THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

CRIMINAL APPEAL NO. 013 OF 2019

(ARISING FROM CRIMINAL CASE NO. 0301 OF 2018)

1. KAZIBWE ELISHA
2. SSALONGO WILLIAM KALUMBA ::APPELLANTS

VERSUS

UGANDA :: RESPONDENTS

Before; Hon. Lady Justice Victoria Nakintu Nkwanga Katamba

JUDGMENT

The Appellants were charged with four counts of Conspiracy to commit a felony under Section 390 of the Penal Code Act, Theft C/S 25 (2) a) and 261 of the Penal Code Act, Forgery C/S 348 (1) of the Penal Code Act, Uttering False a document C/S 351 of the Penal Code Act in the Chief Magistrates Court of Masaka at Masaka. The Appellants pleaded not guilty on all counts. Prosecution led evidence of seven witnesses and the Appellants gave evidence on oath. Count one of conspiracy to commit a felony was struck out and court maintained three counts. The Court evaluated the evidence and the Chief Magistrate entered judgment on the 11th day of July 2019 at the Chief Magistrate's Court of Masaka at Masaka. The Appellants were found guilty and convicted on all three counts. The Appellants were each sentenced to a non-cumulative fine of Ugx. 2,000,000/= each on each count and in default of the payment of a fine, imprisonment for three years concurrently on each count.

BACKGROUND OF THE CASE;

The Appellants were charged in the Chief Magistrates Court of Masaka at Masaka with the offences of theft, conspiracy to commit a felony, forgery and uttering a false document on particulars that Kazibwe Elisha, Ssalongo William Kalumba, Kikambi Emmanuel Kyewalyanga Alias Emma and others still at large during the month of July 2017 at Masaka Municipality in the Masaka District stole a Land Title for Lease 3583 Folio 5 Plot 29 Elgin Road valued approximately Ugx. 200,000,000/= belonging to Kizito Joseph, forged transfer forms purported to have been written by Kizito Joseph, and knowingly and fraudulently uttered the said false document to wit the transfer form.

Prosecution evidence by the complainant Kizito Joseph Kawonawo PW1, was that the first Appellant is his friend and he worked as the Secretary Masaka Land Board. The 2nd Appellant was known to the victim for about 25 years. The Appellants fraudulently transferred his land into the 2nd Appellant's name. He gave the title to the 1st Appellant for extension of his lease but the first Appellant fraudulently transferred the same to the 2nd Appellant. He never signed the transfer forms relied on and did not instruct the lawyers to remove a caveat. There was a suit over the land between PW1 and Crown Beverages. Crown Beverages claimed that the land was theirs. The building was occupied by Pepsi and the tenant was one Jamil Sempijja. Jamil Sempijja paid him rent. The Appellants forged his voter's card for the transfer. He reported the matter to Police.

PW2 Hajji Sempijja Jamil stated that in August 2017, he met A3 Kikambi Emmanuel who told him of a deal of sale of the land in Plot 29 which was at the time under civil suit. A1 produced a Certificate of Title in the names of PW1. He informed PW1 who responded that the land was still under civil suit with a caveat and that is why he did not purchase the property even though he was interested in doing so as sitting tenant.

PW3 Namutebi Sherina testified that she knows A1 and A3 as her casual employers. A3 gave her documents to give the Registrar for transfer of land and A3 picked the title upon completion of the transfer. The title was in A2's name. She never worked with A1. The

police officer who recorded her statement insisted that she states that A1 handed the title over to her not A3. PW3 recanted her statement and was treated as hostile witness.

PW4 Ssewagudde Frank a lawyer with Katende Sempebwa Advocates testified that A3 came to their offices seeking legal services to follow up a matter at the High Court at Masaka. He stated that he was acting for Joseph Kizito and had a copy of the certificate of title and a court order dismissing the suit. PW4 wrote a letter for removal of a caveat relying on the court order and acting for Joseph Kizito through A3.

PW5 Namuwooya Catherine stated that she is a Senior Government Analyst testified that she found the differences in the signature of the victim to be significant and the images on the voter's card are different.

PW6 Fred Kamugunda of Matovu, Kamugunda & Co. Advocates testified that sometime A2 came to his office with the complainant and they had the original certificate of title and transfer forms with the complainant transferring to A2. PW6 signed and witnessed the transfer forms.

