

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL APPEAL NO. KAB-00-CR-CN-0007-2001

(From Cr. C. No. 11/2001 of Kisoro Dd. 1 Court)

NIYONZIMA INNOCENT.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: THE HON JUSTICE P. MUGAMBA

JUDGMENT

The appellant was on 7th September 2001 convicted by the Grade 1 Magistrate at Kisoro of obtaining credit by fraud, contrary to section 292(a) of the Penal Code and sentenced to a fine of Shs. 100,000/= or, in default, to a term of imprisonment of 12 months. He appeals against both conviction and sentence. The state opposed this appeal.

The charge read as follows:

“STATEMENT OF OFFENCE

Obtaining credit by fraud c/s 292(a) Penal Code Act.

PARTICULARS OF OFFENCE

Niyonzima Innocent on the 17th October 2000 and on the 12th December 2000 at Busamba Saving Association obtained credit to the amount of Shs. 310,000/= (Three hundred ten thousand) from the said Busamba Saving Association by means of fraud that’s by showing of the said Association land as security which land wasn’t his at the same time default.....”

Apart from the lamentable grammar lacing the charge is defective. It ought to have borne two counts, one for October 17th and another for December 12th as two separate transactions allegedly took place.

See Section 84(2) of the Magistrates' Courts Act.

Busamba Savings Association the body alleged to have been defrauded is by no means a legal entity. An effort to show the Kisoro District authorities had allowed it to engage in business within the District was made by exhibiting a receipt for the fee paid for the license. However that does not render the body an entity and it must suffer a disability under S.10 of the Business Names Registration Act, Cap.87 of the Laws of Uganda. In effect there is nobody the appellant defrauded.

See also N.B. Nandaula –vs- Father Lyding [1963] EA 706

Other details of evidence are based on whether the saving Association was defrauded and as the question of the body has been addressed those details need not detain us. The body, after all, was in no position to lend.

In the result this appeal is allowed and the conviction is to be set aside and the sentence quashed.

P. Mugamba

Judge

20/02/2002

20/02/2002

Mr. Walinda State Attorney for respondent

Appellant absent

Mr. Turyamuboona Court Clerk.

Court: Judgment read in open Court.

P. Mugamba

Judge

20/02/2002