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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CR-CN-0006/2003

(From original Mbale Crim. Case No. 279 of 2000)

1. **BEN SIMBOYI** }
2. **BUSONYA PEREZ** } .....**APPELLANTS**

VERSUS

UGANDA.....**RESPONDENT**

BEFORE THE HON. MR. JUSTICE RUGADYA ATWOKI

This appeal arises from the judgment and orders of the grade I Magistrate sitting at Mbale in which he convicted the appellants of doing grievous harm c/s 212 of the Penal Code Act and sentenced them to 12 months imprisonment. They appealed to this court against both the conviction and sentence.

Seven grounds of appeal were set out in the memorandum of appeal.

i) The learned trial magistrate erred in fact and in law in holding that the appellants acted unlawfully.

ii) That the learned trial magistrate erred both in law and in fact in holding that the complainant did not obstruct the appellants while the same were executing their lawful duties.

iii) That the learned trial magistrate erred both in law and in fact in not considering that the appellants were acting in self defence.

iv) That the learned trial magistrate erred in admitting the evidence of the clinical officer who was not a medical officer.

v) That the learned trial magistrate erred both in law and in fact in that the same did not evaluate the evidence properly or at all.

vi) That the learned trial magistrate erred both in law and in fact in awarding an excessive and or oppressive sentence in the circumstance.

vii) That the decision of the learned trial magistrate has occasioned a miscarriage of justice.

All the above grounds can conveniently be dealt with under ground number v) of the memorandum of appeal, as they are all a complaint that there was failure to properly evaluate the evidence. I will do just that.

The facts from which the appeal arose are thus. The appellants were local government officials. They went on a mission to collect graduated tax and in the process to apprehend the tax defaulters. They got to the home of one Kamala who informed them that one of his sons called Gadenya was a tax defaulter. The appellants went to the home of Gadenya and found him taking goats out for tethering. Upon seeing the tax collectors, Gadenya ran away, and the appellants seized one of the goats and went away with it.

When the tax collectors got to the trading centre, they met the complainant, a brother of Gadenya. He informed them that the goat they were taking away belonged to him, and he demanded that they give it back to him. They refused and a scuffle ensured. The complainant was overpowered and tied the so called 'kandoya three piece' style, meaning that the hands were tied up and behind his back in a very painful military style torture, and marched to the sub county headquarters.

The complainant was injured and he complained to the police who arrested the appellants and charged them with doing grievous harm in the 1st count, and malicious damage to property in the 2nd count. The 2nd count was dismissed. The appellants were convicted on the 1st count and sentenced to imprisonment for 12 months. Hence the appeal.

It transpired during the trial that the appellants demanded for shs. 2,000/- from the complainant before releasing the goat to him. They also demanded some money for the alleged injuries he caused them during the time of the scuffle. He paid this money though the exact amount which he paid was disputed. It was not disputed however that the complainant had duly paid his tax, and was not thus a tax defaulter at the time of this incident.

The appellants argued that they were lawfully collecting taxes and their actions were therefore lawful. Section 80(1) of the Local Government Act gives the local authorities the power to levy, charge and collect taxes. Section 69 of the same Act provides for the appointment of parish and sub county chiefs. The duties of the chiefs are set out in sub section (3) thereof, and include in para (d) the duty to collect government revenue. This would include the taxes levied by the local government.

Schedule 4 of the same Act in part II deals with graduated tax. Regulation 10(3) provides that any person who refuses or neglects to pay this tax, and proof is on him, commits an offence, and is liable on conviction to imprisonment or a fine. Regulation 10 (4) provides further that the tax defaulter may be sued for recovery of the tax due.

These provisions for the enforcement of payment of graduated tax do not include confiscation of property of the tax defaulter or of a relative or any other person on behalf of the tax defaulter.

The evidence was that the appellants took the goat from Gadenya, the brother of the complainant. They did not dispute this and it was their evidence. The reason for so doing was because the tax defaulter Gadenya ran away from them. Whether the goat belonged to Gadenya or to his brother, the complainant herein, was not material, as the law does not give the local chiefs power to confiscate or attach tax defaulters property.

Taking the goat of the complainant or of any other person in alleged satisfaction of, or in the attempt to enforce payment of graduated tax by the complainants brother was certainly unlawful.

The argument was that the complainant acted unlawfully when he tried to forcefully remove the goat from the chiefs. The evidence was that the complainant asked for his goat at least three times and each time his request was not granted. The complainant was

not even a tax defaulter. This was the evidence of the 1st appellant. It was on the 4th attempt that a scuffle ensued.

During the scuffle, the complainant was tied up, tortured and injured. His testimony was that he was trying to recover his goat. There was no evidence that the goat did not belong to him. I have already held that it was unlawful for the chiefs to have seized it in the first place. The attempt to recover the same was therefore lawful. The resistance by the chiefs and the subsequent assault on the complainant was not justified. It was not lawful.

The evidence was that the appellants were at the trading centre resting when the complainant came asking for his goat. They were not then collecting taxes. There could not have been any obstruction of the chiefs in their duty of collecting taxes.

The appellants further argued that they were acting in self defence. The evidence from the appellants was that the complainant attempted to pull the rope on which the goat was tethered. There was no evidence that he attacked or assaulted any of the appellants. On the other hand, the appellants resisted this attempt to take the goat, overpowered the complainant and tortured him as they tied him with his hands at the back. The assault was not on the appellants but on the complainant. The appellants were not attacked as it were. They had no apprehension or fear for their lives. They could not justify the assault they occasioned while engaged in an unlawful act of taking away the complainants goat.

The appellants argued that the trial magistrate erred in admitting the evidence of the clinical officer of grievous harm when this was not a doctor, and so not an expert witness. What constitutes grievous harm is defined under S. 2(f) of the Penal Code Act. The clinical officer examined the complainant. He ascertained that the injuries sustained were consistent with the definition set out in that section. He classified the injuries as such. A person conversant with the clinical officers handwriting and signature tendered the medical report in court as evidence under S. 45 of the Evidence Act.

The evidence was properly evaluated by the trail court. After my own analysis, I have not found any fault with the reasoning and conclusions of the trial court. I did not find that there was any miscarriage of justice. The appeal against the conviction is accordingly dismissed.

The learned trail magistrate found that the manner in which the offence was committed was brutal and high handed. He was entitled to that opinion. The evidence on record was that the complainant was tied and tortured military style by having his hands tied up and behind his back. I do not disagree with his conclusion. The sentence he imposed was after due consideration of the above factors.

This court will not interfere with the sentence of a lower court unless it was erroneous in law, or based upon wrong principles, or was manifestly excessive in the circumstances.

The appellants were 1st offenders. They were executing government duties, albeit overzealously and in the process unlawfully. The complainant sustained grievous harm, but there was no indication that he did not recover sufficiently from said injuries. He recovered the goat, the subject of this rather sad episode.

The sentence of imprisonment for 12 months was in those circumstances harsh and excessive. The appeal against the sentence will succeed. I will set aside the sentence of 12 months imprisonment and substitute thereof a sentence of a caution.

I will order that the appellants pay the complainant compensation of sh. 135,000/-, the amount he lost to the appellants, and shs. 50,000/- for the injuries he sustained, all totaling to shs. 185,000/-.

RUGADYA ATWOKI
JUDGE
28/08/2008.