PW7 D/Sgt Mugarura Johana a police officer attached to Regional CIID Masaka stated that he investigated the instant case and discovered the removal of caveat by the lawyer from KATS. The transfer forms had photographs of A2 and the Complainant and lawyer told him that he had never seen those people in his office. When the complainant challenged the signature, PW7 filed PF17A and took to a handwriting expert for examination where it was established that the signatures were not similar hence the charge of forgery.

That was the Prosecution case.

The Appellants denied the allegations and DW1 Kazibwe Elisha testified that until 2011 he was working as a Secretary to the District Land Board Masaka. He stated that he never held certificates of title in his position except for titles that were expired. As Secretary, they only facilitated the process. He was out of office between September 2007 to June 2009 on interdiction and he did not help the complainant with extension of his lease.

DW2 Ssalongo William Kalumba stated that the Complainant sold him a plot with a building at 200M and DW2 offered 120M. On 26, October 2017, the Complainant presented his voter`s card and the original Certificate of Title and the two concluded the transaction and Matovu Kamugunda witnessed the transfer forms.

DW3 Kikambi Emmanuel stated that in October 2017, A2 asked him to deliver a title deed to the land office for the land A2 had bought from the complainant. A2 informed him that the complainant turned around and reported him to police. The complainant sent him to the lawyers to remove the caveat. He presided over the removal of caveat and transfer to A2 on instructions of the complainant.

That was the Accused/Appellants case.

In his judgment, the trial Magistrate found that A2 had physical custody of the certificate of title and there was no valid purchase, as such the land was fraudulently transferred by A1 and A2 without a claim of right. The Appellants were found guilty and convicted on all three counts. The trial Magistrate sentenced each of them to a non-cumulative fine of Ugx. 2,000,000/= on each count and upon failure of payment, imprisonment for three years concurrently on each count.

The Appellants being aggrieved and dissatisfied with the conviction and sentence brought this appeal on the following grounds;

1. The trial Magistrate erred in law and fact when he put the Appellants on their defense without according them an opportunity to make submissions on a no case to answer, thereby resulting into a miscarriage of justice;
2. The trial Magistrate erred in law and fact when he stated that he who alleges must prove thereby shifting the burden of proof to the Appellants which resulted into a miscarriage of justice;
3. The trial Magistrate erred in law and fact when he relied on evidence of a hostile witness to convict the Appellants, thereby resulting into a miscarriage of justice;

4. The trial Magistrate erred in law and fact when he failed to properly evaluate the evidence regarding the charge of theft and convicted the Appellants, thereby resulting into a miscarriage of justice;
5. The trial Magistrate erred in law and fact when he convicted the Appellants for the offence of uttering a false document without evidence thereby occasioning a miscarriage of justice;
6. The trial Magistrate erred in law and fact when he convicted the Appellants on the charge of forgery without evidence thereby occasioning a miscarriage of justice;

Determination of the appeal;

This being a first appeal, this court is under a duty to reappraise the evidence, subject it to an exhaustive scrutiny and draw its own inferences of fact, to facilitate its coming to its own independent conclusion, as to whether or not, the decision of the trial court can be sustained ***(see Bogere Moses v. Uganda S. C. Criminal Appeal No.1 of 1997 and Kifamunte Henry v. Uganda, S. C. Criminal Appeal No.10 of 1997***, where it was held that: "*the first appellate Court has a duty to review the evidence and reconsider the materials before the trial judge. The appellate Court must then make up its own mind, not disregarding the judgment appealed against, but carefully weighing and considering it").*

An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination, ***(see Pandya v. Republic [1957] EA. 336***) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion (***see Shantilal M. Ruwala v. R. [1957] EA. 570***). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, ***(see Peters v. Sunday Post [1958] E.A 424).***

I will consider the grounds in the same order as they were argued by Counsel for the Appellants.

Ground one; The trial Magistrate erred in law and fact when he put the Appellants on their defense without according them an opportunity to make submissions on a no case to answer, thereby resulting into a miscarriage of justice;

Counsel for the Appellants submitted that *Section 127 of the Magistrates Courts Act* makes the process of putting the Accused to their defence an important one and since the Appellants were not accorded the opportunity to make submissions on a no case to answer, this resulted into an erroneous conviction.

