were no metal detectors. He also told court that it was D/ASP Ochola PW4 who led the search team to Oyuku hills. When PW4 gave his testimony, he said he led the team and that he was even the one who filled out the search certificate EX P1. He told court that they first searched a place in Latanya where A4 had taken them and they found nothing. That he then led them to Oyuku hills which they located by use of GPS. A search in small caves revealed the fire arms. Interestingly PW4 who led the delegation could not identify A4. He said;

“Right now I am not sure of Otim John.”

This could have been possibly due to the long spell of time since the search, but it could also be that the person who led them was not amongst the accused. In his evidence PW4 admitted that saying that the gun detector pointed out to where the guns were. “My statement was that the gun detector pointed out to where the guns were. The machine pointed out the hill. The machine helped recovery of guns” in his statement Exh D10, he wrote;

“Thereafter we proceeded ahead towards Oyuku hill as the machine for detecting the guns was showing. When we reached near the slope of Oyuku Hill as we continued searching we recovered seventeen guns under the rock and no ammunition was recovered”

Under further cross examination although he said it was through A4’s information that the guns were found he insisted that “they used the machine because that was the modern way of investigation.”

Cross examined by Ms. Nsereko, PW4 insisted that “they would still have known where the guns were even without Otim by use of gun detector.” He added that there had always been “the

suspicion that the guns have always been there, because of earlier LRA activities since the place was a former infested LRA place.”

On re examination he said the team had 3 machines including a camera and that he did not know a gun detector before.

He said it was Captain Okello who showed them the gun detector. As I said before PW4 was the leader of the team when the guns were found. Where the person leading the search team says electronic means were used to detect the guns because “that was the modern way of investigation” even if the others said to the contrary, the resultant doubt would be resolved in favour of the accused. This was a former LRA stronghold and so it was likely to be littered with firearms whether hidden or otherwise. Because of the foregoing, its court’s view and finding that the prosecution does not have sufficient evidence pointing at A4 as the person who led to the recovery of the guns as would require him or any of the other accused persons to explain where the guns came from, let alone their purpose.

PORTABLE RADIOS

These are commonly known as walkie talkies and were first recovered in Bweyale. They were 29 of them. The prosecution through PW5 produced evidence that they recovered 29 walkie talkies from Kidega Patrick A14. That Kidega told them that he had received them from Komakech Patrick A13. PW5’s evidence pitted against his police statement was most contradictory. I shall however not go into that since Kidega who was allegedly found with the walkie talkies was discharged on a nolle prosequi and he was not called to testify. The truth of the source of the walkie talkies remains a mystery.

The way PW5 and his boss D/C Obel Andrew PW10 kept on changing the statements and amending them so as to absolve people like Onoba from whose house the walkie talkies were found, in my opinion the prosecution would have required more than PW5 to pin Kidega if trial against him had continued.

The other walkie talkie which was allegedly found in the thatch of A13 Komakech Patrick lacked proper identification and was left out and so nothing was found on A13 whose house was searched when he was away in detention and after finding nothing at the time of his arrest.

The other 6 walkie talkies were found outside between the house of one Ocii and Komakech. Evidence by the prosecution did not succeed to connect them to the accused. There is therefore no evidence in the recovery of those 29 walkie talkies as would suffice to require an explanation from A13 or any of the accused.

Having gone through the main pieces of evidence, I now turn to each and all of the accused persons on whether the prosecution makes out a prima facie case.

I have considered all the relevant evidence. I made little use to evidence which was referred to as intelligence. The reason being that most evidence that was referred to as intelligence was hearsay. The other reason being that the sources of evidence would not be available for cross examination. As Sakar on Evidence 12 Ed 413 writes;

“The rule of the common law is that no evidence shall be admitted but what is or might be under the cross examination of both parties”

This legal position therefore is that no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross examination.

