

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.35 OF 2015**

**(ARISING FROM LUWERO CHIEF MAGISTRATE’S COURT CRIMINAL  
CASE NO.93 OF 2014)**

**NAMATA JOYCE alias MACHUMI:.....:APPELLANT**

**VERSUS**

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

**JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

The appellant is represented in this appeal by Maria Nassali from Nassali & Co. Advocates. Whereas the respondent is represented by Ms Jacquelyn Okwi, Senior State Attorney from the Directorate of Public Prosecutions. The parties filed written submission on the amended memorandum of appeal that was filed in Court on 19/6/2015.

**2. Facts of the appeal**

The appellant was charged with the offence of failing to prevent fire from spreading Contrary to Section 331 of the Penal Code Act, Cap.120, Laws of Uganda. The brief particulars of the offence are that on 15<sup>th</sup> day of February 2014 at Katundu village in Bututumula Sub county in the Luwero District, the appellant/accused failed to prevent fire she lawfully lit on the land occupied by her from extending to the land of Mawanyire Godfrey thereby causing damage to the sugarcane plantation, the property of Muwayire.

The appellant was tried by Her Worship Namata Harriet Nsibambi, Magistrate Grade One. The appellant was found guilty of the charged offence, convicted and sentenced her to a fine of Ug. Shs. 1,200,000/= or to 12 months imprisonment in default of payment of fine. The appellant was also ordered to pay Ug. Shs. 3,000,000/= to the complainant as compensation for the loss and damage he suffered because of the actions/omissions caused by the appellant.

The appellant was dissatisfied and aggrieved with the whole judgment, conviction and sentence. Hence this appeal against conviction and sentence.

### **3. The Grounds of Appeal.**

This appeal is based on the following three grounds that:-

1. The learned Trial Magistrate erred in fact and law when she convicted the appellant of failing to prevent and control a fire lawfully lit by her without evidence to that effect and thus came to a wrong conclusion.
2. The learned Trial Magistrate erred in law and infact when she admitted the contents of the charge and caution statement thus prejudicing the innocence of the appellant and as a result came to a wrong conclusion.
3. The learned Trial Magistrate erred in law and fact when she failed to adequately evaluate the evidence as a whole and as a result came to a wrong conclusion ordering the appellant to pay compensation of Shs. 3,000,000/=.

The appellant prays to Court for an Order that the appeal be allowed and the judgment and decree of the learned Trial Magistrate be set aside. The underlining is mine for emphasis. In Criminal Cases we don't have decrees.

4. The resolution of the appeal by Court.
  - 4.1. The appellant's Counsel and the respondent's Counsel filed written

Submissions. On 11<sup>th</sup> August, 2015 when this appeal came up for hearing, Counsel for appellant submitted that she did not intend to put in Court written submissions in rejoinder.

Counsel for the appellant in her written submissions argued grounds 1, 2 and 3 of appeal separately and in that Order. In reply, Counsel for the respondent in her submissions argued grounds 2 and 1 of appeal together, and grounds 3 alone.

In resolving this appeal, I will follow the order that was adopted by Counsel for the appellant.

#### **4.2 Ground 1 of appeal**

In her submissions on this ground of appeal, Counsel for the appellant briefly evaluated the evidence of the prosecution, and compared the same with the defence evidence. She stated that the prosecution failed to prove its case against the appellant beyond doubt. In this respect she relied on cases of *Kizito Ronald Vs- Uganda (HCCA) case No. 14 of 2008*, and *Abdu Ngobi vs- Uganda Criminal Appeal; No. 10 of 1991*, whereby it was held that the burden of proof always rests on the prosecution and the Court must decide whether the defence has raised a reasonable doubt. That if the defence has successfully done so the accused must be acquitted.

Counsel for the appellant in her submissions, further, raised a defence of alibi. She submitted that the prosecution failed to destroy that alibi:-

That there were inconsistencies in PW2's statements. That this is because PW2 stated that the appellant was digging in her garden, but that under cross-examination, she stated that PW2 used to dig for Mulokole who is a member of their organization. That PW3's evidence on pages 6 and 7 of the proceedings of the Trial Court was mainly hearsay evidence from PW2. Counsel for the appellant also argued that PW5's evidence is hearsay. On the defence of alibi, Counsel for the appellant relied on and cited the case of *Mushikikona Watete alias Peter Wakhokla and others –Vs- Uganda, SCCA, appeal No. 10 of 2000*.

