

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

HCT-14-CR-CN- 008-2020

**(ARISING FROM MKN-00-CR-CO-104-2018 AT NAKIFUMA G1
COURT)**

1. MAKONZI SULAIMAN

2. BUZABALYAWO YAHAYA

3. MAKONZI KAMADA

4. MUTEBI FRED ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE DAVID MATOVU

JUDGMENT

Introduction

1. This is an appeal by Makonzi Sulaiman, Buzabalyawo Yahaya, Makonzi Kamada and Mutebi Fred (hereinafter referred to as the “Appellants”) challenging the decision of Her Worship Nahirya Esther Magistrate Grade One at Nakifuma Magistrates Court in her Judgment delivered on 7th December, 2020 in Criminal Case

No. 104 of 2018 where she convicted all the four (4) Accused persons of doing grievous harm and assault occasioning actual bodily harm and sentenced each of them to pay a fine of Ug Shs 1,000,000/= (One million shillings) on each count or in default to serve a prison term of 24 months.

The learned trial magistrate convicted A4 of theft and sentenced him to pay a fine of Ug. Shs 500,000/= (five hundred thousand shillings) or in default serve 24 months' imprisonment. Court also ordered A4 to compensate the complainant with Ug. Shs 1, 800, 000/= (One million eight hundred thousand shillings).

Duty of 1st Appellate Court

2. It is the duty of the 1st Appellate Court to evaluate all the evidence and materials available before the trial Court a fresh and thereafter arrive at its independent finding of facts (**See case of Kifamunte Henry Versus Uganda (Supreme Court Criminal Appeal No. 010 of 1997).**)

Ground of Appeal

1. **That the learned trial magistrate erred in law and in fact when she convicted A1, A2 and A3 of the offence of assault**

occasioning actual bodily harm when the ingredients of the said offence were proved by the state.

- 2. That the learned trial magistrate erred in law and fact when she convicted the A4 of theft when the ingredients of the offence were not proved by the state.**
- 3. That the learned trial Magistrate erred in law and fact when she failed to evaluate the evidence on the court record and thus reached a wrong decision which occasioned a miscarriage of justice.**
- 4. The learned Magistrate erred in law and fact when she sentenced the Appellants to a sentence which was too harsh and excessive in the circumstances.**

Legal representation

- 5. Mr. Gilbert Nuwagaba represented all the four (4) Appellants and the state did not file submissions in reply.**

Decision of Court

- 6. Court has carefully read the submissions of counsel for the Appellants and agrees with Counsel for the Appellant that the charge sheet dated 18th April, 2019 in CRB 117 of 2018 specifically Count III of Assault occasioning actual bodily harm**

Contrary to section 236 of the Penal Code Act did not disclose any criminal offence in the particulars which read as follows:-

“Makonzi Sulaiman, Buzabalyawo Yahaya, Makunzi Kamada and Mutebi Fred Mwanje on the 5th day of April, 2018 at Lusanja Village, Mukono District. Hereby occasioning Mutyaba Robert actual bodily harm.”

The particulars of the offence left out some important verb and therefore lost its intended meaning. The learned trial magistrate should not have proceeded to record a Plea of any nature on such a defective count.

For the above reason ground one of this appeal succeeds.

Ground 2

7. Counsel for the Appellants correctly states the ingredients of the offence of theft as being the following:-

- i) Taking property of another person unlawfully**
- ii) Without a bonafide claim of right**
- iii) Having the intention to permanently deprive the owner of their property.**
- iv) Participation of the accused in the theft**

8. Court finds that the learned trial magistrate correctly laid out the above ingredients of the offence in her Judgment while resolving the count on theft.
9. Court has carefully evaluated the prosecution evidence and finds that the complaint Bruhan Kityo who testified as PW1 had been paid Ug Shs 1, 800, 000/= (One million eight hundred thousand shillings) by Sulaiman Kimala who testified as PW4 and this payment was consideration for the supply of beef by PW1 to PW4.
10. Court also finds that exhibit P4 proved that indeed the transaction between PW1 and PW4 relating to the supply of beef was a genuine transaction.
11. Court is also satisfied that PW1 correctly identified A4 Mutebi Fred Muwanga as the person who stole his phone and money and this evidence was not challenged by the defence and therefore court agrees with the learned trial magistrate that only A4 was culpable on this count of theft
12. Ground 2 accordingly fails.

Ground 3

13. Save for the failure of the learned trial magistrate failing to properly comprehend the particulars of the offence on the offence relating to assault occasioning actual bodily harm, Court has not found any reason to fault the learned trial magistrate on her overall evaluation of the evidence on record.

Ground 4

14. Having found that the learned trial magistrate ought not to have taken plea on the offence of assault occasioning actual bodily harm, the conviction of all four (4) Accused persons for the offence assault occasioning actual bodily harm in Court III is hereby quashed and the subsequent sentence on this Court is also set aside.
15. However, since the Appellants did not challenge their convictions and sentences for the offences of doing grievous harm Contrary to Section 219 of the Penal Code Act. Court will not tamper with the convictions and sentences in counts 1 and 2.

16. Finally, with regard to the offence of theft for which A4 was convicted this Court upholds the conviction and finds the sentence and order for refund as very reasonable.

17. In the final analysis only Ground 1 of appeal succeeds but this does not alter the convictions in Count 1, 2 and 4 which remain standing and similarly, the sentences in counts 1, 2 and 4 also remain standing.

Dated this 17th day of April 2024.


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David Matovu

Judge