

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CR-CN 0023 OF 2010

(ARISING FROM BUSIA CRIMINAL CASE NO. 29/2010)

AJAMBO ANNET OUMA:::APPELLANT

VERSUS

UGANDA:::RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

Appellant raised 4 grounds of the appeal.

1. That the learned trial Magistrate erred in law in convicting appellant on very shaky evidence.
2. That learned trial Magistrate violated sec 128 MCA in not offering appellant opportunity to call her defence.
3. Learned trial Magistrate failed to properly evaluate the evidence
4. That the learned trial Magistrate passed a very harsh sentence.

The duty of a first appellate court is to review the evidence on record and form its own conclusions thereon. I am aware of this duty and the limitation I have of not having chance to hear and observe the witnesses

The accused had been charged of obtaining money by false pretense Contrary to Section 308 of the Penal Code Act, was convicted and sentenced to 3 years imprisonment.

The prosecution called 3 witnesses, and accused chose to keep quiet. Evidence from PW1 was that accused was her land lady, she sold to her a plot of land, and she was to pay 1.6 millions. She first paid shs 400,000/= then added 100,000/= then 500,000/= in presence of **Atim**. She again gave 250,000/= in presence of neighbors. When PW1 wanted to pay finally before LCs so that agreement is made, she (accused) refused, dodged around and didn't do so.

PW2: Atim confirmed she was present on 26th July 2009 when accused received 250,000/= from PW1.

PW3: Efumbi David said on 7th April 2009 saw complainant (PW1) and accused counting money. In evening accused told her the money they counted was for buying the place from accused.

Accused in defence opted to keep quiet.

The prosecution has a burden to prove the case beyond reasonable doubt.

Did the prosecution satisfactorily prove all ingredients of the offence of obtaining money by false pretenses?

The ingredients are:

1. There must be a representation.

2. The representation must be false.
3. The person making it knows its false.
4. It must be intended to defraud.
5. Delivery of something capable of being stolen.

The evidence above falls short of proving the above facts. Whereas the trial Magistrate in her Judgment attempted to show that witnesses attested to the parting with shs 1.6 million and that they were truthful and discredited in cross-examination, the appellant has successfully shown in his submissions that this analysis was not correct.

I tend to agree because;

1. The evidence of the three prosecution witnesses is not corroborated by any other independent evidence to show that the alleged transaction took place. How can an exchange of money for purchase of land be done so casually without any written document, no serious witness e.g an LC, or even an attempt to involve neighbors save PW2 who actually was simply lending PW1 money? PW3 was a drunkard on his own frolic and his evidential value is not sufficient to stand alone.
2. There was doubt as to whether this money ever exchanged hands (no receipt) and if so for what purpose. What if it was rentals?
3. There are inconsistencies in the witness's evidence on record as shown by appellant.

For reasons above it was unsafe for the trial Magistrate to convict when the prosecution case left a big doubt in the evidence. I find that prosecution evidence does not sufficiently show that the accused in getting money from complainant did so fraudulently and with a misrepresentation. I am not able to find any evidence on record to show that she received money as alleged. Everything is still in doubt. I find that Ground 1, Ground 2, Ground 3 and Ground 4 are all proved.

I uphold the appeal. I replace the order of conviction with an order of acquittal and order that she be immediately discharged and be set free. I so order.

Henry I. Kawesa
JUDGE
18.09.2014