Therefore evidence from unnamed sources would have deprived them of the right to test the credibility of the sources. During the hearing there were suggestions that since the accused were arrested and information obtained by soldiers all such evidence be disregarded. I would with respect say that as in **R v Leatham 8 Gex 498, Collis V Gunn (1964) IQB 68 and Karuma V R (1955) 22 EACA 364** held, these soldiers and security men were empowered like any other under the criminal procedure code to arrest people they believed were committing felonies and if they came across evidence without use of fraud, trick, duress or oppression it would be good and admissible evidence. What however transpired in some of the arrests in this case was dealt with in the three trials within trials.

ACCUSED 1

The evidence that the prosecutor brought against A1 Okot Alex Langwen was mainly that he chaired the Nairobi Meeting of 14th, 15th July 2007 whose Agenda was to overthrow the government of Uganda.

The other piece of evidence was that he attended the Kireka project meeting.

The others were that he owned a satellite phone which his wife gave to Pw18 D/ASP Sylverno Kibwota.

Beginning with the phone, all the witnesses have told court that the walkie talkies are not a reserve of forces. They all agreed that the walkie talkie radios did not spell treason. That its only when put to use in promotion of rebellion that they become relevant and acquisition thereof becomes an overt act provable in a treason trial. The foregoing was emphasized by Pw11 and Pw19.

Evidence on record was to the effect that A1's father Pw3 Lawrence Okenyi Lagwenyi called PW18 who was then the District CID officer and told him to collect a phone that his son had left home. It should be recalled that the prosecution witnesses who included PW18 told court that they had conducted a search in A1's house which was scantily furnished and found nothing. Where then did a phone come from to enter a drawer that had been searched a day before. The question is even stronger because A1 was in detention then. More so PW3 who PW18 alleged called him to pick the phone and the laptop, denied in court having called PW18. He denied giving out anything. His evidence stands undisturbed on court record. While a phone is no evidence of treason, in this case no phone was recovered from A1.

The Nairobi meeting has already been dealt with finding PW20 an unreliable source and being the sole witness court does not think there is sufficient evidence to ask accused for an explanation.

On the Kireka project which I dealt with earlier PW28 who testified in that respect had a lapse of memory as to when the meeting took place and even failed to identify Deus. This coupled with the failure of the prosecution to produce in court the photos, reports and tape recording as proof of the meeting and the transcript spelling no treasonable utterances, left no concrete evidence to prove the treasonable acts.

As for the 3 million shillings he allegedly got for purchase of equipment for the rebellion, the prosecution submitted that A2 Komakech Patrick named A1 as the source.

But the methods of obtaining confessions, admissions and statements were dealt with earlier during the trial. The places and length of detention created a lot of suspicion as to the accuracy of what was told to the investigators see **Njuguna s/o Kimani v Rep (1953) 21 EACA 316 CA**. The duty to prove the manner in which information was procured fell upon the prosecution.

All in all the prosecution evidence fell far too short to establishing a prima facie case. In the premises court would not put him on his defense thus acquitting him.

ACCUSED 2

A2 Komakech is said to have attended the Nairobi meeting. I have dealt with the Nairobi meeting and declared PW20 as an unreliable witness. So such evidence by PW20 that he attended a meeting cannot stand. Furthermore he is not known even by PW20 to have uttered anything. The prosecution submitted that he was found with a satellite phone, a solar panel charger and GPS. The prosecution had also produced an identity card which described him as Director of Invincible Children. As such director he needed equipment of that nature. The phone was examined by PW11 of the police ICT directorate and given a clean result of no communication.

The question on this equipment would have been on whether they were licensed, other than treason since there was no such evidence. In all the prosecution does not make out a prima facie case against him. He is acquitted.

ACCUSED 4

The prosecution called evidence to the effect that A4 Otim John revealed that guns had been hidden in Oyuku Hills and led the investigators to them. This matter was however dealt with earlier in this ruling and found that the leader of the team PW4 said the guns were found with the help and means other than A4.

