

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KABALE

**CRIMINAL APPEAL NO. 12/99**

(Arising out of Kabale Cr. Case No. 161/1998)

A1 AGABA A.

A2 BAJA D.

A3 KANYAMUNYU

A4 KAMWEGYEMA

A5 KABIGUMIRA.....APPLICANTS

VERSUS

UGANDA.....RESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

The appellants herein were charged before the Chief Magistrate's

Court at Kabale with four counts namely malicious damage to property, contrary to section 315(1) of the Penal Code, store braking, contrary to section 284 of the Penal Code, theft, contrary to sections 245(1) and 252 of the Penal Code. The Grade 1 Magistrate who convicted them made the following observations prior to conviction:

‘it is evident from the above analysis that none of the accused can be directly implicated with commission of any of the above charges. What is on record and what can be proved against them is that they were participants in inciting into the commission of the said crimes either at planning level or even directly.

S. 143 of the Magistrates' Courts Act provides that when a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he was not charged with it.

In this instant case the accused conspired and incited the commission of the offence of malicious damage to property of Byaruhanga Boniface and Byaruhanga Matias to section 23(2) of the Penal Code Act and I hereby convict them accordingly.

It was contended by counsel for the appellants that there is no cognate offence of conspiracy to damage property. From the text quoted above it should be clear that the lower court found the offences of malicious damage to property since there was evidence of the appellants having attended a meeting where plans to damage the complainants' property were discussed.

Consequently, I find no merit in this appeal and I dismiss it.

19/02/2002

Mr. Kasirivu for the appellants

Appellants in Court

State Attorney absent

Mr. Turyamubona Court Clerk.

Court: Judgment read in open Court.

Right of appeal explained.

P. Mugamba

Judge

