

CRIMINAL APPEAL NO. 037 OF 2014
5 (Arising from Nakifuma Criminal case No. 133 of 2013)

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The background to this appeal is that the complainant a farmer had poultry - Project.

On the material day when he went to open the poultry house
5 early in the morning to feed his chicken, he found the same broken into and about 400 chicken were missing.

When he reported the matter to the Police, a sniffer dog was deployed to the scene and following the scents led the
10 investigators to the Appellant's home and particularly the Appellant.

He was apprehended and charged, tried and convicted accordingly.

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The Appellant has raised three grounds namely:

1. The trial magistrate erred in law and fact when she failed to evaluate the evidence on record thus reaching a wrong conclusion.

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2. The trial magistrate erred in law and fact when she failed to consider the contradictions and inconsistencies in the prosecution evidence thus reaching a wrong conclusion.

3. The trial magistrate erred in law and fact when she based her decision on the uncorroborated evidence of a sniffer dog.

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Ground No. 1 - Evaluation of evidence:

- It is submitted for the Appellant that the colour of the trousers (P1) was found to be blue and yet what was exhibited in Court was a green trousers.

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The magistrate noted this in her Judgment as a minor discrepancy.

- It is also submitted that there was a break in the chain of evidence.

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That the name of the Police Officer – PC. Mukanza who is reported to have handed the Exhibit (P1) to the Investigating Officer (PW4) does not appear on the Exhibit slip.

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That there was nothing to show that the trousers was got from the Appellant.

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It is submitted that the magistrate did not consider the defence that the Appellant was putting on a blue jean

trousers and stripped shirt and that the trousers exhibited was not his.

- 5 - The trial Court did not consider that the bricks at the scene were never subjected to finger print examination.
- Further that none of the stolen chicken or house breaking implements were ever submitted as Exhibits.
- 10 - It is also submitted that the magistrate should have considered the evidence for the prosecution and even the defence that the Appellant also reared dogs and the sniffer dog could have gone to the Appellant's home to attack the Appellant's dogs.
- 15 - The Appellant gave the defence of alibi i.e. supported by the evidence of DW2 and his wife who testified that the accused was at home the whole night and never went anywhere.

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Ground No. 2 - Contradictions and Inconsistencies:

- That PW2 stated that the accused was arrested by the Police dog and was putting on a blue trousers.

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That at the Police he stated that the dog only stopped at the accused's residence.

5 - That PW1 also stated that the accused was alone at home. PW3 on the other hand claimed there were 2 or 3 other people. The above are an indication of untruthfulness.

- PW3 also stated that he never saw any dogs at the Appellant's home.

10 **Ground No. 3 - Uncorroborated evidence of the sniffer dog:**

- That the Court relied heavily on the trousers as corroborating the prosecution evidence.

15 - That no chicken or implement was found at the accused's home.

- There were no finger print examinations taken or conducted.

20 Reference was made to the case of **Bogere Moses Vrs. Uganda SCCA 1/97.**

25 There in it was held that the Court must evaluate the evidence as a whole and give reasons why it believes one version and not the other.

In reply, the Resident State Attorney – Ms. Nabagala Grace submitted;

- That the dog handler knew his work and that the dog properly trailed the scent past 10 houses up to the accused's home.

- That he was found with a trousers with chicken droppings.

That the accused did not explain the chicken droppings on the trousers.

- It is further submitted that the trousers was identified by PW1 as blue, by PW3 as deep blue.

That these are mere shades of the same colour and one can make a mistake.

- She also attacks the evidence of DW3 as being contradictory in that at one moment she says she never saw the dog, then that she heard dogs barking and that she does not say anything about the trousers and the chicken droppings.

- That it was not practical to take finger print from the bricks.

- Finally that the magistrate properly evaluated the evidence and the appeal should be dismissed.

Resolution of the issues:

- 5 1. It is trite law that it is upon the prosecution to prove its case to the required standard of beyond reasonable doubt.

10 This duty never shifts. The accused does not have to prove his innocence. It was therefore incumbent upon the prosecution to prove the ingredients of the 2 offences.

Under **Section 295 PCA**, the prosecution has to prove:

- 15 (a) That the complainant's building was broken into.
 (b) That the person doing so had the intention to commit a felony therein.
 (c) Participation of the accused in crime.

20 Under sections **254 (1) and 262 of the Penal Code Act**, the prosecution must prove:

- The participation of the accused.
- The intent to deprive the owner of the property - unlawfully and permanently.

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In trying to prove the above ingredients, the prosecution relied on;

- The actions of the sniffer dog.
- The trousers which was either found at the home of the
5 accused or with the accused.

To say the least, the evidence is largely circumstantial.

It is settled law that for a conviction based on circumstantial
10 evidence to hold, the exculpatory facts must point to the guilt of the accused person to the exclusion of any other reasonable hypothesis. Ref: **Alluyi Vrs. Republic (1975) EA. 218.**

A look at the record reveals that the premises were broken into.

15 Secondly that the 400 chicken were missing therefrom.
That ingredient of store breaking is thus proved.

There are however issues with the participation of the accused. The only evidence is that of the sniffer dog leading
20 the investigators to the home of the accused. There is no clear explanation as to how the trousers was recovered.

The prosecution tries to shift the burden by asking the accused/Appellant to explain the droppings on the said
25 trousers.

- No evidence is adduced that the trousers was his or it was got from him.
- Even then the way the same was handled by the Investigating Police Officers and the Exhibit Store man leaves a lot to be desired.

There is a clear break in the chain of evidence in respect of the exhibit.

- How as it recovered?
- Who did so?
- How was it handled in the Police station?
- Why was the Exhibit Store man not called to verify and to confirm that the trousers was the one recovered at the accused's home.

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The above only leaves the evidence of the sniffer dog which to say the least requires other evidence to lead to the conclusion that the accused was the culprit.

- Was any other investigation carried out to recover any house breaking instruments,
- Or the whereabouts of the chicken.
- Or anything else to connect the Appellant to the breaking of the house and theft of the chicken?

25 The conclusions leading to the arrest and prosecution of the Appellant are lacking in corroboration.

The moment the dog stopped at the Appellant's home, the Investigators seem to have stopped any further investigations.

- 5 It is very dangerous to therefore base a conviction on the uncorroborated evidence of the sniffer dog.

The circumstantial evidence is not sufficient to lead to no other conclusion other than that of guilt on the part of the accused.

- 10 His participation in the crime has not been proved to the required standard.

I accordingly allow this appeal. The Judgment of the trial Court is set aside and the conviction and sentences quashed.

- 15 It is ordered that the Appellant be set free forthwith.

Godfrey Namundi

JUDGE

- 20 **05/03/2015**

