

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CRIMINAL APPEAL NO. 4 OF 2011**

*(Arising from Kumi Criminal Case No. 263 of 2010. Appeal from the decision of Magistrate grade one at Kumi dated 13<sup>th</sup> April 2011)*

**OPIO JOHN}**

**IGOE JESCA}**

.....

**APPELLANTS**

**OLUKA PAUL}**

**V**

**UGANDA**

.....**RESPONDENT**

**JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO**

The appellants Opio John, Igoe Jesca and Oluka Paul were all convicted on two counts by Grade one magistrate sitting at Kumi on 13<sup>th</sup> April 2011 and sentenced to 12 months imprisonment each. The sentences to run concurrently. In count 1, the three were jointly convicted of causing actual bodily harm c/s 236 of the penal code to Akiya Matilda. In count two, the three were jointly convicted of causing actual bodily harm c/s 236 of the penal code to Ouma James.

They appealed against the convictions and sentences of the grade one magistrate.

Section 4 of the Criminal Procedure Act cap 116 gives the guiding principles for dealing with criminal appeals. An appeal will be allowed if the appellate court is satisfied that the conviction is not supported by evidence, or that court erred on a question of law and in fact caused a miscarriage of justice.

Courts of record have over the years expounded on these principles and held that in re-evaluating the evidence, the appellate court should be mindful that the trial court had an opportunity to observe the demeanour of the witnesses. **See Bogere Moses v U, Supreme Court criminal Appeal 1 of 1997.**

The evidence on count one as accepted by the magistrate is that on 3<sup>rd</sup> May, 2010 at Boma south, Kumi town council, Matilda Akia was in her compound picking greens when she was attacked by Opio John , A1 who kicked and hit her with the flat side of a panga. He was joined by A3 Oluka Paul who boxed her. The two were joined by A2 Igoe Jesca who told whoever cared to listen that she was ready to kill. A2 Igoe Jesca then proceeded to wrestle with Matilda Akia. It is apparent from the evidence of PW 1 James Ouria that the appellants and complainants are related as he describes A2 as his brother's wife and A1 and A3 as cousins.

I am satisfied that given the evidence, the conviction on assault occasioning actual bodily is justified. Nevertheless, i will comment on the fact that as the three appellants were charged jointly for the offence, it was therefore necessary for the court to make a specific finding that there was a common intention to commit the offence. From the evidence on record, it is clear that the three appellants ganged up against Matilda Akia and each separately engaged her either by kicking her, boxing her and wrestling her. Each of these incidents constitutes an assault with or without medical evidence.

Therefore in addition to finding the three appellants guilty of assault, the magistrate should have gone ahead to make a finding that the three acted with a common intention to assault the complainant, a fact that is evident from the participation of the three appellants in the assault. However, the omission to make such finding did not occasion a miscarriage of justice and the conviction on count one stands.

With regard to count two, the evidence as accepted by the trial court is that on 3<sup>rd</sup> May, 2010, at Boma South, Kumi council, Pw1 James Ouria was asleep in his house at about 2 p.m when he heard his wife Matilda Akia raise an alarm that she was being attacked by A1 Opio John. The latter then proceeded to kick and

box the complainant James Ouria. This witness hinted at the possible motive for the assault when he said A1 said he, James Ouria , killed A1's mother.

The evidence shows that only Opio A1 assaulted James Ouria. The magistrate therefore erred when he convicted all three appellants on count two. Conviction against A2 Igoe Jesca and A3 Oluka Paul on count two hereby quashed and the sentence set aside.

Conviction against A1 Opio on count two is upheld.

With regard to the sentence of 12 months, imprisonment imposed on all three appellants, it was imposed at a time when the sentencing guidelines had not come into force. Had this been the case, the maximum recommended penalty is 12 months imprisonment. In the circumstances, the sentence was fair and it is confirmed.

In the premises, the appeal is dismissed.

**DATED AT SOROTI THIS 07<sup>th</sup> DAY OF AUGUST 2013.**

**HON. LADY JUSTICE H. WOLAYO**

### **Obiter**

This appeal was determined summarily as authorised by section 32 of the Criminal procedure Code. The original court file will be returned to Kumi grade one court along with a copy of this judgment ,for custody.