

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

CRIMINAL APPEAL NO. 024 OF 2011

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(ARISING FROM JINJA CRIMINAL CASE NO. 163/2009)

UGANDA

..... APPELLANT

10

VERSUS

KADHUME

DANIEL

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, Ronald Kayizzi in which he acquitted the Accused/Respondent of the charge of Malicious Damage to Property c/s 335 of the Penal Code Act.

The Accused/Respondent was a head teacher of Busoona Primary School, a School founded under the Church of Uganda at Busoowoko village. There was a Football field near one of the School buildings. The Accused relocated the field to a sugarcane plantation some distance from the

building. Sugar canes were up rooted in the process and planted in another newly ploughed field. According to the accused, he was implementing a decision of the P.T.A, a management, Committee of the School.

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According to the prosecution, the Accused did this on his own will and in the process willfully and unlawfully damaged the sugar cane. The Prosecution was not satisfied with the decision of the Magistrate and filed 2 grounds of Appeal.

10 1. The learned trial Magistrate erred in law and fact when he failed to evaluate the evidence on record as a whole thus arriving at a wrong decision.

15 2. The trial Magistrate erred in law when he admitted the defence documentary evidence as exhibits yet they were not authored by the Accused.

On Ground No. 1 it was submitted that all prosecution witnesses testified that the Accused had no authority to
20 destroy the sugar cane.

Regarding Ground No. 2, the learned State Attorney relied on Section 63 of the Evidence Act. That the Minutes should have been tendered by the Secretary of the P.T.A.

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The Respondent on the other hand submitted that the decision was made by the P.T.A and that the Church the owner of the sugar cane was represented on the P.T.A by Wambi George who attended the meeting. He was
5 accordingly implementing a decision of persons authorized to so decide.

Regarding Ground No.2, it was submitted that the Respondent was Secretary of the P.T.A by virtue of his being
10 Head teacher and so he was right to tender the Minutes of the P.T.A. (There was no rejoinder to the above).

I have carefully gone through the evidence and the Judgment of the trial Magistrate.
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Ground No.1 must be disallowed immediately as it is not supported by the record. The Respondent did not flout Section 63 of the Evidence Act as submitted by the State.

20 Secondly, the Minutes were not even challenged when tendered or on cross-examination. The issue cannot therefore be brought up before this Court when it was never an issue in the first place.

25 Regarding Ground No.1, the Magistrate considered the following cardinal principles in criminal procedure:

1. That Prosecution must prove the charges and all ingredients of the offence beyond reasonable doubt.

2. The Court relies on the strength of the prosecution evidence to Court, and not on the weakness of the defence case.

On both principles he was absolutely correct. In arriving his decision to acquit, he required the prosecution to prove the ingredients of the offence which were:

- Destruction of property.
- Willfully and unlawfully.
- Maliciously
- By the accused.

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In destruction, the sugar cane were uprooted and replanted in another field. (Evidence of DW2, DW3, DW4 and DW5). This in my view does not amount to destruction, if it was then the other ingredients i.e. malice, unlawfully and willfully cannot stand. There would have been no replanting.

Secondly, the evidence that this was implementation of a management decision of the School has not been discredited by Prosecution evidence or on cross-examination.

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All in all, I found that this was a clash between personalities (Head teacher and others) rather than a clear case of Malicious damage as required by Section 335 of the penal Code Act.

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Ground No. 2 also fails. This Appeal fails and is dismissed for want of merit. The Judgment of the trial Court is upheld.

10 **Godfrey Namundi**

JUDGE

09/04/2015