

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBALE**

**HCT-04-CR-CN 0048 OF 2013**

**(ARISING FROM PALLISA CRIMINAL CASE NO. 191/2013)**

**1. KAKOZA BADIRU**

**2. GODIYO JOREM:.....APPELLANTS**

**VERSUS**

**UGANDA:.....RESPONDENT**

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

**JUDGEMENT**

Appellants raised five grounds of appeal.

1. The learned trial Magistrate erred when he failed to evaluate the evidence on record.
2. Trial Magistrate erred in law and fact when he relied on contradicting and uncorroborated evidence.
3. Learned trial Magistrate misdirected himself when he ordered compensation of 10 millions each.
4. Learned trial Magistrate erred in fact and law when he was biased and impartial.
5. The decision occasioned miscarriage of justice.

As a first appellate court I must review the evidence and reach my own conclusions thereon.

I am aware of the fact that in assessing this evidence I did not have chance to see and listen to the witnesses.

The evidence on record is as follows:

**PW.1 Damesh Patel** directed A.1 to deposit whatever sales that day to his uncle in Tirinyi called **Markesh**.

**PW.2 Corporal Adot Edson**, when the accused occurred, the accused were carried to hospital and went with the money in their pockets.

**PW.3 Khabuya Jacinta**- a nurse confirmed accused were not very badly off at time of hospitalization.

**PW.4 Corporal Isaac Ouma** and **PW.5 Babulise Christopher** were police officers who recorded statements and investigated the matter.

**PW.6 P. Makesh** confirmed receiving an anonymous call about an impending robbery, then later after receiving some sells money the accused were reported in an accident. At the scene both A.1 and A.2 had been removed, and had left with all the money.

In defence **Kakooza**, the driver said he knocked a hump, there were no pressure in the brakes and his car got an accident, whereby he lost consciousness till next morning when in hospital.

**Joram Godyo**, confirmed that he had money by time of accident.

I have carefully gone through the submissions raised by appellants on all grounds and find as follows.

The evidence on record is overwhelmingly clear and not contradicted that the money was in the pockets of the accused (two) by time of accident. Evidence on record is not contradictory as counsel argued. Actually the judgment of the trial Magistrate is well reasoned and goes at length to consider the issues, the evidence and the law.

I do not find credence in the possibilities of error that counsel mentions in his arguments that perhaps PW.2 was mistaken while seeing, instead of seeing A.1 putting money in the pocket but didn't see the polythene bag.

The alleged contradictions in the evidence are very minor and do not go to the root of the evidence on record.

Well as the accident was perhaps natural and could have occurred, there is evidence that it could have also been premeditated. The trial Magistrate considered the demeanour of all witnesses and found accused's demeanour inconsistent with innocence.

The assertion that money was stolen by other people in the course of the accident is not borne out by evidence. Instead evidence shows that there was a cordoning off of the area shortly after the accident, moreover PW.1 was guarding the place, was very conscious and all witnesses said nobody else accessed the place by the time police came. There is no other possible cause of this loss save accused persons themselves.

I therefore find no merit in grounds 1, 2, 4 and 5 of the appeal and they do accordingly fail.

Under ground 3 the learned trial Magistrate is faulted for passing a sentence of compensation upon the appellants, and in submission counsel argued that the sentence was excessive and appellant be given the option to pay a fine.

I have examined the reasons why the court passed the sentences it did. I find the sentences lawful and have no basis or reasons why I should vary them. This ground is also not proved.

In the final conclusion I find that this appeal has failed on all the grounds raised. I accordingly dismiss it. The lower court judgment and sentence are upheld. I so order.

**Henry I. Kawesa**

**JUDGE**

**18.09.2014**