

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALA

**D.R. CRIMINAL APPEAL NO. MKA 5/93**

BAKORAH O ERIASAF.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

BEFORE: THE HON. JUSTICE P. MUGAMBA

JUDGMENT

This is an appeal against the judgment of Mr. Kisawuzi, Grade 1 Magistrate, Rukungiri. The magistrate convicted the appellant of the offence of malicious damage to property, contrary to section 315(1) of the penal Code Act and sentenced him to a fine of Shs.50,000/=.

The appeal is against both conviction and sentence.

Four grounds of appeal were advanced and counsel for the appellant did not argue them in sequence as ought to be the practice. However concerning the first and second grounds which relate to conviction on available prosecution evidence I agree with counsel for the appellant that the trial magistrate should have noted that although PW3 was called to testify he is mentioned by neither PW1 nor PW2 as having been engaged in working on PW1's fence as he claims. Another person who did not testify is mentioned. The trial magistrate should have taken note of this hiatus before relying on PW3's testimony. However once a court has tested the evidence of a single identifying witness, it may rely on such evidence if satisfied that the identification was reliable and free from any mistake or error. See Uganda –vs- Ludoviko Gudoi and another [1977] HCB 168. Even taking the evidence of PW2 alone the appellant was seen with his son cutting the fence with a panga. I see no reason why the finding of the trial magistrate should be disturbed. I see no reason either why the evidence given by PW2 and PW3 should not be given credit simply because, as counsel for the appellant argues, they had testified on her behalf on an

earlier land case. I find no basis either for the contention that this case was a fabrication because of an earlier land case and I refuse to be persuaded.

Counsel for the appellant argued that the trial magistrate should not have held that the evidence of PW1 was corroborated by PW2, PW3 and PW4 without showing how the same was corroborated. I note that the trial magistrate observed that the three witnesses were supportive of the evidence of PW1 and the charge. This is the observation at the bottom of page 1 and the top of page 2 of the judgment.

With regard to alibi counsel for the appellant argued that the magistrate simply held that the accused's defence of alibi had been disproved and destroyed by prosecution evidence. He argued that the magistrate did not bother to show how it had been disproved. The appellant had testified that at the time alleged he had been in church rather than at the scene of crime. This is technically a defence and it is not the duty of the accused to prove the alibi but rather of the prosecution to negative it. See Uganda – vs- Dusman Sebuni [1981] HCB 1. I find the evidence given by PW3 puts the appellant at the scene of crime and disproves the alibi, as the magistrate must have found.

The final ground is that the judgment is bad in law and occasioned a miscarriage of justice. I do not agree with that submission and I find that the trial magistrate arrived at a proper decision and there is no reason to disturb it. It is true a detailed evaluation of the evidence would have been desirable but I find the decision arrived at correct.

The appeal is accordingly dismissed.

P. Mugamba

Judge

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Mr. Walinda Fred State Attorney.

Appellant absent

Mr. Beitwenda for the appellant

Mr. Turyamubona Court Clerk

Court: Judgment read in open Court.

Right of appeal explained.

P. Mugamba

Judge

20/02/2002