

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL APPEAL NO.045 OF 2015

(Arising from Buganda Road Court Criminal Case No. 1268 of 2008)

NTAMBI ROBERT VINCENT :::APPELLANT

VERSUS

UGANDA :::RESPONDENT

JUDGMENT BY HON.MR.JUSTICE JOSEPH MURANGIRA

1. Introduction.

1.1 The appellant is represented by Ntende Fredrick Samuel from Ntende,Owori & Co. Advocates, and Mr. Ronald Kasisa from Kasisa & Co. Advocates; and Mr. Ronald Kasisa from Kasisa & Co. Advocates. Whereas the respondent is represented by Bwiso Charles, Senior State Attorney, from the Directorate of Public Prosecutions.

1.2 Brief facts of the appeal.

The appellant was charged with forgery Contrary to Section 349 of the Penal Code Act, on Count 1; uttering a false document Contrary to Section 351 of the Penal Code Act, on Count 2, and fraudulent transfer of title Contrary to Section 190 of the Registration of Titles Act, Cap. 230, Laws of Uganda, on Count 3.

The appellant was tried, found guilty, convicted and sentenced on all the three (3) counts by His Worship Araali K. Muhiirwa, Magistrate Grade 1 at Buganda Road Court, on 14th April, 2015.

The appellant being aggrieved by the Judgment and the whole decision by the said Trial Magistrate appealed to the High Court of Uganda, at Kampala against conviction and sentence.

1.3 Grounds of appeal.

The appellant appeals against conviction and sentence based on the following three grounds of appeal; that:-

- 1) The judgment of the trial Court is against the law, incorrect and improbable.
- 2) The learned Trial Magistrate erred in Law and fact when he grossly misdirected himself on the insufficient evidence on record, which evidence did not in any way prove the ingredients of the offence (s) with which the appellant was charged.
- 3) The learned Trial Magistrate erred in law and fact when he considered and relied on aspects of the prosecution evidence in isolation of defence (appellant's) case hence he wrongly convicted and sentenced the appellant.

2. Resolution of this appeal by Court

Counsel for the appellant presented their arguments on the three grounds of appeal together on the following segments:-

- a) Errors on law.
- b) Errors of mixed law and fact.

Counsel Ronald Kasisa argued the Segment based on errors on law and Counsel Ntende Fredrick Samuel argued the Segment based on errors on mixed law and facts. In essence, their arguments were more less the same.

On grounds 1 and 3 of appeal, Counsel Ronald Kasisa, submitted that the errors they are pointing out; the Trial Magistrate convicted the appellant based on different particulars from these stated in the charge sheet. That on count 1, it was alleged that the appellant had forged a transfer form for land comprised in Block 229 Plot 1368, land located at Kireka purported to have been signed by the late Nuru Matilida Bulya whereas not. On Count 3 that the appellant allegedly transferred the said land into his own names allegedly that the late Matilida Bulya consented to the transfer and registration of the same land whereas not.

That the particulars in the charge sheet suggest that the land was registered in the names of Nuru Matilida Bulya. That the particulars in the charge sheet also suggest that the late Matilida Bulya used to sign in the order as Nuru Matilida Bulya.

That, therefore, it was a gross-error in law for the Trial Magistrate to find and convict the appellant whereby he, the Trial Magistrate at pages 6-7 of his judgment faulted the appellant for forging Nuru Bulya's signature and also transferring the land belonging to Matilida Bulya. That the aforestated finding and conviction is Contrary to Article 28 (3) (b) of the Constitution of the Republic of Uganda, and Section 124 (1) of the Magistrate's Courts Act, Cap.16.

Further, Mr. Ntende Fredrick Samuel argued the second leg segment, which is on errors mixed law and facts. He submitted that the Trial Magistrate misdirected himself on the insufficient prosecution evidence on record, on the ingredients of all the offences on which the appellant was charged, that thirdly, he considered the prosecution evidence in isolation of the appellant's evidence.

On count 1, Counsel for the appellant submitted that Section 342 of the Penal Code Act provides that for forgery has two (2) ingredients:-

- 1) Making of the false document.
- 2) The maker has to make that document in order to defraud or deceive.

That at page 2, the Trial Magistrate in his judgment; created other two (2) ingredients, which he even reverend analysed in light of the evidence on record. That, there is no evidence on record at all to show that the appellant is the one who completed the transfer form (Exh. P1). He went ahead to evaluate the evidence on record and came to his own conclusion that there is no evidence on record to pin the appellant on the offence of forgery.

On count 2, Counsel for the appellant argued that the offence of uttering a false document has the following ingredients:-

- a) Knowledge of the part of the person.
- b) Then the fraudulent presentation of the false document.

He submitted that the falseness in the transfer form was not clearly shown to the Court by the prosecution in the evidence it adduced. That there were mere assertions which raised suspicions and that they remained as such.

That the allegations are those of forging a signature that which signature was not properly analyzed. That, that signature should have been that of Nuru Matilida Bulya as it is stated in the charge sheet.

