

The appellant argued grounds 1 and 2 together and ground 3 separately.

I agree with the duties of this court as a first appellate court as stated in *Pandya v. R* (1957) E.A. 336.

On grounds 1 and 2 the argument of the appellants is that the court failed to properly evaluate the appellant's defence of alibi. Referring to *Vicent Rwamaro v. Uganda (1988-90) HCB 70*, which held that an accused who sets up the defence of alibi does not have a duty to prove it, but it's the duty of the prosecution to disprove it. The appellant faulted court's reliance on exhibit 'C', and faulted the comment that if the appellants did not believe the letter they had the burden of disproving it.

In response the Resident State Attorney, pointed out that the alibi set up by accused was contradicted by the consistent testimony of the prosecution witnesses. The evidence from accused's witnesses according to respondents was contradictory and full of lies. Resident State Attorney agreed with the findings of court as on record on the strength of the evidence.

I have analyzed the evidence on record and the findings of the trial court thereon and do resolve the two issues above as follows:

Evidence of **PW.1 Chelangat Alfred** was of an eye witness who saw accused with pangas etc, and also saw them felling trees. PW.II Alfred Peter Christian also saw accused among the many people who cut the maize and destroyed the garden.

PW.3 Cherop Andrew, saw the accused cutting the trees. All defence (accused) put up alibi, as a defence. DW.5 a witness said he was with all accused at home on that day. DW.6- also claimed was with the accused.

I have gone through the judgment of the trial court. I am impressed with the analysis of the evidence by the learned trial Magistrate. She indeed evaluated the defence of alibi and found their witnesses grossly contradicted each other, she also considered the fact that the evidence was unsworn. She however noted that evidence was full of lies.

As a first appellate court, am limited in my assessment of the truthfulness of the evidence recorded since I had no chance to examine the witnesses in court. However the trial Magistrate who had chance so to do found them unreliable. I do not fault her, given the account of the record of the proceedings.

I therefore do not find merit in grounds 1 and 2 above and find them not proved by appellants. They do fail.

Ground 3: That sentence was harsh:

Appellants' argument was the trial Magistrate did not put into consideration the value of the destroyed property; since the complainant put the value at 300,000/= and no evidence was led to put it at shs. 6,000,000/=. He referred to Stephen Batimba v. Uganda crim. No.1 of 1995.

Resident State Attorney, however pointed out that section 335 (1) of the Penal Code Act provides for imprisonment of 5 years for malicious damages to property.

I have examined the law applicable. Whereas the provisions of 335 (1) of the Penal Code Act provide for a maximum of 5 years imprisonment, the court has discretion to consider a lesser sentence. I do find the sentence of 18 months therefore reasonable. However when giving the order for compensation court has to be guided by evidence. An award for compensation is always given in hesitation in criminal cases because it needs ascertaining values by evidence.

I therefore agree that the shs. 6,000,000/= million was given without any guiding evidence thereon and is found irregular. This ground therefore succeeds in part. The order for compensation is set aside and will await civil determination by a civil court.

For reasons above this appeal fails on grounds 1 and 2 and partially succeeds on grounds 3 in that the compensation order is set aside. I so order.

Henry I. Kawesa

JUDGE

17.12.2014