

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

CRIMINAL APPEAL NO. 055 OF 2010
(Arising from Jinja Criminal case No. 675/2009)

5

UGANDA ::
:::::::::APPELLANT

10

VERSUS

A1. BABALANDA JOHN
A2. MUSEGWANO
MOHAMED::::::::::::::::::::::::::::::::::::RESPONDENTS

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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JUDGMENT

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This is an Appeal against the Judgment and Orders of the Magistrate Grade 1, her Worship Lamuno Pamela wherein she acquitted the 2 accused people who are now Respondents.

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The two had been charged with six counts of Malicious Damage to property contrary to section 335 (1) of the Penal Code Act.

The background to the criminal proceedings is that the first accused/Respondent and his mother obtained an order for execution/eviction against the complainants, from the Chief Magistrate's Court. he presented a purported LC Court \

5 judgment which the Chief magistrate believed was genuine and approved the same for execution.

The first accused/Respondent then procured the services of the second Respondent - a Court Bailiff who executed the

10 orders of the Chief Magistrate.

The complainants challenged the orders of the Chief magistrate claiming they were based on a forged LC. Court Judgment. The High Court declared the LC. Court Judgment

15 and proceedings (consequential thereto) a nullity on admission by Counsel for the 1st Respondent and Nakayima his mother.

Criminal proceedings were then preferred against the 2

20 accused/Respondents which have led to the instant Appeal.

The Chief magistrate in acquitting the two accused people found that the essential ingredients of the offence of Malicious Damage to property had not been established by

25 the prosecution. She noted that the execution was carried out on orders that at the time had been lawfully issued by

the Chief Magistrate before it came to his attention that the LC. Judgment was a forgery.

The Prosecution raised 2 Grounds of appeal namely that:

5 1) The trial magistrate erred in law and fact when she failed to evaluate the evidence on record as a whole and thus arrived at a wrong decision.

10 2) The trial magistrate erred in law when she misdirected herself and wholly relied on a Court order that was held by the High Court a nullity abinitio and acquitted the accused.

In her submissions in support of the appeal, the learned
15 State Attorney Ms. Kulusum Mariam stated that the trial magistrate ignored the High Court Judgment nullifying an order by the Chief magistrate based on a forged LC.III Judgment to destroy the houses of the Defendants. That the act of the Appellant was malicious from the start.

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In reply, Counsel for the Respondents Mr. Kugumikiriza submitted that the destruction of the houses was based on a lawful order that had been issued by the Chief Magistrate's Court.

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The 2nd Respondent executed the said order in the presence of the area LCs and the Police. Further that the PW1, the area MP and others even went to the Chief Magistrate's Court and verified that the Chief Magistrate's Order was authentic. That the ingredients of **"unlawfulness"**, **"malice"** and **"willfulness"** were not established. That what was prevailing on the day of execution was that there was a lawful order on record.

10 I have considered the record and evidence. It is true that much as the 1st Respondent knew the LC Judgment was forged, the Chief magistrate did not know that. He therefore issued a lawful Order. The 2nd accused/2nd Respondent executed the order in the honest belief that he
15 was executing a lawfully issued Order.

It was incumbent for the prosecution to adduce evidence that at the time that the order was forged.

20 If anything, the first accused/Respondent No. 1 should have been the one to be charged with offences related to forgery, diverting the course of justice, perjury etc. rather than charging the two with Malicious damage to property.

25 In the circumstances of the case as at the execution, the said execution was a result of an order lawfully issued by the

Chief magistrate in the honest belief that the LC. Judgment was genuine.

I find the appeal in the circumstances without merits, and it
5 is dismissed accordingly.

Godfrey Namundi

JUDGE

10 **26/03/2015**

26/03/2015:

Appellant - Resident State Attorney Nabagala for State

Respondent present

5 Court: Judgment read.

Godfrey Namundi

JUDGE

10 **26/03/2015**