

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – CR – CN – 016B OF 2016**  
**(Arising from KAS – CO – 692 of 2015)**

**SUNDAY SAM.....APPELLANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.**

**Judgment**

This is an appeal against the decision of His Worship Matenga Dawa Francis Chief Magistrate at Kasese delivered on 21/06/16.

**Brief facts**

The Appellant was charged with the offence of theft Contrary to **Section 254 (1) and 261** of the Penal Code Act. It was alleged that on the 26<sup>th</sup> November 2015 at Post Bank in Kasese District, the Appellant stole US Dollars 450 the property of Haruna Serwada. The accused was convicted of theft and ordered to pay the Complainant UGX 2,000,000/= as compensation within a week's time from the time of judgment or serve 1 year imprisonment in case of default.

The Appellant being dissatisfied with the decision of the trial Magistrate lodged this appeal whose grounds are:

1. That the learned trial Magistrate erred in law and fact when he held that the State had proved its case beyond reasonable doubt.
2. That the learned trial Magistrate erred in law and fact when he held that the Appellant's act and conduct from the footage shows that he is the one who picked the money.
3. That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence thereby coming to a wrong decision.
4. That the learned trial Magistrate erred in law and fact when he held that the Appellant was untruthful in his testimonies.

M/s Sibendire, Tayebwa & Co. Advocates appeared for the Appellant and Ojok Alex Michael, Regional Principal State Attorney – Fort Portal for the Respondent.

**Opinion on all Grounds:**

First, it is trite law that the duty of a first Appellate Court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court. [See: **Pandya versus R (1957) EA 336, Ruwala versus R (1957) EA 570, Bogere Moses versus Uganda Criminal Application No.1/97(SC), and Okethi Okale versus Republic (1965) EA 555**].

Counsel for the Appellant submitted that the prosecution did not prove its case against the Appellant beyond reasonable doubt. That the footage as exhibited in Court did not at all clearly show that there was money at the counter where the Appellant went. That the trial Magistrate only relied on assumptions as there is no evidence on record showing the Appellant picking the money from the Counter. That only the phone that was left with the money was found with the bank staff. That in the circumstances there should have been an investigation as to how the bank staff got the phone.

Further, that since the footage showing the person that picked the phone and handed it to the staff was not shown causes a lot of doubt.

State on the other hand submitted that the trial Magistrate rightly in his judgment noted that the money stolen belonged to the Complainant, it was fraudulently taken without a claim of right, that the property was taken with fraudulent intention of permanently depriving the owner of his property and Court also evaluated the evidence on record which showed that PW1 and PW3 went to the bank with dollars but found an unfavourable exchange rate and failed to complete the transaction.

PW3 after leaving the banking hall then found that he had forgotten his phone and money in the bank.

PW1 and PW3 upon return to the bank were given back the phone and shown footage that it was the Appellant that had taken the money. The Appellant was not known to the two witnesses and it is the bank that assisted in the arrest of the Appellant.

Further, that the trial Magistrate also rightly held that there was no coincidence that a person who was processing a loan goes exactly where the money and the phone were claiming that he had gone to pick a withdraw form. The circumstantial evidence and CCTV footage placed the Appellant at the scene of Crime. Therefore, the conduct of the Appellant as seen on the footage was wanting and highly suspicious.

In the case of **Kitosi Abu and another versus Uganda Criminal Appeal No. 154 of 2010** it was held that;

*“In respect of circumstantial evidence this Court knows of no principle that invariably before basing a conviction on circumstantial evidence there must be corroboration. In fact this Court of Appeal has in the recent case of **Hon. Akbar Hussein Godi Vs Uganda (Criminal Appeal No. 62 of 2011 (unreported)** made a reinstatement of the principle that when*

*properly handled, circumstantial evidence may be the best evidence to prove a proposition. This Court stated as follows in Godi's case:- "Thus the Appellant was convicted on circumstantial evidence. We appreciate this evidence to be in the nature of a series of circumstances leading to the inference or conclusion of guilt when direct evidence is not available. It is evidence which although not directly establishing the existence of the facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or in relation to them. It is evidence, at times regarded to be of a higher probative value than direct evidence, which may be perjured or mistaken. A Kenyan Court has noted that:-*

*"Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination, is capable of providing a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. See High Court of Kenya at Nairobi Criminal Case No. 55 of 2006: Republic Vs Thomas Gilbert Chocmo Ndeley.*

*Though a decision of the High Court of Kenya, we find the enunciation of the principle as regards the application of circumstantial evidence in the words of the above quotation very appropriate and as representing the position of the Law on circumstantial evidence even in Uganda."*

In the instant case footage was produced by the prosecution showing the Appellant in the Court hall at the same time as PW1 and PW3. The Appellant's conduct during this whole time showed that there was something sinister going on. The Appellant moved from the counter where he was to the counter where the money had been left. In his defence he claimed that he had gone to pick a withdrawal form yet the clients in the same line as his, picked forms from the very counter and did not move to any other counter. If find the evidence of the Appellant hard to believe given the fact that was even visual proof exhibited in Court by the prosecution. In this case the circumstantial evidence as was produced by the Prosecution was the best evidence and admissible. I concur with the submissions of the State that the prosecution did indeed prove its case beyond reasonable doubt against the Appellant for the offence of Theft Contrary to **Section 254 (1)** and **261** of the Penal Code Act.

The decision of the lower Court is upheld and this appeal fails for lack of merit.

Right of appeal explained.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**8/11/16**

Judgment read and delivered in open Court in the presence of;

1. State Attorney
2. Counsel for the Appellant
3. Court Clerk

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**8/11/16**