



The prosecution called three witnesses who testified as below;

PW1: He supplied accused with goods and accused gave him two post dated cheques which were tendered in evidence. When cheques were presented in the Bank they bounced and when accused was approached he disappeared.

PW2: that the accused got goods from PW1 but never paid for them.

PW3: that PW1 gave accused goods against which he (accused) gave two cheques as security for payment. The cheques bounced.

PW4: the cheques bounced and witness confirmed so.

In defence accused stated that he was not a signatory to the account where the bounced cheques were issued. Counsel tendered a company resolution showing that the accused never stopped payment of the cheques.

DW2: stated that he was a signatory of the account and it's him who wrote to the Bank not to honor the cheques

In his judgment, the Magistrate found accused guilty of obtaining goods by false pretences having found that the charge of issuing a bouncing cheque cannot stand.

The appellant now complains that the conviction was wrong since the offence is not minor and cognate, not charged with it, occasioning a miscarriage of justice.

**Counsel Majanga** has argued at length why he faults this finding.

I agree for the following reasons;

1. The offence of obtaining goods by false pretence is not minor and cognate to the offence of issuing a false cheque as envisaged under Section 145 (see case of **ROBERT NDECHO & ANOR VS. R [1951] 18 EACA 171**)

The test is whether the accused had a fair opportunity of making his defence in the alternative charge. (See **GODFREY SSEKAMWA alias LUBEGA VS. UGANDA (1979) HCB 119**).

Going by that finding and the case of **STEPHEN KISUWA AND ANOR VS. UGANDA (supra)**, the trial Magistrate acted in error to convict accused of an offence he had not been charged with, so that he was not given a fair opportunity to defend himself.

I therefore for the above reasons agree with appellant's counsel that there was no basis for convicting accused on this charge and all orders based on it were null and void. I do allow this ground of appeal as proved.

The above ground also renders the other grounds as proved since all relate and are formulated around it

I will now turn to the whole assessment of the evidence on record by the Trial Magistrate. It's my finding that the evidence on record if properly evaluated by the Trial Magistrate, he could have reached another conclusion thereon, and hence he erred when he convicted appellant on a nonexistent charge after wrongly evaluating the evidence before him. For this reason, I will uphold the appeal; I will set aside the entire Judgment and orders of the lower court. I order that the

Judgment, conviction and sentence of the lower court be set aside. There should be a fresh trial conducted before the Chief Magistrate. I so order.

**Henry I. Kawesa**  
**JUDGE**  
**11.09.2014**