

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

**CRIMINAL APPEAL NO. 031 OF 2014**

5 (Arising from Jinja Criminal Case No. 131 of 2011)

**KANUSU ROBERT ::**  
**APPELLANT**

10 **VERSUS**

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

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

**JUDGMENT**

20 This is an Appeal against the Judgment of Her Worship Kanyange Susan, Chief Magistrate, in which she convicted the Appellant on three Counts namely:

- a) Malicious Damage to property.
- 25 b) Obstruction of Election Officer
- c) Assault occasioning actual bodily harm.

She sentenced the Appellant to a total of 4 ½ years imprisonment or a total fine of Shs.2,100,000/=. The  
30 Appellant filed 4 grounds of Appeal as follows:

1. The learned Chief Magistrate erred in not properly evaluating the evidence and applying the law thereto thereby coming to the wrong conclusion that the Appellant was guilty of Malicious Damage to property.

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2. The learned Chief Magistrate erred in not properly evaluating the evidence and applying the law thereto, thereby coming to the wrong conclusion that the Appellant was guilty of obstruction of Election officer.

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3. The learned trial Magistrate erred in not properly evaluating the evidence and applying the law thereto, thereby coming to the wrong conclusion that the Appellant was guilty of Assault occasioning actual bodily harm.

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4. The learned Chief Magistrate erred in law and fact when she held that the contradictions and inconsistencies in the Prosecution's case were minor and did not go to the root of the offences.

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In summary, the appeal revolves around the evaluation of evidence, and contradictions and inconsistencies.

25 Counsel for the Appellant has submitted that the trial Magistrate relied on the fact that the Appellant was at the

scene of crime as the only piece of evidence to convict the said Appellant. He then proceeded to point out what he claimed are inconsistencies and contradictions in the prosecution's case;

- 5       - These are in respect of the evidence of PW1, PW2, PW3 and PW5 in regard to the kicking of the Ballot Box and claims that the Ballot papers poured on to the ground.
- That PW5 and PW6 never found any scattered Ballot papers at the scene.
- 10       - Why was the Ballot Box replaced when there were other Ballot Boxes available (PW5)?
- That there are different versions on how the Ballot Box was damaged with each witness giving a different description.

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Regarding Ground No. 2, it submitted that there was no evidence to show what sort of duties PW1 was executing at the scene. That Section 157, Local Government Act as Ammended, restricts the offence of obstruction to the person

20 of Election Officer. That the evidence does not support allegations of obstruction.

Further that the Appellant only went to the scene after a Report that there was chaos at the Polling station, and left

25 after trying to calm the people at the scene.

Regarding Ground No. 3, it is submitted that the evidence regarding assault by the Appellant was scanty and that the injuries of PW1 could not have been inflicted by the  
5 Appellant.

That this is because the Doctor's evidence was that the injuries were 2 days old and yet they are alleged to have been inflicted on 23/2/2011, the previous day. That it  
10 appears PW4 (the Doctor) never examined PW1 but only relied on the story given to him to ascertain the cause of the injury.

For the Respondent, it was submitted that the trial  
15 Magistrate properly evaluated the evidence on record. That there were no contradictions as evidenced by the testimonies of PW1 who was at the scene and clearly observed the Appellant kicking the Ballot Boxes and assaulting him.

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That the Appellant himself in his testimony admits having gone to the scene after a call.

PW2 supports the evidence of PW1 that when he was called to the scene, he found chaos at the Polling station which had been caused by the Appellant.

- 5 PW5, the Returning Officer also confirmed that he was called and when he went to the Polling station found the chaos and instructed that the damaged Ballot Box be replaced.

It is further submitted that the said Ballot Box was clearly  
10 identified in Court.

In respect of Ground No. 2, it is submitted that as a result of the activities of the Appellant, the voting at the Polling station was stopped for 2-3 hours as order had to be  
15 restored and the Ballot Box had to be replaced. That the above is borne out by the evidence of PW1, PW2 and PW5.

Finally regarding the assault, it is submitted that PW1 was clearly assaulted (per his own evidence) supported by the  
20 evidence of PW3 and PW4 Dr. Katende who examined and classified the injuries.

**Resolution:**

A look at the Judgment and record of the trial Court reveals  
25 the following facts:

1. There was chaos at the Polling station and the voting process was disrupted for some time as a result of the said chaos.
- 5      2. The Appellant was at the scene, clearly observed and identified by PW1 and PW3. Appellant in his testimony admits as much though he says he never kicked the Ballot Boxes or hit anybody.
- 10     3. PW1 sustained injuries as seen from his own evidence and that of PW3 and PW4.

The trial Magistrate clearly dealt with the ingredients of the 3 offences and was satisfied that they had been proved to  
15 the required standard.

She observed that according to the evidence of PW1, PW2 and PW3 and other witnesses the Ballot Box was indeed damaged and was sufficiently described.

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PW1 and PW3 were at the scene and clearly identified the Appellant at the scene of crime.

Much as the Appellant tried to raise an alibi, he was clearly  
25 at the scene and he admits so. The trial Magistrate relied on

**Kifamunte Henry Vrs. Uganda; Criminal Appeal No. 10/97 (Supreme Court)** that deals with alibis.

5 The Chief Magistrate also found that the contradictions and inconsistencies if any were minor and did not go to the root of the case. Ref: **Okwanga Anthony Vrs. Uganda Supreme Court Criminal Appeal No. 2/2000.**

10 The trial Magistrate also relied on the evidence of PW1, PW2, PW3 and PW5 to conclude that there was obstruction of the election process for 2-3 hours and that the Appellant was directly responsible, having been squarely placed at the scene of crime.

15 The trial Magistrate was also satisfied with the evidence of PW1 and PW3 regarding the assault. The injuries were classified by Dr. Katende. The Appellant was properly placed at the scene, and the incident occurred in broad day light.

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This Court has the mandate to re-evaluate the evidence and make its own findings.

It has to keep in mind that it had no opportunity to observe the demeanour of the witnesses. Ref: **R. Vrs. Pandya (1957) EA 336.**

5 Having gone through the evidence on record and the Judgment of the trial Magistrate, I have come to the same conclusions as those of the trial Court that the Appellant was properly tried and found guilty on all the charges. He was clearly placed at the scene, he caused damage to the  
10 election materials, obstructed the Election process, and assaulted PW1.

I accordingly find that all the grounds of Appeal fail. I uphold the Judgment and findings of the trial Court including the  
15 convictions and sentences. The Appeal is dismissed accordingly.

**Godfrey Namundi**

20 **JUDGE**

**21/7/2015**



21/7/2015:

Appellant in Court

Resident State Attorney Shamim Nalule

5 Court: Judgment read in Court.

**Godfrey Namundi**

**JUDGE**

10 **21/7/2015**