

Grade one, at Law Development Center Magistrate Grade 1 Court. Hence, this appeal against the Judgment of the Trial Court.

3. Grounds of appeal

3.1 The appellant in his memorandum of appeal raised the following grounds; that:-

- a) The learned Trial Magistrate erred in law and fact when she convicted the appellant of the offence of stealing by agent Contrary to Section 271 (e) of the Penal Code Act, without properly evaluating the evidence as a whole and hence arriving at a wrong decision.
- b) The learned Trial Magistrate erred in law and fact when she proceeded with the hearing without according the appellant a right to a fair hearing, thereby arriving at a wrong decision.
- c) The learned Trial Magistrate erred in law and fact when she convicted the appellant while basing on the evidence of the prosecution which was faulted with a lot of contradictions, inconsistencies and falsehoods, thereby occasioning a miscarriage of Justice.

3.2 It is proposed by the appellant that this Court grants him the following orders; that:-

- a) “The appeal be allowed and the judgment of the Trial Magistrate be quashed and set aside.
- b) This Honourable Court be inclined to give the appellant an option of a fine based on his health conditions.”

4. Resolution of this appeal by Court.

4.1 In arguing this appeal, Counsel for the respondent and the appellant argued grounds 1, 2 and 3 of appeal separately. As earlier on stated the parties filed in Court written submissions. However, the appellant never filed in Court his written submissions in rejoinder.

4.2 Ground 1 of appeal

On this ground 1 of appeal, the appellant submitted that the Trial Magistrate did not only fail to appropriately evaluate the evidence as a whole on the offence of stealing by agent Contrary to Section 271 (e) but that also misdirected herself to an offence of theft Contrary to Section 254 (2) (a) and 261 of the Penal Code Act that while accused (appellant) did not plead to as required by law. He said that the principle of Criminal law is that an accused person charged with the Criminal offence shall plead to a charge that he or she has been charged. In the instant case the appellant has charged with the offence of stealing by agent Contrary to Section 271 (e) of the Penal Code act. That it surprises him that in her judgment, the Trial Magistrate pronounced herself on the charge of theft Contrary to Sections 254 (2) and 261 of the Penal Code Act which he did not plead to. On this point of plea taking, the appellant cited the case of ADAM-VS- R [1973] EA 445.

The appellant went further in his submissions to outline the ingredients of the offence of stealing by agent. He evaluated the-evidence on record, and stated the evidence of the prosecution is full of speculations. That the prosecution evidence is full of contradictions and inconsistencies. That no Court could have convicted him on such evidence. He prayed that he be acquitted of the charged offence.

On the Contrary, the respondent's counsel, Ms Lucy Kabahuma, in her submissions in reply on this ground 1 of appeal, stated that the appellant was charged with theft Contrary to Sections 254 (2) (a) and 261 of the Penal Code Act. She further stated that the Trial Magistrate properly evaluated the evidence as a whole on the Court record and that she came to the right conclusion. In essence, the respondent's Counsel supported the judgment and findings of the Trial Magistrate.

I have considered the submissions by both parties. Indeed, the major complaint of the appellant is that he was convicted of the offence of theft which was never charged with and that he never pleaded to such charge of theft. In his submissions he said that he was charged with stealing by agent Contrary to Section 271 (e) of the penal Code Act. That he pleaded to the aforestated offence.

I referred to the charge sheet which reads:

“Statement of offence

Stealing by agent Contrary to Sections 254 (2) (a) and 261 of the Penal Code Act.

Particulars of offence

Saaka Moses on the 2nd day of July, 2013 within Kampala in the Kampala District stole M/V Reg.No UAM 542N Hiace, being the proceeds of Motor Vehicle Reg.No UAK 300E and UAL 667H which had been received by Saaka Moses by virtue of powers given to him.”

The charge sheet indicates that the appellant pleaded to the offence of theft Contrary to Sections 254 (2) (a) and 261 of the Penal Code Act. The particulars of the offence states that the appellant stole M/V Reg. No UAM 542N Hiace being the proceeds of M/Vs Reg. No.s UAK 300E and UAL 667H.

At page 34, lines 13 and 14 from top of the Court proceedings the appellant stated:

“I never stole his cards. I never stole his car.”

This clearly means that the appellant knew that he was being charged with theft of a motor vehicle.

Further, I perused the judgment of the Trial Magistrate and from pages 6-8 of her judgment; the Trial Magistrate properly evaluated the evidence as a whole on record. Then from pages 3-6, 1st paragraph, the Trial Magistrate in her judgment briefly summarized the evidence of each prosecution witness and that of the appellant.

Furthermore, I re-evaluated the evidence on the lower Court record as a whole and came to the conclusion that the Trial Magistrate properly evaluated the evidence on the Court record, addressed herself on the offence charged, and thus came to the correct decision. In the result, ground 1 of appeal fails.