In reply, Counsel for the respondent disputed the submissions by Counsel for the appellant. In her submissions in reply, she supported the Judgment and findings of the Trial Magistrate.

At this stage, it should be appreciated that the first appellate Court has a duty to re-evaluate the entire evidence on the Court record of the lower Court and subject the same to fresh scrutiny and come up with its own conclusions. In the case of Charles Bogere Vs- Uganda, supreme Court, Criminal Appeal No. 10 of 1998, reported in 199 KALR 17, it was held that:-

**“It is the duty of the first appellate Court to reconsider the entire evidence on record, and subject it to a fact and exhaustive scrutiny and make its own conclusion.”**

Again, Section 34 (1) of the Criminal Procedure Code, Cap.116, Laws of Uganda, provides that the appellate Court, on any appeal against conviction shall allow the appeal if the decision has in fact caused a miscarriage of Justice or if Court is satisfied that there has been a miscarriage of justice.”

Indeed, in handling and resolving the appellant’s three grounds of appeal I shall certainly follow the above cited legal principles of law. I have perused both the record of proceedings and the judgment of the trial Court.

As stated in the facts of appeal hereinabove in this judgment, the Trial Magistrate convicted the appellant of the offence of failing to prevent fire from spreading according to Section 331 (c) of the penal Code Act. This Section provides that:-

**“Any person who fails to prevent any fire lawfully lit by him or her on land occupied or owned by him or her, from extending on to the land of any other person or from causing damage to the property of any other person, commits a misdemeanor.”**

The ingredients of the offence that had to be proved by the prosecution are:-

(a) Lighting of a fire on the land occupied or owned by the accused person.

- (b) Failure to prevent a fire from exceeding to the land of another person or failure to prevent a fire from causing damage to the property of another person.
- (c) The accused committed the charged offence.

From the Court record, with regard to the first ingredient of the charged offence, PW2 testified on page 5, 2<sup>nd</sup> paragraph of the record of proceedings and page 6, 4<sup>th</sup> paragraph, line 1 that on 15<sup>th</sup> February 2014 she saw the appellant in her garden, starting a fire and burning shrubs. She particularly saw the appellant with a stick of fire. This evidence is corroborated by the evidence of PW3 on page 6, 2<sup>nd</sup> last paragraph of the record of proceedings, when he testified that on 15<sup>th</sup> February 2014 the appellant came with a stick with fire and lit a fire on the grass which was near a sugarcane plantation. At page 7, paragraph 4, PW3 testified that he saw the appellant lit a fire and that she was dressed in a red gomasi. In re-examination, at page 7, PW3 stated that it was at 10:00a.m when he saw the appellant lit a fire. From the evidence of PW2 and PW3, these witnesses were present at the scene, and thus, I do not agree with the submissions by Counsel for the appellant that the evidence of PW3 is hearsay and full of inconsistencies. PW2 and PW3 gave direct evidence against the appellant. And their evidence was not contradicted in cross-examination.

On the ingredient of failure to prevent a fire from extending to the land of another person, PW2 gave evidence on page 5, 3<sup>rd</sup> paragraph of the lower Court proceeding that a fire that the appellant lit spread to the sugarcane plantation of PW1. She further testified on the same page, 4<sup>th</sup> paragraph of the said proceedings, line 3 that a fire spread throughout the entire sugarcane plantation. This evidence is corroborated by the evidence of PW3 at page 6, 3<sup>rd</sup> paragraph of the record of proceedings where he testified that the sugarcane plantation caught fire. PW's evidence at page 3, 2<sup>nd</sup> paragraph line 2-3 of the record of proceedings, is that on 15<sup>th</sup> February 2014 he found that fire had spread into his sugarcane. PW6 in his testimony stated that she visited the scene where the fire had spread to PW1's sugarcane plantation and she even took photographs (Exh P1) of the burnt

Sugarcane. Here again there is enough evidence by the prosecution that pinned down the appellant to this ingredient.

