

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
ANTI CORRUPTION DIVISION
HCT-00-AC-CN-0025-2014

UGANDA

APPELLANT

VS.

SEMAMBO SHABAN

RESPONDENT

JUDGMENT

This is an appeal by the State against the decision of the Grade 1 Magistrate’s court delivered on 10th December 2014. Therein the respondent was acquitted on a charge of theft, contrary to sections 254(1) and 261 of the Penal Code Act. This appeal seeks for the acquittal to be set aside so that it is substituted by a conviction.

Three grounds were advanced by the State in the memorandum. They read as follows:

1. That the learned trial magistrate erred in law and facts when she failed to properly evaluate the evidence on record as a whole thereby coming to a wrong conclusion.

2. The learned trial magistrate erred in law and facts when she held that the participation of the respondent in the offence was not proven beyond reasonable doubt thereby reaching a wrong decision.
3. The learned trial magistrate erred in law and facts when she failed to attribute fraud on the conduct of the respondent thereby arriving at a wrong decision.

Needless to say the duty of the first appellate court in the matter, the situation in which this court finds itself here, is to go over the record in order that it may reach its own independent decision. I hasten to add however that what the appellate court does not share with the trial court is the advantage of seeing the witnesses as they testified.

It is argued in ground 3 of the appeal that the trial court did not attribute fraud on the conduct of the respondent. Fraud as commonly recognised is the deliberate deception to secure unfair or unlawful gain. **Black's Law Dictionary**, 8th edition, describes fraud as a known misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Simply put there is the aspect of knowledge on the part of the accused that the misrepresentation is for purposes of deceit or that it will deceive. Doubtless the respondent signed the impugned documents. That could be an avenue for a possible charge. But relating to the charge under consideration the evidence is not available. It was argued by

the appellant that section 20 of the Penal Code Act would apply. With greatest respect no evidence is handy to sustain the contention. The evidence adduced by the prosecution cannot sustain fraud which is at the centre of any successful allegation of theft. Ground 3 must fail.

Having disposed of ground 3 discussion of grounds 1 and 2 is moot. No reason exists to disturb the decision of the trial court.

Appeal dismissed.

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PAUL K.MUGAMBA

JUDGE

11TH JUNE 2015