

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALA

D.R. CRIMINAL APPEAL NO. KAB -00-CR-CN-0006-2000

(Arising from Criminal Case No. 42/98 of Kabale Court)

UGANDA.....APPELLANT

VERSUS

- 1. TURYASINGURA E.**
- 2. KABASHEKYE C.**
- 3. TWINOMUJUNI**
- 4. KABAREBE J.**

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

The state against the decision of the Acting Chief Magistrate, Kabale, whereby on 22nd August 2002 he found the four respondents not guilty and acquitted them of the charge of threatening violence, contrary to section 76(a) of the Penal Code.

In its appeal the appellant set out four grounds. The first ground is that the learned Chief Magistrate erred in law in acquitting the respondents contrary to adequate evidence on record implicating them beyond reasonable doubt. Learned State Attorney calls to his aid the evidence of prosecution witnesses which he maintains adequately proves that the offence was committed as alleged. While I agree with the learned State Attorney that evidence of commission of a crime is clearer during daytime I note, in common with the learned. Chief Magistrate, that the witnesses do not all relate to the happening of an event at the same time and same place as the appellant would want this court to believe.

The second ground of appeal relates to contradictions and I find there is no remarkable departure in the way the lower court evaluated the evidence and reached its decision.

The third ground of appeal is that the learned Magistrate relied on extraneous matters and reached a wrong decision. The State cites paragraph 3 at page 3 of the judgment. I see no merit in this argument. The inclusion of Kabashekye as being in company of the complainant when cultivating land was improperly included in the judgment but this was a basis for the decision of the lower Court.

I do not find merit in the contention by the appellant that the lower court reached a wrong decision because the Acting Chief magistrate misconstrued evidence on record. On the whole he reached a proper decision and I do not agree the fact he did not see witnesses testify had anything to do with the manner he handled the case. Although it would it would have been desirable for the magistrate who heard the case to be the one to write judgment it is not necessary that one person goes through the entire process. When conditions do not permit, as was the case in the matter on appeal, it is possible for the magistrate who ultimately writes the judgment to be different from the one who heard evidence. For the record I detect no disability in the way the instant matter came to be decided.

In the result I find no merit in the appeal and would dismiss it.

P. Mugamba

Judge

20/02/2002

20/02/2002

Mr. Beitwenda holding brief for Mr. Kasirivu, counsel for respondents

Mr. Walinda counsel for the State

Mr. Turyamuboona Court Clerk.

P. Mugamba

Judge

20/02/2002