He further submitted that the prosecution evidence was very much disputed by the defence. That therefore, the Trial Magistrate misdirected himself whom in the process he convicted the appellant of the forging the transfer forms of Matilida Bulya.

On Count 3, Counsel for the appellant argued that under Section 190 of the RTA (Supra) for one to have committed an offence, he or she would be the offender to have willfully made a false document in the application to be registered under the RTA (Supra). That the prosecution did not lead any evidence to show that the appellant committed the charged offence. That the evidence on record are allegations which lead to the suspicious, that which suspicious lead to a theory that the accused as a grandson of the late Matilida Bulya could not have laid the disputed land transferred to him in preference of the son (PW2) of the late Matilida Bulya. That the Trial Magistrate wrongly convicted the appellant on Count 3.

Counsel for the appellants prayed to Court that the conviction of the appellant be quashed on the 3 counts sentences be set aside, and that the appellant be acquitted.

In reply, Mr. Bwiso Charles Counsel for the respondent submitted that the appellant's Counsel's submissions had no merit, lacked substance and that it was intended to mislead this Court. He submitted that Counsel for the appellant in their respective submissions were relying on form, but not in the substance of the charge. That on the form of training charges, such cannot defeat justice. That the substance of the charge is that there was a forgery which was committed. So are the other offences. He relied on Article 126 (2) (e)

of the Constitution of the Republic of Uganda. He prayed that this appeal be dismissed, conviction and sentence be upheld.

Having evaluated the submissions by Counsel for both parties, my duty as a Judge of the first appellate Court is to re-evaluate the evidence as a whole on the Court record, subject the same to a fresh and exhaustive scrutiny and come to my own conclusions. See the case of Akol Patrick and others Vs. Uganda [2006] HCB Vol.1 page 4, it was held that:-

“The duty of the first appellate is to re-evaluate the entire evidence on record and come to its own conclusions bearing in mind that it did not see the witnesses testify.”

It is true that the burden of proof in Criminal cases lies on the prosecution. And the standard of proof is beyond reasonable doubt. My duty, therefore, is to find out, basing on the evidence as a whole on the Court record, whether prosecution discharged its duty of the burden of proof and the proof must be beyond reasonable doubt. See the case of Akol Patrick & others –vVs- Uganda (Supra).

On ground 1 of appeal: The judgment of the Trial Court is against the law, incredible and improbable.

I re-evaluated the evidence on record as a whole. The Court proceedings and the Judgment of the Trial Magistrate reflect the fact that Nuru Matilda Bulya and Matilida Bulya refer to one and the same person. In the Court proceedings PW1 in his evidence addressed the deceased as Nuru. At page 3, 1st paragraph, lines 1-2, he addressed the deceased as Bulya Nuru. And on line 3, he addressed the deceased as Nuru Bulya. Throughout the proceedings, these names were interchangeably used as Nuru, as Bulya Nuru, as Nuru Bulya and as Matilida Bulya, but they were all meaning the same person.

In cross-examination by Ntende Fredrick Samuel, Counsel for the accused (appellant) on whether PW1 knew Nuru, PW1 at page 3, last paragraph of the Court proceedings, clarified to Court that Nuru was a Catholic before and that her name was Matilida. That

she married a Muslim man and acquired the name Nuru. In re-examination of PW1 at page 4 last paragraph of the Court proceedings, PW1 stated that the cost of land title was in the names of Matilida Bulya. PW2, PW3 and PW4 in their respective evidence stated that these names of the deceased were interchangeably used, but that they mean the same person.

In his evidence the appellant also knew the deceased by the same names. In his evidence at page 9, he says he knew Matilida Bulya. And on pages 10 and 11 of the defence case proceedings, the appellant under cross-examination he Consistently referred to the deceased as Bulya Nuru and also Matilida Bulya, meaning that him also did not find any grave distinction between the names and he knew that all the names are referring to the same person who is named in the charge sheet. In the result I do not see any reasons why I should fault the Trial Magistrate on ground 1 of appeal. Thus, ground 1 of appeal fails. The arguments by Counsel for the appellant on this ground do not hold any water at all.

Ground 2 of appeal: The learned Trial Magistrate erred in law and fact when he grossly misdirected himself on the insufficient evidence on record, which evidence did not in any way prove the ingredients of the offences with which the appellant was charged.

The appellant was charged with the offences as stated herein above in this judgment. Counsel for the appellants properly set out in their submissions the ingredients of each offence charged. The same ingredients are within the judgment of the Trial Magistrate. The Trial Magistrate found that the transfer form and the consent form to transfer were forged.

It is the evidence of the appellant that he signed on the said forms and that thereafter his name was transferred on the certificate of Title from the names of Matilida Bulya. At page 9, 2nd paragraph defence proceedings lines 6-8, the appellant stated:-

“I came back home and I found a transfer and consent form with Matilda Bulya which she gave me to sign. I did sign the transfer and consent forms and gave her back the papers. There was nobody present.”