Section 127 of the Magistrates Courts Act provides that, "*If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall forthwith acquit him or her*."

Section 127 does not make it mandatory for court to entertain submissions on a no case to answer. The words "*if it appears*" make it discretionary for court to consider the evidence adduced by the Prosecution supporting the charge and determine whether the Accused should be put to his defence.

In the instant case, at the close of the Prosecution case, the trial Magistrate clearly stated at Page 23 of the proceedings that the evidence on record establishes a case against the accused and as such the Accused persons were put to their defence. This was therefore no irregularity as the Accused persons had the opportunity of cross examining the Prosecution witnesses to challenge their evidence as well as giving their evidence in their defence against the charges.

I am further in agreement with Counsel for the Respondent that the Appellants being represented would have made the submissions on a no case to answer if they believed that there was insufficient evidence against them.

I therefore find that the trial Magistrate exercised his jurisdiction and discretion in putting the Accused persons to their defence following his own consideration of the evidence. This was in line with the provision of Section 127 which allow the Magistrate to put the accused person to their defence if it appears to the Magistrate that a case has been made against the accused persons.

This ground therefore fails.

Ground two; The trial Magistrate erred in law and fact when he stated that he who alleges must prove thereby shifting the burden of proof to the Appellants which resulted into a miscarriage of justice;

Counsel for the Appellants faults the trial Magistrate for relying on the evidential burden as provided in ***Section 101 of the Evidence Act*** and holding that A2 Kalumba should have proved purchase.

The burden of proof in criminal cases does not shift from the Prosecution except in certain cases and the prosecution has to prove beyond reasonable doubt that the Accused committed the offence. ***(Woolmington Vs DPP [1935] AC 462)***

In the instant case, while evaluating the evidence of the Accused persons, the trial Magistrate stated in his judgment at Page 7 that A2 should have proved that he purchased the complainant's land. This was irregular as the burden to prove whether there was or wasn't a purchase was on the Prosecution. If the complainant had never disputed the sale and purchase, there would be no case. It is because the complainant denied ever selling the property that this case is in court. The burden was on him to prove that there was no sale and not on A2 to prove that there was.

Black's Law Dictionary 8th Edition Page 335 defined a ***miscarriage of justice*** to mean a situation where the accused person loses a chance of acquittal as a result of procedural irregularity or omission by a judicial officer.

I find that the evaluation of evidence and misdirection by the trial Magistrate in stating that A2 should have proved the purchase was an error that occasioned a miscarriage of justice as the burden to prove whether there was or wasn't a purchase of sale was on the Prosecution.

This ground is resolved in the affirmative

Ground three; The trial Magistrate erred in law and fact when he relied on evidence of a hostile witness to convict the Appellants, thereby resulting into a miscarriage of justice;

Section 129 of the Evidence Act provides that, " *Where the court declares that a witness called by a party is hostile to that party (whether because his or her testimony in court conflicts with any statement he or she has made during the police investigation or for any other reason), it may permit the party to conduct the examination-in-chief by that party as if it were a cross-examination and may determine the order of the witness' examination by the other parties*".

PW3 while giving evidence deviated from her statement admitted as Exh P5 and the Prosecution attorney prayed to proceed with her examination in chief like it was cross examination and the court allowed thereby declaring her hostile.

The purpose of conducting the examination in chief of a hostile witness as if it is cross examination is to discredit their unreliable evidence.

"*The giving of leave to treat a witness as hostile is equivalent to a finding that the witness is unreliable. It enables the party calling the witness to cross-examine him and destroy his evidence. If a witness is unreliable, none of his evidence can be relied on, whether given before or after he was treated as hostile, and it can be given little, if any, weight* **(see Alowo v. Republic, [1972] E.A. 324).** *The rule of practice is based on logic, because if a person is found to be untruthful, there is no reason to suppose that he was any more truthful before he was caught out than after: indeed, it is the very evidence that he has*

given that has shown his unreliability". - ***See the case of Batala Vs Uganda [1974]1 EA 402 (CAK) cited in Uganda Vs Ssebuwufu Case No. 0493 of 2015.***

The trial Magistrate relied on the statement made by the hostile witness PW3 to prove the connection between herself and A1. PW3 alluded to intimidation while making the statement but she confirmed in her oral testimony that she worked with A1 and still works with him. This only confirmed part of her statement and most importantly, this evidence was not the sole basis for the conviction. Although the evidence of a hostile witness carries no weight, it is my considered opinion that where parts of the statement deviated from are reiterated in oral examination that evidence can be relied on to corroborate other independent evidence in order to reach a conviction or acquittal.

