

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL APPEAL NO. 25 OF 2012

(Arising from Amuria Criminal Case No. 225 of 2012. Appeal from the decision of Magistrate grade one at Amuria dated 13th December 2012)

EDONYU AUGUSTINE APPELLANTS

V

UGANDARESPONDENT

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The appellant was convicted of criminal trespass c/s 302 of the penal code on 13th December 2012 by the Magistrate grade one at Amuria and sentenced to twelve months imprisonment.

He appealed against conviction and sentence 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 record as accepted by the trial magistrate is that the appellant entered part of pw1 Odeng Gerald's land by cultivating it . The two are neighbours. A decision of LII court of the area was tendered as evidence and it showed that the LC court had found that Odeng bought the land previously.

Odeng was not happy with this development and he reported the intrusion to LC 1 Chairman Ojara Michael.

The appellant raised the defence of a claim over the land stating that it belonged to his late father.

Section 302 of the penal code defines criminal trespass as the entry into property in the possession of another with intent to commit an offence to intimidate, insult or annoy any person. The appellant does not deny cultivating the land claims a right over it.

Section 7 of the penal code provides that this defence will stand only if there is an honest claim of right and without intention to defraud. In the case before the magistrate, the LCII judgment, although not final, weakens the defence of claim of right. The appellant was not exercising an honest claim of right.

I find that the conviction was based on evidence and the law. I therefore dismiss the appeal against conviction.

With regard to sentence, the magistrate imposed the maximum penalty. This was excessive given that the appellant did not act with violence in asserting his claim of right. In the premises, the remainder of the sentence is suspended. The appellant will therefore be released immediately. However, should the appellant continue in the trespass, he will be re-arrested and made to serve the remainder of the sentence. The appellant is advised to pursue his claim in courts of law.

DATED AT SOROTI THIS 07th DAY OF AUGUST 2013.

Hon. Lady Justice H. Wolayo