This piece of evidence puts himself at the center of the forgery. The only person who was present when he was signing the said forms was the late Matilida Bulya. There is no other person (DW1 and DW3) to corroborate his said statements. The said statements cannot negative the evidence of PW1, PW2, PW3 and PW4, whose evidence is that the appellant forged the documents in issue.

Again, the appellant in his evidence stated that he was given the disputed land by the late Matilida Bulya as a gift. I have looked at the transfer form, which reflects that the appellant paid shs. 2,000,000/= (two million shillings) to late Matilida Bulya as a consideration. There is no evidence either oral or written to show that the appellant got the disputed land from late Matilida Bulya as a gift. And there is also no agreement exhibited on Court record to prove that the appellant bought the land in issue from the late Matilida Bulya. The inclusion of a consideration of Shs.2,000,000/= in the transfer form Contrary to the evidence of the appellant that he acquired the land in issue as a gift is also a sign of fraudulent intentions on the part of the appellant.

Further, there is evidence on record of proceedings from PW1, PW2, PW3 and PW4 that for some time the certificate of Title of late Matilida Bulya had gone missing and that she consistently complained, and that he had engaged the appellant to assist her to recover her land Title. That evidence was never challenged in cross-examination of the said prosecution witnesses. The said evidence shows that before her death, the late Matilida Bulya had complained to people in authority, like her lawyers. It is not in contention that PW1, PW2, PW3 and PW4 were aware that late Matilida Bulya's Certificate of Title went missing and that before her death she was looking for it.

It is also surprising, that according to the record of proceedings, immediately after the death of the deceased, Matilida Bulya (two days after) the appellant came out with the land Title; and started chasing out from the house the sons of the deceased.

At page 20, 2nd paragraph, PW6, the handwriting expert came up with a finding that the questioned writings and signature were not made by the late Matilida Bulya. Counsel for

the appellant submitted that Pw2's and PW6's intentions were merely to find on the writings on the documents and not the signatures. PW6 stated in his findings that the questioned signatures and writings were not of Matilida Bulya. I re-evaluated the evidence as a whole on the Court record and the judgment on of the Trial Magistrate. The Trial Magistrate in his judgment ably considered the evidence on record. It is my finding that all the ingredients of each of the offence charged were proved by the prosecution evidence on record. The Trial Magistrate, therefore, discharged his duty. Wherefore, I see no reasons on which to fault the Trial Magistrate. In the result, ground 2 of appeal, too, fails.

Ground 3 of appeal: The learned Trial Magistrate erred in law and fact when he considered and relied on aspects of the prosecution evidence in isolation of defence (appellant's) case, hence he wrongly convicted and sentenced the appellant.

Counsel for the appellant faulted the Trial Magistrate in their submissions that he did not consider the evidence on record as a whole. That is, that the Trial Magistrate considered the prosecution evidence and disregarded that of the defence.

I perused the judgment of the Trial Magistrate. In his evaluation of evidence right from page 1, the Trial Magistrate considered the evidence as a whole in the Court record.

From pages 3-4, the Trial Magistrate in his judgment evaluated the evidence of the prosecution witnesses on page 4, last paragraph of his judgment, the Trial Magistrate analysed defence case. At page 6, 2nd last paragraph the Trial Magistrate considered the case for the prosecution and the defence. The entire judgment of the Trial Magistrate, the Trial Magistrate considered the prosecution evidence, and weighed it against the defence evidence and that he came to the conclusion. Thus, the submissions by Counsel for the appellant in that regard hold no water at all. The Trial Magistrate is being unfairly criticized by the appellant's Counsel. I, therefore, fixed no merit in this ground 3 of appeal. It also fails.

Conclusion.

In closing, having found that the three (3) grounds of appeal have no merit, this appeal, too, has no merit. It is accordingly dismissed. The conviction and sentence of the Trial Court are upheld.

Dated at Kampala this 25th day of September, 2015.

.....
Joseph Murangira,
Judge.

Court:

Since it was the findings of the lower Court and this Court that the appellant obtained his registration on the certificate of title in respect of land comprised of Kyadondo Block 229, Plot 1368 through fraud, the Commissioner Land Registration is hereby directed to cancel from the said Certificate of Title the name of the appellant, Vincent Robert Ntambi and to reinstate thereon the former Registered Proprietor, Matilida Bulya, within thirty (30 days) from today.

This order is pursuant section 177 of the Registration of Titles Act, Cap. 230, Laws of Uganda.

Dated at Kampala this 25th day of September, 2015.

.....
Joseph Murangira,
Judge.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL APPEAL NO.045 OF 2015

(Arising from Buganda Road Court Criminal Case No. 1268 of 2008)

NTAMBI ROBERT

VINCENT :::APPELLANT

VERSUS

UGANDA :::RESPONDEN

T

REPRESENTATION

25/9/2015.

Mr. Amuza Muzige Senior State Attorney for the State.

Mr. Ronald Kasisa for the appellant.

The appellant is in Court.

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.