In this case, the trial Magistrate warned himself of the weight of evidence of a hostile witness and went ahead to rely on the parts of PW3's evidence that confirmed a relationship between PW3 and the Accused persons.

The trial Magistrate cautioned himself before relying on the evidence of a hostile witness and further relied on parts of the parts of the evidence to establish a relationship between the parties and the witness which I strongly believe existed for the reason that even before becoming hostile, she maintained the same evidence that there was a connection between herself and the accused persons. Further, this evidence was not the basis of the conviction and therefore, I find that relying on evidence of a hostile witness in this case did not occasion a miscarriage of justice.

This ground is resolved in the negative.

Ground four; The trial Magistrate erred in law and fact when he failed to properly evaluate the evidence regarding the charge of theft and convicted the Appellants, thereby resulting into a miscarriage of justice;

The definition of theft is provided for under ***Section 254 of the Penal Code Act*** which provides that; *A person who fraudulently and without claim of right takes anything capable*

of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

For an accused person to be convicted of the offence of theft C/S 254 & 261, the Prosecution has to prove beyond reasonable doubt that; *there was a taking of a thing belonging to another*, that *thing was something capable of being stolen*, that *thing was taken fraudulently and without claim of right with the intention of permanently depriving the owner of the same, the accused participated or is responsible*.

In the instant case, the complainant alleged that he gave the 1st Appellant his certificate of title for the purpose of extending a lease. The certificate of title represents his interest in land and as such is a thing capable of being stolen. The Prosecution therefore proved that there was a taking of a thing capable of being stolen.

The second ingredient requires proof that the thing was taken fraudulently, without a claim of right and with the intention to permanently deprive the owner of that thing.

The complainant alleged that he gave the certificate of title to the 1st Appellant in 2008 for purposes of extending his leasehold interest and the Appellants transfer the complainant's title to the 2nd Appellant.

Counsel for the Appellants argued that the time span between when the complainant alleges to have given the title to the 1st Appellant and when the Appellants were charged is 09 years which is logically impossible for one to allow another person to keep their title for such purpose. Counsel faults the trial magistrate for relying on conjecture about the practical process of lease extension to convict the Appellants.

The Appellants' case is that the land was purchased legitimately although there was no purchase agreement. The 1st Appellant testified that together with the complainant, they appeared before PW6 the advocate who witnessed the transfer forms and the complainant PW1 presented the original certificate of title, his voter's card and a photograph for purposes of transferring the land to A2. This evidence was corroborated by PW6.

The Prosecution case is that the 1st Appellant upon completing the lease extension did not return the certificate of title as he needed the complainant to pay Ugx. 15,000,00/= This was stated by PW1 in his evidence. It was also his evidence that the 1st Appellant is his friend who was the Secretary of the District Land Board at the time and that is why he trusted him to conclude the process.

The complainant testified that he discovered the fraud in 2017 and that was after he had demanded the title from the 1st Appellant who kept dodging him until he established from the lands office that the land had been transferred to A2.

According to the certificate of title, there was a caveat lodged onto the land in 2007 by Crown Beverages. This was corroborated by PW1 and Pw2 that there was a suit between the Complainant and Crown Beverages. In 2017, the lawyers wrote to have the caveat removed since Crown Beverages had lost the suit. This means that the land was encumbered from 2007 a year after the complainant had been granted the lease to 2017 when the suit was lost. In his evidence he stated that there was a caveat on the land by Crown Beverages and PW2 also testified that when he informed Pw1 that there was a 'deal' to sell his land, Pw1 informed him that the land could not be sold because there was a caveat.

