

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

**HCT-04-CR-CN-0027-2010  
(ARISING FROM TORORO CRIMINAL CASE NO. 43/2009)**

**UGANDA.....APPELLANT  
VERSUS  
ODONGO JAMES.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

Accused was charged with assault occasioning actual bodily harm c/s 236 of the Penal Code Act.

Facts of the offence were that **Odongo James** on 2<sup>nd</sup> of September 2008, at Merikit Trading Centre willfully and unlawfully assaulted **Oketch Peter** thereby occasioning him actual bodily harm.

The accused was acquitted of the offence, hence this appeal.

On Appeal, appellant raised two grounds:

1. That the Learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence of the appellant against Respondent.
2. The trial Magistrate's decision is tainted with fundamental misdirections and non directions which has occasioned a miscarriage of Justice.

The appellant chose at the hearing to amalgamate the two grounds into one ground which they argued as “whether the trial court evaluated the evidence before reaching its decision.

Both the appellants and Respondents filed in written submissions which I have examined alongside the entire lower court record.

The duty of a first appellate court was laid down in the case of *Kifamunte Henry v. Uganda Cr. Appeal No.10/1997 S.C.*, and that is generally to re-examine the evidence as a whole and to make its own findings and conclusions thereto.

The evidence on record is as follows.

**PW.1 Oketch Peter** told court that on 2.09.2009 at 3:30p.m at Merikit Trading Centre while on a tour of the market, was assaulted by complement. The complainant boxed him on the left eye, and threw a brick hitting him on the chest.

**PW.2 Okware Richard** told court that he witnessed accused hitting at PW.1.

**PW.3 PC Adukai** carried out the arrests of accused.

**PW.4 Ochieng Charles** also witnessed the accused hitting the complement as alleged by PW.1.

**PW.5 Nandela K**, conducted the medical examination of PW.1 on PF.3.

**DW.1 Odongo James** (accused) denied and stated that on that day he confronted complainant (PW.1) about his plot but he never fought him.

**DW.2 Owor Charles** confirmed the evidence of DW.1 in that complainant and accused struggled over a pole which complainant wanted to uproot.

**DW.3 Okiror Joseph**, told court that PW.1 wanted to demolish DW.1's structure but no fight ensued.

It was the Trial Magistrate's finding that the above evidence on page 3 of his Judgment is that;

*"I have found the prosecution evidence so convincing that a willful act took place. However the unlawfulness in the said act has majorly been vitiated by the accused's defence of an honest claim of right, section 7 of the Penal Code Act enacts...."*

.....

The Trial Magistrate proceeded under that section of the law to fault the prosecution's evidence and to acquit the accused.

The Judgment of the lower court shows that the Trial Magistrate did not comprehend the case before him. The beginning point is that accused was charged of an offence under the Penal Code Act, whose genre is found in Division IV of the code titled "offences against the person, running from section 187-252 of the Penal Code Act.

Section 236 of the Penal Code Act, therefore falls among those crimes which are against the person, as distinct from those against property which are found under Division V of the Code ranging from sections 253 -326, and Division VI- sections 327-341.

In other words section 7 of the Penal Code Act could not be invoked to cover up an offence clearly committed against “the person of another” by assaulting him. What honest claim of right can exist between an act of assault? Or of murder? Or of grievous harm?

The trial Magistrate was not trying a land dispute whereby property rights came into issue. Clearly the Trial Magistrate failed to evaluate the case and the evidence and thereby reached wrong conclusions. The issue he would have concerned himself with is whether accused assaulted the complainant as alleged. The evidence on record, as he himself concluded on page 3, 2<sup>nd</sup> paragraph of his judgment “was convincing”. I find that from evidence of PW.1, PW.2, PW.3, PW.4 and PW.5, the prosecution led concrete evidence beyond doubt to prove that accused assaulted the complainant. The evidence of DW.1, DW.2, DW.3 only collaborated prosecution case by showing that indeed accused had confronted complainant on that day.

I therefore agree with the appellant in this case that the Trial Magistrate failed in his duty to evaluate the evidence before him. The issues of demolition were not proved by any evidence- save assertions by DW.1 and his witnesses. The defendant never raised the defence of honest claim of right and the attempt by the

trial Magistrate to bring it up to cover accused's criminal actions is faulty and regrettable. The evidence as rightly evaluated by the appellants in their submission shows that complainant was an LC Chairman, who was on duty together with other authority figures. The accused's actions of violently attacking people on duty, for whatever his reasons was in itself not defensible. The acquittal of accused was given in error and I agree with the prosecution that it ought to be set aside.

Under section 35 of the Civil Procedure Rules,

*“the appellate court may on appeal from an acquittal or dismissal enter such decision or judgment on the matter as may be authorized by law and make such order or orders as may be necessary.”*

Also ***Abdu Ngobi v. Uganda Cr. App.27/1995 S.C.*** and ***Kifamunte Henry v. Uganda Cr. Appeal No.10/1997 SC) Supra***, this court has power to re-evaluate the evidence as a whole and come up with its own conclusions.

It is the finding of this court that the evidence on record incriminates the accused. He was guilty of the offences charged. The trial Magistrate acquitted him in error. This appeal for the grounds succeeds. The lower court orders of acquittal against the accused are hereby set aside. The accused is convicted of the offence of assault as charged, and should immediately be produced before this court for sentence. I so order.

**Henry I. Kawesa**

**JUDGE**

**16.04.2014**

16.04.2014

Respondent absent.

Resident State Attorney **Muwaganya** for Appellant.

**Adongo Suzan** for Respondent.

Court: Judgment read out in open court in presence of all parties.

**Henry I. Kawesa**

**JUDGE**

**16.04.2014**

**Resident State Attorney:**

He is present in court. We pray that this court proceeds to sentence him. The offence with which he has now been found guilty carries a possible 5 years imprisonment under the Penal Code Act. He assaulted a person in authority and doing lawful duty. He wasn't remorseful. A lot of time has been wasted in prosecuting. We pray for deterrent sentence. We pray for leniency. He is a first offender. He was trying to protect his property. Even if the offence carries a maximum of 5 years, court has direction considering the circumstances. We pray for leniency and gives him a lesser sentence.

**Henry I. Kawesa**

**JUDGE**

**16.04.2014**

**Court:                    Sentence and Reasons**

The offence carries a maximum of 5 years. Accused is a first offender. He is reportedly repentant, and reportedly they have reconciled. When the mitigations above and the passage of time, involved; this court will leniently treat the accused/convict. He is to be given a sentence to deter him and teach us to respect authority. He will serve community service, at the Sub-county Headquarters for 3 months. The Merikit District Probation Officer to work out modalities. I so order.

**Henry I. Kawesa**

**JUDGE**

**16.04.2014**