On the failure to prevent a fire from causing damage to property of another person, PW2 at page 6, 4<sup>th</sup> paragraph of the record of proceedings testified that PW1's sugarcane got burnt as a result of a fire that was started by the appellant. Again, PW3 at page 6, line 8 of the record of proceedings, and at page 7 lines 1 -6 of the said record of proceedings gave direct evidence that the sugarcane of PW1 caught fire as they failed to stop the fire lit by the appellant. PW1's evidence at page 3, 4<sup>th</sup> paragraph, line 4, stated that his sugarcane got burnt. He identified the photographs of the burnt sugarcane (Exh P1). PW5 at page 9, 2<sup>nd</sup> paragraph, lines 2 -4 of the record of proceedings, gave evidence that they found the sugarcane plantation of about 5 acres burnt. PW6 at page 10, 2<sup>nd</sup> paragraph lines 1-5 of the record of proceedings gave evidence that she took photographs (Exh P1) of that burnt sugarcane plantation that belongs to PW1. On this, the prosecution adduced enough evidence that proved this ingredient of the offence charged.

On the last ingredient of the offence charged of whether the appellant is responsible of burning the sugarcane plantation of PW1, PW2 at page 5, 2<sup>nd</sup> paragraph and at page 6, 4<sup>th</sup> paragraph line 1 of the record of proceedings gave evidence that on 15<sup>th</sup> February 2014, she saw the appellant in her garden, starting a fire and burning shrubs. She particularly saw her with a stick of fire. PW3 at page 6, 2<sup>nd</sup> paragraph of the record of proceedings of his testimony stated that on 15<sup>th</sup> February 2014, the appellant came with stick of fire and lit the grass near the sugarcane plantation. At page 7, 4<sup>th</sup> paragraph of the record of proceedings, PW3 further gave evidence that he saw the appellant lit a fire and that the appellant was dressed in a red gomesi. He further stated at page 7 of the record of proceedings, in his re-examination that it was at 10:00 a.m. when he saw the appellant lit a fire. PW3 at page 6, 2<sup>nd</sup> paragraph line 2 of the record of proceedings confirmed the presence of PW2 at the time a fire was lit by the appellant which fire burnt down PW1's sugarcane plantation. PW2 at page 5, 1<sup>st</sup> paragraph, lines 2-3 gave

evidence that she knows the appellant as a neighbour. PW3 at page 6, 1<sup>st</sup> paragraph lines 2-3, PW3 stated that he knew the appellant as a person who was working in the garden of one Mwanje.

Consequent to the above, in her submissions Counsel for the appellant raised an alibi as defence for the appellant. The issue of identification was discussed in the case of Uganda –Vs- George William Simbwa, Supreme Court Criminal Appeal No.37 of 1995 whereby it was held that:-

**“Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should closely examine the circumstances the identification came to be made, particularly the length of time, the distance, the light, the familiarity of the witness with the accused.”**

In the instant case, all the abovestated factors of proper identification were present. The prosecution evidence as evaluated hereinabove particularly of PW2 and PW3 does destroy the appellant’s defence of alibi. These two prosecution witnesses placed the appellant squarely at the scene of crime. In the case of Alfred Bumbo and 3 others Vs Uganda, Supreme Court, Criminal Appeal No. 28 of 1994, it was held that:-

**“The law is that once an accused person has been positively identified during the Commission of a crime then his claim that he was elsewhere must fail.”**

In addition to the direct evidence of PW2 and PW3, there is enough circumstantial evidence that was adduced by PW1, PW4, PW5 and PW6; which also put the appellant at the scene of Crime.

Further, as I stated hereinabove that I re-evaluated the evidence as a whole, the contradictions, inconsistencies or/and discrepancies submitted on by Counsel for the appellant are so minor and they don’t go to root of this case.

There is also no hearsay evidence in the prosecution evidence Contrary to the submissions by Counsel for the appellant.

It is my holding, therefore that the prosecution proved its case against the appellant beyond reasonable doubt. The Trial Magistrate properly considered all the evidence on Court record in her judgment and correctly came to the right conclusion. In the premises, Ground 1 fails.