The complainant PW1 testified that he gave the certificate of title to the 1st Appellant for purposes of extending his lease in 2008 and discovered that transfer in 2017. I find it hard to believe that the complainant neglected his certificate of title for nine years despite the alleged friendship between the parties. The 1st Appellant left the office of the Secretary of the Land Board in 2011, why didn't the complainant retrieve his certificate of title at this point?

DW1 Kazibwe Elisha was very elaborate in his evidence on the process of renewing a lease and that the office Land Board does not receive the certificate of title throughout the process. DW1's evidence for the process of renewing a lease was not challenged in cross

examination. I believe this evidence to be true and despite the contradiction about the time he was interdicted and when the lease was extended, the rest of his evidence was consistent.

The 2nd Appellant testified in his evidence that there was no sale agreement since he knew the complainant very well and the transfer forms were enough.

The complainant in his evidence testified that he has known the 2nd Appellant for about 25 years and therefore there was an existing relationship between the two parties. PW6 Kamugunda Fred testified that the Complainant and the 2nd Appellant appeared before his office and duly executed a transfer form for the transaction. I do not find any reason why PW6 had to perjure himself before the court being an advocate who understands the due process of court.

The purpose of a sale agreement is to act as a legally binding contract between two parties involved in a transaction. A contract can be either oral or written as in such transactions; the undertaking that parties have completed a sale of land transaction can be completed by payment of consideration which can be evidenced by executing transfer forms being instruments for effecting such legal transfers.

The complainant and the 2nd Appellant knew each other for a very long time, about 25 years. They had established a relationship of trust between themselves. Contrary to the Chief. Magistrate's finding and with respect to him, it was based on the existing relationship that only a transfer was executed. I therefore find that in the circumstances, the complainant's evidence that there was no purchase simply because there was no sale agreement insufficient to prove the prosecution case.

Consequently, the ingredient that the 'thing was fraudulently taken' was not proved by the prosecution beyond reasonable doubt.

The trial Magistrate was therefore in error for finding that the offence of theft was proved and that the certificate of title was fraudulently taken without a claim of right.

This ground therefore succeeds and is resolved in the affirmative.

I will resolve grounds five and six concurrently since the two offences have similar ingredients.

Grounds five and six; The trial Magistrate erred in law and fact when he convicted the Appellants for the offence of uttering a false document without evidence thereby occasioning a miscarriage of justice.

The trial Magistrate erred in law and fact when he convicted the Appellants on the charge of forgery without evidence thereby occasioning a miscarriage of justice;

The Appellants were charged with and convicted of the offences of forgery and uttering a false document. ***Section 342 of the Penal Code Act*** defines forgery to mean the making of a false document with intent to defraud or to deceive. ***Section 351 Penal Code Act*** on the offence of uttering false documents provides that, "*Any person who knowingly and fraudulently utters a false document commits an offence of the same kind and is liable to the same punishment as if he or she had forged the thing in question*".

For one to be convicted of the offence of Forgery C/S 342, the Prosecution has to prove the following ingredients; ***the accused made a false document; the false document was made with intent to deceive.***

For one to be convicted of the offence of uttering a false document, the Prosecution has to prove that; the accused knowingly and fraudulently uttered a false document. The Prosecution has to prove that the accused knew that the document was false and presented the same to be relied upon. ***Black's Law Dictionary 4th Edition*** defines the word '***utter'*** to mean, to offer, whether accepted or not, a forged instrument, with the representation, by words or actions, that the same is genuine.

In the instant case, the Prosecution case was that the Appellants forged transfer forms, a withdrawal of caveat and voter's card which were used to effect the removal of caveat from the land comprised in Lease 3583 Folio 5 Plot 29 Elgin Road belonging to Kizito Joseph and later transferring the same land to the 2nd Appellant.

PW1 Kizito Joseph testified that he never signed transfer forms, nor did he instruct lawyers to remove the caveat and further that the voter's card used to effect changes on the certificate of title was forged.

I have examined the said letter Exh P2 for the removal of caveat. In the letter dated 25th July, 2017, the advocates clearly stated that they were acting on instructions of Mr. Joseph Kizito the registered proprietor and the caveat was to be vacated to enable the registered proprietor use and develop the land.

