



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
CRIMINAL APPEAL NO. 0010 OF 2013**

**KATUSIIME EDWARD ::: APPELLANT  
VERSUS  
UGANDA :::  
RESPONDENT  
(Arising from Criminal Case No. 0112 of 2010)**

**BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON - RESIDENT  
JUDGE**

**JUDGMENT**

This is an appeal from the judgment of His Worship Kaggwa John, the Chief Magistrate Masindi, delivered on 16<sup>th</sup> April 2013, whereby the appellant was convicted of criminal trespass contrary to section 302 of the Penal Code Act and was sentenced to 8 months imprisonment. The appeal is against both conviction and sentence.

Briefly, the background to this appeal is that the appellant and the complainant Wandera Yosia are cousins. In 2006 the appellant approached his father one Majara Elasto (PW3) requesting for land to settle at Mukonogamu. The father referred him to the complainant who was in possession of the said land. When he approached the complainant, he gave him one quarter of an acre where he constructed a home. In 2008, the appellant encroached on the other part of the land thereby destroying the respondent's coffee, cassava and houses. The appellant

planted his own crops on the land. The matter was reported to the LCs but the appellant rebuffed them and did not attend their court. The matter was reported to police and the appellant was subsequently charged, tried and convicted, hence this appeal.

Four grounds were framed in the memorandum of appeal although to my analysis, they are essentially two;

1. That the trial magistrate erred in law and fact when he did not properly evaluate the evidence and ignored the appellant's defence therefore arriving at a wrong decision.
2. The trial magistrate did not address the appellant that he had a right to mitigate for sentence for alternative sentences and ask for sentences such as fine, caution or community service as the alleged offence was not too grave in nature.

The appellant was represented by Mr. Baryajunwa Gibbs while Mr. Kumbuga Richard appeared for the respondent. Although it was agreed that both parties were to file written submissions within the given timeframes, none of them had done so at the time of writing this judgment.

In his judgment, the chief Magistrate referred to case law that defines the offence of criminal trespass, before he proceeded to evaluate the evidence on record. The offence of criminal trespass involves entering

upon property or land in possession of another, with the intent to commit an offence or to intimidate, insult or annoy any other person. The words “in the possession of another” refers to actual possession. The intent of the offender is to be gathered from the circumstances of the case. The intent referred to in section 202 is to commit an offence or to intimidate meaning to put fear by show of force or threat or violence or to insult meaning to assail with scornful abuse or offensive disrespect. Refer to the case of ***Kigorogolo versus Rueshereka (1969) E.A 426.***

In the instant case, the complainant’s evidence reveals that he was in possession of the land since 1964. His uncle and also the appellant’s father, Majara Elasto (PW4), was the care taker following the death of the complainant’s father. The complainant’s possession was confirmed by the said Majara Elasto who also stated that he referred his son, who is the appellant, to the complainant for allocation of part of the land. He was given a quarter of an acre.

In his defence, the appellant stated that his father sent him to the complainant to show him the land belonging to his father (PW4). The entire land covered 10 acres out of which the complainant gave him 6 acres. The appellant was however contradicted by his father, who told court that the appellant came back to him and told him that the complainant had given him half an acre which was too small, and wanted the land to be shared equally with the complainant. The response of his father as recorded by the Magistrate reads as follows; “....but I told him

that what has been given to you is yours as he the complainant had stayed in that land for long.”

In view of the evidence of his own father, the learned trial magistrate rightly disbelieved the appellant’s version regarding the size of the land he was given by the complainant.

The other aspect raised by the appellant in his defence was that the complainant owed him shs. 500,000/= which the complainant borrowed from him earlier. When he demanded for his money that is when the complainant filed a case of trespass against him. The trial magistrate considered this as an afterthought and disregarded the same.

I should point out that the issue of the debt was never raised during cross examination of the complainant. It is trite whenever the opponent has decided to avail himself the opportunity to put his essential and material case in cross examination, it must follow that the testimony given could not be disputed at all. Therefore an omission or neglect to challenge the evidence in chief on a material or essential point by cross examination, would lead to an inference that the evidence is accepted, subject to its being assailed as inherently incredible or palpably untrue. Refer to the case of ***John Kayibanda versus Uganda (1976) HCB 269 and James Sawoabiri & Fred Musisi versus Uganda Civil Appeal No. 5/1990 (SC)***.

In the present case, the trial magistrate rightly treated the appellant's version as an afterthought.

From the record, there was abundant evidence to lead to the finding the complainant was in actual possession of the land. It further revealed the appellant entered upon the part of the land beyond that given to him. He destroyed the complainant's crops and property, and replaced them with his own crops. This act clearly manifested the intent to commit an offence or to intimidate or annoy the complainant. His repeated assertions that the land in issue belonged to his father and that it was his father who sent him to reclaim the same was rebuffed by the said father.

Accordingly, I am satisfied that the learned Chief Magistrate subjected all the relevant evidence to careful scrutiny and he carefully looked at the evidence as a whole. I have not been persuaded that he wrongly evaluated the evidence or drew any unjustified inferences from it, so as to require this court to make its own evaluation and draw its own inferences/conclusions.

The ground on evaluation of evidence therefore fails.

The other ground is in relation to the right to address court by the convict in mitigation. I must confess I am unable to appreciate the essence of this complaint or ground because, from the record of the court this is what the appellant stated in mitigation. "I pray for leniency. I have orphans whom I

look after, I have also an old mother aged above 80 years whom I look after.”

In my view, the appellant was given an opportunity to address court in mitigation. He pleaded for leniency. While it is correct there were other sentencing options other than imprisonment, it cannot be said the trial magistrate exercised his discretion wrongly when he settled for a custodial sentence. The maximum penalty for the offence of criminal trespass is one year. The way the ground on sentence was framed, it does not appear to challenge the appropriateness or the longevity of the sentence. I will therefore restrain myself from commenting on whether it was harsh or excessive. The ground on sentence also fails.

In a nutshell, I find no merits in this appeal and the same is hereby dismissed. I therefore uphold the judgment of the lower court and confirm the sentence. The appeal is dismissed.

**SIGNED**  
**BYABAKAMA MUGENYI SIMON**  
**RESIDENT JUDGE**  
**07<sup>TH</sup> OCTOBER 2013**