#### **4.3 Ground 2 of appeal**

Counsel for the appellant in her submissions criticized the Trial Magistrate that she improperly admitted in evidence for the prosecution a charge and Caution statement which was not signed by the appellant. That such evidence prejudiced the innocence of the appellant and that as a result came to a wrong conclusion.

In reply Counsel for the respondent conceded to this point. However, she hastened to state that there is enough evidence on Court record that support the conviction of the appellant. I agree with the submissions of both Counsel.

On ground 1 of appeal hereinabove, I exhaustively reconsidered the evidence as a whole on Court record, which I need not repeat here. There is indeed enough prosecution evidence on Court record that support the conviction of the appellant by the Trial Magistrate. Again, I perused the judgment of the Trial Magistrate and found that the conviction of the appellant is not based on the Charge and Caution Statement. Wherefore, ground 2 of appeal fails.

#### **4.4 Ground 3 of appeal.**

In her submissions, Counsel for the appellant endeavoured to show that the Trial Magistrate failed to adequately evaluate the evidence as a whole and that as a result came to a wrong conclusion ordering the appellant to pay a fine of Shs.1,200,000/= and to pay compensation of Shs.3,000,000/=.



In reply, Counsel for the respondent does not agree with the submissions by Counsel for the appellant. In her arguments Counsel for the respondent supports the sentence of a fine and the compensation order.

When resolving ground 1 of appeal hereinabove, I made a finding that the Trial Magistrate properly evaluated the evidence as a whole on the Court record. Again, my duty as a judge of first appellate Court, I re-evaluated the evidence as a whole on Court record and found that the prosecution evidence proved the case against the appellant beyond reasonable doubt. Thus, the argument by Counsel for the appellant that the Trial Magistrate never adequately evaluates the evidence on record does not hold any water at all. Hence, the Trial Magistrate cannot be faulted on the sentence and order of compensation she passed.

According to the Section of the offence charged, the offence is a misdemeanor. The sentence for misdemeanor is found in Section 22 of the Penal Code Act, Cap.120, laws of Uganda; it is imprisonment for a period not exceeding two years. In this instant case, the Trial Magistrate sentenced the appellant to pay a fine of Shs. 1,200,000/= and in default of payment of such a fine to serve a sentence of 12 (twelve) months imprisonment. This sentence is within the law. Again, Section 197 (1) of the Magistrate's Courts Act, Cap.16, laws of Uganda, provides that; when any person is convicted by a Magistrate's Court of any offence, and it appears from the evidence that any other person has suffered material loss in consequence of the offence committed, the Court may in its discretion and in addition to any other punishment, order the convicted person to pay that other person such compensation as the Court deems fair and reasonable.

In the circumstances of this case, as discussed and resolved in ground 1 of appeal where the complainant suffered loss because of the actions/omissions of the appellant the Trial Magistrate acted within the law when she gave an order against the convict/appellant to pay to the complainant (PW1) Shs.3,000,000/=.

In the result, ground 3, too, fails.

**5. Conclusion.**

Finally, in view of all my analysis, re-evaluation of the evidence as a whole on the Court record and my findings hereinabove on all the three grounds of appeal raised in the memorandum of appeal, I hold that the appellant's appeal has no merit. This appeal is accordingly dismissed. The conviction, sentence and order of the Trial Court are upheld.

Dated at Kampala this 24<sup>th</sup> day of August, 2015.

**Joseph Murangira**

**Judge.**

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.35 OF 2015**  
**(ARISING FROM LUWERO CHIEF MAGISTRATE’S COURT CRIMINAL**  
**CASE NO.93 OF 2014)**  
**NAMATA JOYCE alias**  
**MACHUM:.....APPELLANT**

**VERSUS**

**UGANDA :.....RESPONDEN**  
**T**

**REPRESENTATION:**

The appeal is in Court.

Mr. Nassali Maria for the appellant.

We are ready to receive the Judgment.

Mr. Muzige Hauza, Senior State Attorney, holding brief for Senior State Attorney, Ms. Jacquelyn Okwi for the respondent.

I am ready to receive the Judgment.

Ms. Margaret Kakunguru, the Clerk is in Court.

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

Right of appeal explained to the parties.

**Joseph Murangira**

**Judge.**

**24/8/2015.**