

**THE REPUBLIC OF UGANDA  
IN TH HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL APPEAL NO. 055 OF 2014**

5 (Arising from Chief Magistrate’s Court of Mukono at Kayunga  
Criminal Case No. 135 of 2014)

**MUSIITA MOSES** ::  
**APPELLANT**

10

**VERSUS**

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

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**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**JUDGMENT**

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This Appeal arises out of the Judgment and Orders of the Chief Magistrate Ms. Agnes Nkonge sitting at Mukono Chief Magistrate’s Court.

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Therein she convicted the Appellant Musiita Moses for the offence of Arson c/s 327 of the Penal Code Act and sentenced him to serve four years of imprisonment.

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The brief facts of this matter are that the complainant Lowanyang Mark was a herdsman on the farm of PW1.

On 29/5/2013, the hut in which he was staying got burnt. The Appellant was arrested as having been responsible. He was tried and found guilty.

5 The Appellant has raised 6 grounds of Appeal which revolve about 3 issues:

1. The sentence.

2. The evaluation of evidence.

10 3. The alibi raised by the Appellant was not considered by the Court.

The Appellant made his own submissions, his Counsel having disappeared from the proceedings. He submitted that he does not know the complainant (Lowanyang).

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That at the time the hut was allegedly burnt, the Appellant was attending a meeting with some of the people who are his witnesses.

20 That Lowanyang and the witness who claim to have seen him burn the hut are not residents of the area.

He further submitted that the owner of the land on which the hut was Moses Kalangwa had a grudge with him, having tried  
25 to buy the Appellant's land when the Appellant refused, the said Kalangwa then framed him.

He also submitted that the sentence was harsh and yet he is sick. That he should have been given the option of a fine.

5 Ms. Nabagala – Resident State Attorney has submitted that the ingredients of the offence were proved to the required standard.

She categorized the grounds of appeal under:

- 10 1. Evaluation of the evidence by the trial magistrate and
2. Whether the sentence was excessive.

In her submissions, she relied on the evidence of PW3 Lubega Allan, Lowanyang Mark and Kalisa Karangwa (PW1) to establish  
15 that the hut in question was indeed burnt.

Further that even the witnesses for the Appellant e.g. Kayonga Godfrey (PW4) confirmed that the hut was indeed burnt.

20 On the evidence on record, there is no dispute that the hut was indeed burnt and both the prosecution and defence are agreed about this. I need not dwell on this.

What is in issue is whether the Appellant was responsible or  
25 participated in the burning of the hut.

Counsel for the State has submitted that PW4 Lowanyang and PW2 Kamba William clearly identified the Appellant at the scene of crime. This was at around 7.30pm and they were able to see him with the assistance of the light from the  
5 burning hut (in respect of PW4 and PW2) and in respect of PW2 with the additional assistance of the headlight of the motorcycle.

The Appellant was seen in the company of some other people  
10 carrying sticks, but it is him and one Simbwa who were positively identified.

The Appellant on the other hand claims the incident happened during the day and that this was at the very time the Appellant  
15 was attending a meeting with his witnesses.

DW2 the area chairman claims he heard of the incident at 7.30pm while DW3 and the Appellant claim some people at the meeting are the ones who reported that the house was  
20 burning.

The said people are not named neither does the Appellant and the witnesses state whether any action was taken or anybody went to the scene since this was a meeting involving area  
25 residents, who should have been concerned with a calamity concerning a fellow resident.

The area chairman himself neither went to the scene, nor did he take any other action as the local leader.

- 5 It is not the duty of the accused/Appellant to prove his alibi like the one raised in the instant case.

The prosecution must instead produce evidence to discredit the said alibi.

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The Appellant was clearly identified at the scene and the conditions for identification were favourable given the light from the burning hut. Secondly, the Appellant was known to PW4 and PW2 as a neighbour.

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This evidence clearly brings into question the alibi or the unsubstantiated claims by the Appellant and his witnesses that the incident took place during the day.

- 20 I am therefore convinced that the prosecution proved the participation of the Appellant in the commission of the offence to the required standard of beyond reasonable doubt. There is no justification for the act so the said action was unlawful.

The grounds that the evidence was not properly evaluated and that the magistrate failed to consider the alibi do collapse and are dismissed accordingly.

On sentence, the Appellant claims the sentence was excessive  
5 and that he should have been given the option of a fine.

The prosecution argues that the sentence was proper given that the maximum sentence is life imprisonment.

10 Ordinarily, the Courts consider both the aggravating and mitigation factors in the process of sentencing. I have perused the record in the course of sentencing. The magistrate clearly mentioned that she gave a sentence of 4 years other than the maximum considering:

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1. The age of the Appellant.
  2. The fact that the Appellant was a first offender.

I have not seen any fault with those considerations. Arson is an offence that carries a maximum sentence of life  
20 imprisonment and should not be taken lightly.

In summary, I find no merits in this appeal and it is dismissed accordingly. The Judgment and orders of the trial Court are upheld and confirmed.

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**Godfrey Namundi**

**JUDGE**

**5/3/2015**

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5/3/2015:

Appellant present

Resident State Attorney – Nabagala Grace

Defence counsel absent

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Court: Judgment delivered in open Court.

**Godfrey Namundi**

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**JUDGE**

**5/3/2015**