THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CR-CN-0011-2011

1. **SEBOWA CYRUS**
2. **NSUBUGA Y. TADEO…… ……APPELLANTS**

VERSUS

UGANDA……..…….RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA
JUDGMENT

This is an appeal from the judgment and orders of the learned Principal Magistrate Grade I Pallisa in which he convicted the appellants to wit **Sebowa Cyrus** and **Nsubuga Y. Tadeo** of the offences of theft contrary to sections 254 (1) and 261 of the Penal Code Act and conspiracy to commit a felony Contrary to section 390 of the Penal Code Act.

In the lower court charge sheet, the particulars of offence of theft were that the appellants on 26.6.2009 at Namutumba Town stole 562 crates of soda valued at shs.13,570,000/= the property of Coca Cola Company.

The particulars of offence in the second count of conspiracy to commit a felony were that both appellants on the 26.6.2009 at Namutumba in Namutumba District and Limoto in Pallisa district, conspired to commit a felony of stealing 562 crates of Coca Cola Soda the property of Coca Cola Company.

The appellants denied the offences against them and prosecution called seven witnesses to try and prove its case as required by the law.

The learned trial Magistrate outlined the said evidence in his judgment.

The unrepresented appellants testified on their behalf in their respective defences.

After analyzing the evidence on both sides, the learned Magistrate was satisfied that prosecution had proved both counts against the appellants and accordingly convicted both. He rejected the respective defence stories as afterthoughts and accordingly sentenced A.1 to 36 months imprisonment on each count to run concurrently.
He sentenced the 2nd appellant to 23 months imprisonment on count II. Only A.1 was dissatisfied and appealed to this court.

In the memorandum of appeal, the appellant complained in four grounds which in reality can be said to be two grounds that;

1. The learned trial Magistrate erred in law and in fact when he failed to properly evaluate the evidence on record thus making an erroneous decision that **Sebowa Cyrus** was guilty and sentenced him to 36 months imprisonment.
2. The learned trial Magistrate erred in fact when he convicted and sentenced the appellant to 36 months imprisonment in disregard of the period of one and a half years he spent on remand.

Both the appellant and the learned Resident State Attorney with leave of court filed their submissions in writing in support of their respective cases.

As a first appellate court, I have studied the lower court's record, the evidence adduced on both sides and the judgment of the learned trial Magistrate. I have related the same to the submissions by both sides. I have also re-evaluated the lower court's evidence having in mind the legal requirement that the burden of proof in criminal trial lies on the prosecution throughout and that the standard of proof is beyond any reasonable doubt.

I am in agreement with the submission by the learned Resident State Attorney and satisfied that the learned trial Magistrate based his conviction of this appellant on cogent evidence adduced by the prosecution to prove the guilt of the appellant. It was proved beyond any reasonable doubt that the sodas entrusted to the appellant were stolen by him and not the local people in the area. All indications are that the accident was stage managed to hoodwink the owner of the sodas that they were lost after an accident yet they were resold by the appellants.

Whereas PW.2 testified that some locals were drinking sodas at the scene while the appellant was looking the truck itself had less than 100 crates out of the 650 it was laden with. The scene had no broken bottles and no empties or crates of soda were recovered at all. There is no way people would have consumed such big quantity of soda in such a short time and conceal the empties as well. The evidence of PW.5 clearly gives an explanation of where the soda vanished to. He revealed that he was sold 440 crates of soda which fact he disclosed to police and court. There were sold to him allegedly as leftovers. The few crates which were left on the track were meant to hoodwink the owners and conceal the crime.

Regarding the proceeds, this remained within the knowledge of the appellant. From the time of the illegal sale to the time of arrest, the appellant had ample time to conceal the money. The soda in question was sold at Namutumba as testified by PW.4 and PW.7.

The so called accident was stage managed by the appellant to deceive the investigators and mislead the owners of the soda. There is no …….. in grounds 1, 2 and 3 of the appeal which I consolidated in one ground.

Regarding ground 4 of whether the sentence of 36 months imprisonment and order of compensation was harsh I will uphold the submission by the learned State Attorney that it was not. The factors to consider while a Magistrate is passing sentence are enacted in S.133 (2) of the Magistrates Courts Act.

Those factors were considered in the case of ***Uganda v. Charles Eliba [1978] HCB 273***. While sentencing the appellant, court gave them opportunity to put in their respective allocutus.

Appellant 1 said nothing A.2 pleaded that he had a family to look after. Then the learned trial Magistrate considered that A.1 abused the trust put in him by his employer by selling the products he was entrusted with because of sheer greed. Further that he wasted court's time by denying the offence. But this is an accused's constitutional right.

The learned Magistrate handed down a deterrent sentence of 36 months imprisonment on each count to run concurrently. He then sentenced A.2 to a lessor sentence of 23 months on count 2 because he was induced by A.1.

I have no reason to fault the sentence by the trial Magistrate who heard the case and observed the witnesses. The appellant was convicted of the offence of theft contrary to section 261 of the Penal Code Act which attracts a maximum of 10 years imprisonment.

The second count of conspiracy to commit a felony is punishable by 7 years imprisonment.

The value of the lost goods was estimated at 14,000,000/=. The appellant was as agent of his principal who abused the trust of his employer.

I am satisfied that the sentences awarded suited the offence and the guilt of the appellant. It was not excessive and I will uphold it.

The appellants' appeal will be dismissed. He will serve sentence.

Stephen Musota

JUDGE

19.6.2013