

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

**CRIMINAL APPEAL NO. KAB-00-CR-CN-0004-2000**

(From Cr. C. No. 321/99 of Kisoro Court)

KARORERO DAVID.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: THE HON JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against the decision of the Grade 1 Magistrate at Kisoro Court wherein on 11<sup>th</sup> July 2002 he convicted the appellant of criminal trespass contrary to section 286(a) of the Penal Code and removing boundary marks with intent to defend contrary to section 318 of the Penal Code. The appellant was sentenced to a fine of Shs. 50,000/= on each count or a term of imprisonment of 3 months on each count in default.

Four grounds of appeal are contained in the memorandum. Counsel dropped one at the time of arguing the appeal, leaving three of them which he elected to argue omnibus.

The only prosecution witness who testified to witnessing the cutting of the boundary marks by the appellant was PW11. As the judgment correctly notes at page 7 other witnesses were merely told what transpired. In my opinion the cutting of boundary marks on its own is not enough if the two counts are to be proved.

With regard to the first count there must be proof of criminal trespass as required under the law. The particulars of offence state that the appellant on 4<sup>th</sup> November 1999 entered upon the land of Ndagari Isaac with intent to annoy the said Ndagari Isaac. Court visited the locus in quo and this is acknowledged at page 8 of the judgment. Court also refers to L.C. Courts judgments. However I find Court's reliance on its visit very shaky given the scant details in its record. A

visit to the locus in quo must be recorded comprehensively and must show recording of evidence from all parties concerned if it is to be relied on in reaching a decision.

See. James Nsibambi –vs- Lovinsa Nankya [1980] HCB 81.

The visit by the trial magistrate is not sufficiently detailed and one would not rely on it to determine whether or not he was in a position to say whether the events took place on complainant's land or not. In the result I find no basis for determining that the appellant trespassed on complainant's land. I would quash the conviction on the first count.

As for the second count, I find that what needs to be proved is that the plants that were cut were actual boundary marks and if so that they cut unlawfully and with intent to defraud. The evidence recorded at the locus in quo by Court does not help show whether boundary marks were actually affected. Court ought to have taken evidence at the locus in quo pointing out the various aspects of evidence there and how it received it. As it did not I do not find that the second count is proved either. Again I would quash conviction on the second count.

In the result this appeal is allowed and the conviction is quashed and sentence set aside. Appellant is acquitted.

P. Mugamba

Judge

19/02/2002

19/02/2002

Mr. Beitwenda for appellant

Appellant absent

State Attorney absent.

Mr. Turyamuboona Court Clerk.

Court: Judgment in open Court.

P. Mugamba

Judge

19/02/2002