

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

CRIMINAL APPEAL NO. 011 OF 2014

5 (Arising from Jinja Chief Magistrate’s Court Criminal Case No. 415 of
2013)

MUKERA

SALEH ::

10

APPELLANT

VERSUS

UGANDA ::

15

RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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This Appeal arises out of the Judgment and Orders of Her
Worship Kabugo Carol, Magistrate Grade 1 sitting at Jinja
25 wherein she convicted and sentenced the Appellant, Mukera
Saleh of the offence of Stealing a motor vehicle c/s 254 (1) and
265 of the Penal Code Act. He was sentenced to serve 6
years imprisonment.

30 The background to this appeal is that the Appellant Mukera
Saleh and Mugumya Hilary where charged with 3 Counts
namely:

1. Stealing a vehicle c/s 254 (1) and 265 of the Penal Code Act.
2. Possession of suspected stolen motor vehicle c/s 315 (1) of the Penal Code Act.
- 5 3. Conspiracy to commit a felony c/s 390 of the Penal Code Act.

The Magistrate found the two accused people guilty on the first Count.

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She made no finding on Counts 2 and 3. It is therefore not clear whether she acquitted them on the said two Counts.

The Appellant Mukera Saleh who was Accused No. 2 filed two
15 grounds of Appeal namely that:

1. The trial Magistrate erred in law and fact when she failed to evaluate the evidence on record and hence reached a wrong decision.
- 20 2. The trial Magistrate erred in law and fact when she handed to the Appellant an excessively harsh and severe sentence, thus occasioning injustice and extreme hardship to the Appellant.

25 The Appellant's Counsel filed written submissions. The Resident State Attorney was supposed to file a reply but right

up to the writing of this Judgment, no reply was forthcoming even when time frames to do so had been given.

This Court in its appellate function is mandated as a first
5 appellate Court to re-evaluate the evidence before it and it may make its own conclusions.

In this function it is constrained by not having heard the evidence first hand or observed the demeanour of the
10 witnesses.

Regarding Ground No. 1 of the Appeal, it has been submitted that none of the prosecution witnesses placed the Appellant at the scene of crime connecting the Appellant to the commission
15 of the crime.

It is further submitted that the Appellant was just framed as seen from the time A1 borrowed the car from the complainant in the absence of the Appellant, and that A1 denied knowing
20 A2 up to the time he was arrested.

He cited Section 390 of the Penal Code that requires that for there to be conspiracy, there must be existence of 2 or more people, with a common intention of committing a crime.
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It is submitted that there was no linkage between A1 and A2.

It is also submitted that the Appellant testified that he only knew motor vehicle UAJ 540P which he had bought from Mugerwa and not UAS 429R whose numbers are completely
5 different. That on the authority of **Suleiman Katushabe Vrs. Uganda SCCA 7/91**, the Magistrate should have evaluated the evidence as a whole.

It is also submitted that the trial Magistrate was wrong to have
10 taken judicial notice of the change of the car rims as evidence of theft.

The Appellant also cites grave inconsistencies in the prosecution evidence for example PW4 testified that the
15 Appellant's home is in Nakulabye while other witnesses said the home is in Kasubi. That PW4 claimed the number plate was just brought whereas PW1 claims the number plate was found at the Appellant's home.

20 I have looked at the evidence on the record of the lower Court, and the submissions of Counsel for the Appellant.

Firstly, the trial Magistrate clearly laid out the Ingredients of the offence and then dealt with the said Ingredients having
25 first laid out the evidence as enumerated. She considered the circumstances of the taking away of the vehicle by Accused

No. 1 Mugumya from the complainant. The said Mugumya disappeared with the vehicle and was only arrested after tracking his phone and a car chase in Kampala.

5 It is A1 Mugumya who led the investigators to the Appellant.

Indeed the vehicle was found in the possession of Accused No. 2 with altered number plates and other parts replaced. The Chassis number was however that of the vehicle stolen from
10 the complainant.

The Appellant claimed to have bought the car from one Mugerwa who he failed to either call as witness or lead the Investigators to. He claimed he bought the motor vehicle in
15 April 2013 and yet the motor vehicle in question was taken away by Mugumya on 16/5/2013.

The Magistrate weighed all the above evidence as against that of the defence. She considered the explanations of both
20 Accused No. 1 and No. 2 and found that they did not add up. She also considered the fact that apart from the vehicle being found in the possession of A2, the original number plate was found in the home of the Appellant's brother.

25 The 2 Accused were convicted of theft and not conspiracy as submitted by Counsel for the Appellant.

The Magistrate's reasoning is in line with the law of circumstantial evidence that has been elucidated in various authorities. For example **Godi Akbur Vrs. Uganda CA No. 5 62/2011.**

All the evidence against the Appellant, circumstantial as it may appear, leads to no other inference other than that of guilt.

10 Counsel should have addressed his mind to the provisions of **Section 19 (1) and (2) of the Penal Code Act** as well as **Section 20** regarding Common Intention.

I find that the trial Magistrate properly evaluated the evidence
15 on record and property and correctly found the Appellant guilty of the offence.

Ground No. 1 accordingly fails.

20 On Ground No. 2, the Appellant's Counsel faults the Magistrate with having sentenced the Appellant to an excessive term of Imprisonment. He claims the Magistrate did not consider the mitigation by the Appellant and neither did she consider the period the Appellant had stayed on remand.

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I have looked at the considerations by the Magistrate during the sentencing. They are clearly laid out at page 8 of the judgment. These were:

1. The nature of the offence.
- 5 2. The severity of the punishment.
3. Antecedents of the accused.
4. Mitigation by the accused.
5. Time spent on remand.

10 She in her opinion found that the accused in the circumstances deserved a deterrent sentence. She specifically mentioned having taken into account the period of remand and came to the conclusion that 6 years imprisonment was appropriate.

15 I find no fault with the Magistrate's handling of the sentence. This ground must also fail.

In all, I find no merits in this appeal. It is dismissed. The
20 judgment, conviction and sentence by the trial Magistrate are upheld.

Godfrey Namundi

JUDGE

25 **13/02/2015**

