

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

**CRIMINAL APPEAL NO. 019 OF 2015**

(Arising from Bugembe Criminal Case No. 361 of 2013)

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**MBAGO**

**CHARLES:.....A  
PPELLANT**

10

**VERSUS**

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

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

**JUDGMENT**

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This is an appeal against the Judgment of the Magistrate Grade 1 sitting at Bugembe. Therein, the Appellant was convicted of the offence of Threatening Violence c/s 81 (b) of the penal Code Act. He was sentenced to pay a fine of 25 Shs.300,000/= or serve 3 years imprisonment in default.

The Appellant raised 3 grounds of appeal namely:

1. That the trial Magistrate erred both in law and fact when she failed to properly evaluate the evidence on record, thereby arriving at a wrong decision.

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2. That the trial Magistrate erred both in law and fact when she held that the prosecution had proved the offence of threatening violence against the Appellant/Accused beyond reasonable doubt.

3. That the learned trial Magistrate erred both in law and failed to consider the Appellant's point of law in regard to the date of commission of the offence.

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The Appellant was represented by Ms. Muzuusa Stephen while the Respondent was represented by Mr. Ivan Nkwasiwe - Resident State Attorney.

15 For the Appellant it has been submitted that there are contradictions in the testimonies of PW1 and PW2. That while PW1 states that the Appellant went to her home and threatened to kill her, she at the same time states that it is a 'boda boda' rider who knocked on the door and when the  
20 complainant saw the Appellant she closed the door.

PW2 also contradicted herself claiming they were 2 people at home that day and the same time she claims there was a 3<sup>rd</sup> person Maureen Mukyala to whom the actual threats were  
25 made.

It is submitted that these are contradictions and inconsistencies that go to the root of the case.

5 Further that the claims that the threats were not made to the accused in person and hence whatever Maureen (who was not called as a witness) and PW2 stated was mere hearsay which should not be relied upon.

10 It is also submitted that the Court should have considered the Appellant's claim that he does not know where the complainant (PW1) lives so he could not have threatened her. Reference was made to **Twehangane Alfred Vrs. Uganda - Criminal Appeal No. 139/2001** and **Bogere & Another Vrs. Uganda - Criminal Appeal No. 1.97.**

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For the Respondent it was submitted that the 2 ingredients of the offence were proved by the evidence of PW1 and PW2. That the Appellant was properly identified at the scene, both witnesses pointed out the way he was dressed. Further that  
20 they heard what the Appellant stated in respect of threatening to kill the complainant.

It was submitted that the alibi of the Appellant was discredited when the Appellant was properly placed and  
25 identified at the scene of crime.

Further that what Maureen told the PW1 and PW2 was also heard by the said witnesses at the scene as the Appellant was uttering threatening words.

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Finally that the inconsistencies if any were minor and should be disregarded.

I have looked at the evidence on record as this court is  
10 mandated to look at the record of the lower Court, re-evaluate the evidence and come up with its own findings.

First the trial court had to clearly identify the ingredients of the offence and relate the evidence to the said ingredients.

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Under **Section 81 (b) of the Penal Code Act** the said ingredients were clearly pointed out by the trial magistrate namely:

1. Words or acts of threats were uttered with intent to  
20 annoy or intimidate the complainant.

2. The accused was responsible.

The trial magistrate considered the evidence that both the  
25 accused and complainant used to be in a relationship which

evidence is acknowledged by both complainant and the accused. They separated.

On the material day the complainant was at the place she  
5 resided. The accused came and due to the fear she entered  
the house and locked herself in.

The accused uttered threatening words which were heard by  
PW2 and one Maureen. The complainant also heard the  
10 threatening words that left her in a state of fear.

The magistrate considered the evidence of both PW1 and  
PW2 that clearly established that the accused was at the  
scene. He was clearly identified. The accused only denied  
15 the charges and having ever been to the scene as he does  
not know where the complainant stays.

He did not however state where he was on the material day  
hence his alibi fell short of what is required.  
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The inconsistencies pointed out by counsel for the appellant  
do not however explain away the fact that the accused was  
clearly identified at the scene of crime.

I find that the appeal does not establish the grounds outlined.

The trial magistrate evaluated the evidence and found that  
5 the accused committed the crime as alleged.

I find no merits in the appeal and dismiss it accordingly and  
upho  
ld the conviction.

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The trial magistrate sentenced the accused to pay a fine of  
Shs.300,000/= or a sentence of 3 years in default.

While there is nothing wrong with the fine, the default  
15 sentence is not in accordance with **Section 180 (d) of the  
Magistrates' Courts Act**. The said Section provides a  
scale of fines and default sentences.

In the instant case, a fine exceeding Shs.100,000/= would  
20 carry a default sentence of 12 months imprisonment.

The default sentence of 3 years was accordingly illegal. It is  
set aside and replaced with 12 months in default of the fine  
of shs.300,000/=.

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**Godfrey Namundi**

**JUDGE**

**13/8/2015**

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13/8/2015:

Appellant present

Muzuusa for Appellant

10 Shamim Nalule – Resident State Attorney for State

Court: Judgment read.

**Godfrey Namundi**

15 **JUDGE**

**13/8/2015**