4.3 Ground 2 of appeal

On this ground 2 of appeal, the appellant submitted that the Trial Magistrate proceeded with the hearing without according the appellant a right of a fair hearing. He referred to

Article 28 (3) (b) and (c) of the Constitution of the Republic of Uganda. He thus submitted that throughout the record of proceedings and during the delivery of the judgment that the Trial Magistrate proceeded with the case without an interpreter in Court to facilitate the translation to local language that the appellant is well versed with.

In reply, Counsel for the respondent, Ms. Lucy Kabahuma, in her submissions supported the procedural trial of the appellant the Trial Magistrate. She submitted that the Trial Magistrate accorded the appellant a fair hearing.

I agree with Counsel for the respondent that the Trial Magistrate conducted the case against the appellant in accordance with the law. At page 12 last sentence but one of the Court proceedings it is indicated.

“Arthur – Court Clerk.”

At page 13 line 15 of the Court proceedings it is indicated that:-

“Harriet – Court Clerk.”

At page 18 line 15 from top of the Court proceedings it is indicated that:-

“Jackie – Court Clerk.”

The abovestated indicators clearly demonstrate that at any sitting of the Court there must have been a Court interpreter. Not to record at every sitting of the Court that there was a Court Clerk in Court was not fatal to the appellant’s trial in the lower Court.

Again, at page 11, line 4 of the lower Court proceedings, it is stated:-

“Charge read to the accused and explained in his own language.”

Then on the same page 11 line 6 thereof it is stated:-

“Accused: I have heard and understood, but it is not true.”

It is crystal clear that the charge sheet was interpreted to the appellant in his own language. In addition, at pages 17, 20, 22, 27 and 31 of the lower Court proceedings, the appellant was accorded an opportunity to cross-examine all the prosecution witnesses.

The trial Court explained the defence options to the appellant at page 32 of the lower Court proceedings. Subsequently, he gave his evidence on oath at pages 33, 34, 35 and 36 of the lower Court proceedings. From the aforesaid analysis of the events on the lower Court proceedings, I make a finding that the appellant was accorded a fair hearing. Further to this finding, assuming there was no interpreter (which is not true) in Court to interpret for the appellant in the language he understands most, I say there would have been no need for an interpreter. This is because, in the lower Court, the appellant represented himself, he cross-examined all the prosecution witness very well, he gave his evidence very well, and he gave his evidence on oath and presented it well in Court. He was cross-examined by the prosecutor and he answered all the questions that were put to him in cross-examination. All those are clear indicators that the appellant followed very well the proceedings that were conducted in the language of the Court which is English. To crown it all the appellant represented himself in this Court and wrote his submissions in good English. He even cited decided cases in his submissions, which shows that the appellant is fluent in English language and that he knows law. It seems to me that he is not a “joking subject” as far as English and the law are concerned. He put up a spirited spirit in his written submissions.

In the premises, ground 2 of appeal, too fails.

4.4 Ground 3 of appeal.

On ground 3 of appeal, the appellant submitted that the Trial Magistrate erred in law and fact when she convicted the appellant based on the evidence of the prosecution that was tainted with a lot of contradictions, inconsistencies and falsehoods. In reply Counsel for the respondent, MS Lucy Kabahuma, in her submissions supported the judgment and findings of the Trial Magistrate. She submitted that there are no contradictions, inconsistencies nor falsehood in the prosecution case. That if there were any contradictions or inconsistencies in the evidence of the prosecution witnesses, that they were minor and that does not go to the root of the case.

On ground 1 of appeal hereinabove, I made a finding that the Trial Magistrate properly evaluated the evidence as a whole on the Court record and came to the right decision.

My findings in that ground 1 of appeal dispose of this ground 3 of appeal. Again, I agree with Counsel for the respondent that there are no major contradictions or inconsistencies in the prosecution evidence. I have re-evaluated the evidence on the Court record, in cross-examination the prosecution witnesses never contradicted themselves. There are no inconsistencies or falsehoods in the prosecution case Contrary to what is being alleged by the appellant. In the result, this ground 3 of appeal also fails.

5. Conclusion

In closing, since all the three grounds of appeal failed, this appeal is accordingly dismissed. The conviction and sentence of 22 (twenty two) months imprisonment are upheld.

Dated at Kampala this 23rd day of September, 2015.

Joseph Murangira.

Judge.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL APPEAL NO.47 OF 2015

(Arising from Chief Magistrate’s Court of Mengo, at Law Development

Center, Criminal Case No. 137 of 2014)

SAAKA MOSES :::APPELLANT

VERSUS

UGANDA :::RESPONDE

NT

PRESENTATION

23/9/2015

Mr. Amuza Muzige, Senior State Attorney for the respondent. I am holding brief for Lucy Kabahuma, Senior State Attorney. I was informed that the matter is coming up for judgment.

I am ready to receive the judgment.

The appellant is in Court unrepresented.

Ms. Margaret Kakunguru the Clerk is in Court.

Court: Judgment is delivered to the parties in open Court.

Right of Appeal is explained to the parties.

Joseph Murangira

Judge.