

THE REPUBLIC OF UGANDA
IN THE HIGHCOURT OF UGANDA AT KAMPALA
CRIM.REV.No.205 of 1976

Uganda v. Disoni Ndinywa

judgement

Criminal Procedure - Arrests - accused arrested and taken to police station where he was released - on being released was arrested by Police Officer and on being searched was found with suspected stolen property - charged with being in possession of stolen property c/s 299 of Penal Code - whether procedure adopted by police officer in arresting the accused was proper.

Criminal Procedure - charges - accused charged with being in possession of stolen property c/s 299 of Penal Code - Plea revealed offence of theft - magistrate convicted him of theft with which he was not charged - whether conviction proper.

The accused was charged with possessing suspected stolen property c/s.299 of the Penal Code Act. The charge sheet was amended to include a second count under the same section.

The accused had been drinking in a bar and when the bill of Shs.12/- was presented to him he was unable to pay it and instead pledged a Gomasi for the amount. The owner suspecting the Gomasi to have been stolen took the accused to the police station. The accused was released as the police thought that the matter was rather minor. On being released, however, he was subsequently arrested by a police officer and upon being searched he was found with a Graduated Poll Tax tickets in the names of Balamu Mwaita. He was also found with a bicycle and a Gomasi. The police officer suspected these articles to have been stolen and subsequently preferred the above two charges.

The accused appeared in court on 4th July, 1975 and pleaded not guilty to the charges and on subsequent appearances he maintained his plea until 30th October, 1975 when he

changed his plea from not guilty to that of guilty. The plea disclosed that not only was he found with suspected stolen property but he admitted having stolen these properties from a number of people on the same day in the same village. The trial magistrate convicted the accused of the offence of theft c/s 252 of the Penal Code which was disclosed in the plea. He purported to act under s. 151 of M.C.A. The accused was sentenced to 12 months imprisonment on count 1 and 3 months imprisonment on count 2 both sentences to run concurrently. On Revision.

Held: 1. The procedure adopted by the police in arresting the accused was improper because s.299 of the Penal Code was never intended as a substitute for proper investigation of cases and could not be used in the circumstances of the instant case and therefore the conviction was bad.

2. The trial magistrate was in error in convicting the accused of theft when the charge was laid under s.299 of the Penal Code, because s. 151 of M.C.A. the trial magistrate relied upon does not authorise that course of action.

3. Although under s.150(l) (c) of M.C.A., a person charged with stealing is convicted under s.299 of the Penal Code if the facts proved amount to offence, though he was not charged with it, the section does not cater for reverse fact situation as in the instant case.

Conviction quashed and sentence set as:

Ssekandi, J.

: January 28th, 1977

Per Curiam

“The most appropriate course of action in this case would have been for the magistrate to permit the prosecution officer to amend the charge which would then be to the accused again for an appropriate plea.”

Legislations Considered:

1. Magistrates' Courts Act, 1970, (Act 13/70) ss.150(1)(c) and 151
2. Penal Code Act, 1970 (Reprint) s.299.