PW4 Ssewagudde Frank testified that A3 came to his office and instructed him to remove the caveat and purported to have been working on instructions of PW1. The complainant stated in his examination in chief that he does not know much about A3 Emmanuel Kikambi. He however stated in cross examination that he knew him and had ever talked to him on phone and that together, they wanted to sell land to the former Vice President. This evidence clearly shows that there was a relationship between A3 and the complainant and by stating in examination in chief that he did not know much about him, he was being untruthful before court. It is clear that the complainant wanted to deny any relationship with A3 and avoided him in his evidence in chief.

The relationship between the complainant and A3 was further proved by PW3 Namutebi Sherina. DW3 was very consistent in his evidence and his evidence was corroborated by evidence of PW3 although she was a hostile witness. The evidence of the complainant that he wanted to sell land to the former Vice President together with DW3 also confirms their working relationship and since, DW3 is a land broker; I have no reason to doubt his evidence that he was given instructions by a person he had been working for to instruct lawyers to remove a caveat.

PW7 D/Sgt. Mugarura Johana a police officer attached to Regional CIID Masaka testified that when PW1 reported the offence, investigations were conducted and it was established that the signatures on the transfer forms were not similar with the victim's signatures.

PW5 Namuwooya Catherine the handwriting analyst testified that there were variations on the signatures specimen and documents provides although she attributed some of these to natural variations. The signatures of the transfer form, consent form and voter's card were however found to be having significant differences as stated by PW5, the expert witness.

In ***Divie v. Edinburgh Magistrates (1953) SC 34 at 40***, it was held that:

"*The duty of the expert witnesses is to furnish the Judge with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence*."

Counsel for the Appellant submitted that these could be attributed to natural variation and further that the expert opinion of not binding on the court. I agree with Counsel that expert opinions are not binding. In most cases expert witnesses are called by the party seeking to prove their case and this may not only create bias in the witness but also render their evidence partial and ultimately unreliable. The court has to be cautious in reaching a conviction based on the evidence of an expert witness that is not backed by all other available evidence.

The principles of dealing with a handwriting expert were laid down in the case of ***Kimani vs Republic (2000) E.A 417***, where it was stated as follows: " *…….it is now trite law that while the courts must give proper respect to the opinion of expert, such opinions are not as it were, binding on the courts…..such evidence must be considered along with all other available evidence and if a proper and cogent basis for rejecting the expert opinion would be perfectly entitled to do so……..*"

In the instant case, the complainant identified his signature on document ID 11 and stated that the document thereon was his. I have carefully perused the said document which is an application for a town plot, Land Form 1dated 26/07/18 and the signature thereon is similar to the signature on the transfer form Exh P7, the accompanying voter's card, and Exh. Doc. A; where the complainant appended his specimen signatures. I have carefully considered

the different documents and the signatures thereon and I am convinced that the said signatures were not forged. The evidence that the complainant appended his signature to the transfer form before PW6 is also sufficient to corroborate this finding.

I therefore find that the Prosecution did not prove that the accused made a false document with the intent to deceive or that they uttered any false document.

Grounds 5 & 6 therefore succeed.

It is now settled, that an appellate Court can only interfere with a sentence imposed by a trial Court where the sentence is either illegal, is founded upon a wrong principle of the law, or Court has failed to consider a material factor, or is harsh and manifestly excessive in the circumstance ***(see James v. R. (1950) 18 E.A.C.A. 147; Ogalo s/o Owoura v. R. (1954) 24 E.A.C.A. 270; Kizito Senkula v. Uganda, S.C. Criminal Appeal No. 24 of 2001; Bashir Ssali v. Uganda, S.C. Criminal Appeal No. 40 of 2003, and Ninsiima Gilbert v. Uganda, C.A. Criminal Appeal No. 180 of 2010)***.

Having found that the Prosecution failed to prove all the ingredients of the offences of theft, forgery and uttering a false document contrary to Sections 261, 348 and 351 of the Penal Code Act respectively, I find and hold that the trial Magistrate reached a wrong conclusion and conviction and this occasioned a miscarriage of justice.

This appeal therefore succeeds and the whole judgment, conviction and sentence of the trial Magistrate is hereby overturned and set aside.

I so order.

Dated at Masaka this 3rd day of December, 2021

Signed; 

Victoria Nakintu Nkwanga Katamba - Judge