Although the others said there was no such equipment, Pw4 being the leader of the team created such doubt as would be resolved in favor of the accused.

The Nairobi meeting was dealt with earlier in this ruling and found the evidence of PW20 as shaky. It was also this court's finding that even if the meeting had been there, A4 having uttered nothing in the alleged meeting would still on the strength of **Githea v Rep (1956) 23 EACA 440**, have absolved him of guilt. That being the case, the prosecution fails to establish a prima facie case against A4 Otim John who is hereby acquitted.

ACCUSED 5

Okello Patrick Ocii A5 is said to have told PW29 Ogen Mungu and PW19 Okello Richard that he was recruited by Philip Onekomon. This evidence as I said earlier would be frowned upon by the decision in **Njuguna s/o Kimani v Rep (1953) 21 EACA 316**. The accused's home had been searched and nothing tangible connecting him to treason found.

In the premises the prosecution failed to establish a prima facie case and the accused A5 Okello Patrick Ocii is acquitted.

ACCUSED 13

Komakech Patrick (peasant) was alleged to have possessed a walkie talkie. PW6 Nyero told court that while destroying A13's house, something fell from the thatch and landed outside in front of the house. The prosecution did not prove who had put it in there. A13 was not there having been arrested earlier. Incidentally his house had been earlier searched at his arrest and nothing was recovered. In any case PW6 ran away when it fell. It's the police that came later and identified what it found there as a walkie talkie. The said walkie talkie due to identification reasons was not tendered in evidence.

Prosecution had alleged that PW5 had been told by Kidega that it was Komakech who gave him the 29 walkie talkies. Kidega was A14 against whom charges were withdrawn. He was not called to give evidence.

The inference is that his evidence was harmful to the prosecution case **Uganda v Mutende & Anor (1970) EA 269.**

In any case PW5 was a deliberate liar who was not even capable of naming the person from whose house the 29 walkie talkies were found. The foregoing leaves no evidence against A13 and the prosecution having failed to establish a prima facie case against him, A13 Komakech Patrick is acquitted.

ACCUSED 15

Abonga Nick A15 is alleged to have been one of the ring leaders of the rebellion. He was alleged by PW20 to have displayed the equipment they were to use. He was also alleged to have conducted training of how to use the equipment. That he did these while attending the Nairobi meeting. He appeared in a leadership role as PW20 note book Exh P14 showed.

Furthermore he is alleged to have talked to PW28 on the phone.

A15 is said to have done the demonstration of the equipment at the meeting. His exact words were not revealed by PW20. The Nairobi meeting was however dealt with earlier and the evidence was found wanting. Ex P14 was found to be a doctored piece of work and eventually the evidence of Exh P14 was insufficient to put anyone on his defense.

On the issue of PW28 talking to A15 on the phone the prosecution did not prove that the voice heard by Pw28 was that of A15. The prosecution itself told court that Odong who had defected from LRA used to feign LRA rebels' voice to talk to people in Nairobi. It was therefore necessary for the prosecution to prove that the voice that PW28 talked to belonged to A15.

The prosecution having failed to establish a prima facie case, A15 Abonga Frank is acquitted.

ACCUSED 3

Otim Patrick Opoka alias Pader was A3. By the evidence of PW20 the prosecution attempted to prove the guilt of A3. PW20 told court that he was recruited by A3 but he failed to tell court what Otim A3 said in the meeting. PW20'S evidence was however rejected earlier in this ruling. Being the only evidence that could be leveled against A3, the prosecution fails to establish a prima facie case against A3 Otim Patrick Opoka Pader who is hereby acquitted.

ACCUSED 12

The prosecution through PW20 showed that A12 Menya Deovelente travelled to Kenya in 2008. Prosecution tendered a travel manifest Ex P39 showing passengers who travelled by Grand Bus Services on the 14/08/08. The passenger on that bus however is Maaya not Menya.

Again PW20 who allegedly attended the meeting had his evidence so much discredited that it was worthless against whoever was alleged to have attended that meeting.

Moreover there is no evidence what so ever that even if A12 attended, he uttered word let alone anything treasonable.

As for the 2008 meeting there is no proof that it even occurred. PW19 told court that he had no tangible evidence to prove that it took place. That being the case the prosecution evidence falls far too low to a prima facie case to necessitate an explanation from the accused. He is therefore acquitted.

ACCUSED 7

Olanya Alfred Lubel A7 is said to have attended the meeting. PW20 told court that Lubel was also in the meeting. He also wrote his name in his note book. That evidence has been found unreliable. In any case a dumb Olanya at a meeting with no record of any utterance cannot be said to have committed a treasonable act.

He is alleged to have been found with a box on which was written Obonyo's telephone number.

The prosecution did not call evidence to show that the number was called and it was answered by

rebel Obonyo. In the absence of that, there is nothing to suggest that Obonyo whose number Lubel had was the rebel in the mind of the investigators. Without any evidence connecting him to treason, possessing walkie talkies might attract any other offence other than treason.

The prosecution evidence not beating the required standard, a prima facie case is not made out and A7 Olanya Alfred Lubel is acquitted.

ACCUSED 11

A11 Obol Michael's name was in ExP14. The exhibit was found by court to have been doctored.

The learned state attorney however submitted that although he did not say anything, he at least got to know what was going on and failed to report.

PW20 Anywar's evidence having been rejected for contradictions, inconsistencies and deliberate lies, there is nothing to show that Michael Obol A11 knew of any rebellion.

In all no evidence has been adduced against A11 Michael Obol and so no prima facie case has been established, he is acquitted.

ACCUSED 9

The prosecution called evidence to show that A9 Okello Phillip Onekomon aka Kikoko had gumboots and polythene rolls. What the prosecution did not show is that owning those items in an area which has for the past 20 years used polythene sheets for roofing or boots in Tropical Africa was promotion of treason. Since the prosecution did not prove that the gumboots and the polythene sheets were for the promotion of treason, a prima facie case requiring the accused to be put on his defense is not made out. He is therefore acquitted.

ACCUSED 8

Akena Francis A8 is an accused against whom the evidence adused does not even fall in the neighborhood of a prima facie case. The prosecution conceded. No case was made out against him. He is acquitted.

ACCUSED 6

Ochieng Jimmy A6 was arrested by police. The learned state attorney submitted that A6 told police of his connection with the rebels.

Evidence obtained by investigators in this case has been dealt with earlier. The prosecution further said he had a satellite phone. Owning a satellite phone not being treasonable per se, there is no prima facie case made out against the accused person and he is acquitted.

I therefore find that the prosecution has failed to establish a prima facie case against any of the accused on the count of Treason and they are all acquitted.

The accused persons were also in the alternative charged with concealment of treason contrary to section 25 of the penal code act. A close look at the particulars shows that the person intending to commit the treason was not named.

The particulars simply say that the accused;

“knowing of a plot to overthrow the government of Uganda by force of arms did not give information thereof with all reasonable dispatch to the minister of justice, an administrative officer, a magistrate or a police officer in charge of a police station,”

In a proper charge, the person whom the accused knew intended to commit the crime, should have been named. Failure to do so rendered that count defective because the accused persons did not know the person they are believed to have known intended to commit treason. In holding thus I take comfort in **Mattaka & others v Republic (1971) EA 495** where ther Lordships held that

“A charge of misprision of treason which does not name the person intending to commit treason is defective”

That having been said, the accused persons in this case did not suffer any prejudice and no injustice was occasioned.

The prosecution did not in its evidence prove any of the accused to have known and failed to report. In such failure therefore a prima facie case was not made out against any of the accused. They are each and all acquitted of the offence of concealment of treason.

David Wangutusi

Judge

30th May 2012