

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL PRISON

Criminal Appeal No.55 of 2015

(Arising from Chief Magistrates Buganda Road Criminal Case No. 637 of 2012)

KAVUMA IBRAHIM ::APPELLANT

VERSUS

UGANDA:: RESPONDENT

JUDGMENT BY HON.MR.JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 Representation

The appellant/prisoner, Kavuma Ibrahim, is representing himself in this appeal. Whereas, the respondent is being represented by Sayani David Senior State Attorney working with Director of Public Prosecutions, at Kampala.

1.2 Facts of the appeal

The convict, Kavuma Ibrahim, was charged with stealing vehicle Contrary to Section 265 of the Penal Code Act, on Count 1 and obtaining money by false pretences Contrary to Section 305 of the Penal Code Act, on count 2. It was the prosecution's case that in May, 2012, the accused/ convict/appellant stole motor vehicle Registration No. UAM292H, Toyota Hiace Super Custom valued at 18,000,000/= (eighteen million), the property of Mulindwa Christopher. And in June, 2012, the accused/convict purported to sell the said motor vehicle to Hajji Rashid Mutebi who paid 12,000,000/= (twelve million which the convict fraudulently got.

The convict pleaded not guilty to both charges. The prosecution called six (6) witnesses who testified against the accused. Whereas, the accused called two other witnesses in defence. The convict was found guilty, convicted and sentenced to 2 (two) years imprisonment on Count 1 and 1 (one) year imprisonment on count 2. The sentences are to run concurrently.

The appellant is aggrieved with the decision of her Worship Lillian Bucyana, the Chief Magistrate of Buganda Road Court, Hence, this appeal against both conviction and sentence.

3. Grounds of appeal

The appellant appeals against the decision of the trial Chief Magistrate on the following 10 (ten) grounds; that:-

- 1. The learned trial Chief Magistrate erred in law and fact when she promised the conviction and sentencing the appellant on unlawful investigations and prosecution.**
- 2. The learned trial Chief Magistrate erred in law and in fact when she failed to evaluate the evidence on Court record as a whole thus occasioning a miscarriage of Justice onto the appellant.**
- 3. The learned trial Chief Magistrate demonstrated bias against the appellant when she convicted him and sentenced him for the offence of obtaining money by false pretence Contrary to Section 305 of the Penal Code Act, and offence that was not in complaint and there was no person complaining/complained to that effect/offence.**
- 4. The learned trial Chief Magistrate erred in law and fact when she failed to interpret the ingredients of the offence of theft on count 1 (one) and she wrongly convicted and sentenced the appellant.**

5. **The learned trial Chief Magistrate erred and fact when she failed to find that the prosecution evidence had major contradictions, shortfalls, inconsistencies and in-factual grounds that raised many doubts which ought to have been resolved in favour of the appellant.**
6. **The learned trial Chief Magistrate erred in law and fact when she mixed evidence adduced on count 1 to secure conviction on count 2 to the detriment of the appellant.**
7. **The learned trial Chief Magistrate erred in law and fact when she failed to established the rightful owner of the motor vehicle in question which indeed belonged not to the complainant despite the presence of the motor vehicle Log Book but convicted and sentenced the appellant.**
8. **The learned trial Chief Magistrate erred in law and fact when she failed to rely on an earlier decision of her predecessor who had earlier on ordered and handed the motor vehicle in question to the legitimate owner as she had established basing on facts.**
9. **The learned trial Chief Magistrate erred in law and fact when she failed to give/provide corroboration direction in respect of the prosecution's uncorroborated evidence.**
10. **The sentence of 2 (two) years imprisonment on count1 and 1 (one) on count 2 all custodial imprisonment, without an alternative of a fine was excessive given the circumstances.**

4. Resolution of the appeal by Court

- 4.1 From the Court record the appellant filed in Court written submissions prepared by himself. The appellant is a lay man as far as law is concerned. The law does not prohibit any person from representing himself or herself in any trial in the Courts of Law. So by the appellant arguing his appeal in this Court is perfectly right.

4.2 The appellant presented ten (10) grounds of appeal in this appeal. In his written submissions he endeavoured to criticize the judgment of the trial Chief Magistrate. He argued 10 grounds of appeal in his 8 page written submissions document.

In his written submissions on the 10 (ten) grounds of appeal he in summary stated at page 4 last paragraph that:-

“Throughout grounds 1 -10 we will submit that the Chief Magistrate erred in law and appellant wrongly. The appellant throughout the hearing and at police was clear with the fact that the questioned motor vehicle belonged to him and not to PW2 at the time he sold it to PW1 the appellant tendered a motor vehicle title (Log Book) and documents in support of his claim of right, despite that the trial Magistrate erred in law and fact and went ahead and convict him, deciding the case in favour of PW1, who never presented any actual evidence in support of his claim of right/ownership. The learned trial Chief Magistrate disguised the elements of the offence of theft which are “theft”.

The appellant that the appeal be allowed. The conviction be quashed, sentence be set aside. And that he be set free.”

4.3 In reply, Counsel for the respondent, Mr. Sanyuni David, Senior State Attorney, does not agree with the submissions by the appellant. He submitted that the 10 (ten) grounds of appeal have no basis and that the y should be dismissed. He prayed that the entire appeal should be dismissed, the decision of the trial Chief Magistrate be upheld and that the sentence be maintained.

4.4 I perused and re-evaluated the entire record of appeal from the lower Court. I also perused the submissions by both the appellant and the respondent’s Counsel. It should be noted that the first appellate Court, like this one, has a duty to re-evaluate the evidence of both the prosecution and the defence that was adduced at the trial, subject the same

evidence to a fresh scrutiny, weigh the conflicting evidence and then draw its own inferences and conclusions. See the case of:-

- 1) Kafamunte –vs- Uganda Supreme Court, Criminal appeal No.10 of 1975,
and
- 2) George Wilson Simbwa –vs- Uganda Supreme Court, Criminal appeal
No.3 of 1995.

In the consideration of the grounds of appeal, I shall resolve grounds 1, 2, 5, 9 and 10 of appeal separately, and grounds 3,4,6,7 and 8 of appeal jointly.

On ground 1: The learned trial Chief Magistrate erred in law and fact when she premised the conviction and sentencing the appellant on unlawful investigations and prosecution.

The appellant submitted that the unlawful investigations and prosecutions are Contrary to Section 7 and schedule 3 of the Anti-terrorism Act. And went ahead to define who is an investigating officer under the 3rd schedule of the Anti-terrorism Act. That Namugerwa Annet, PW6, who investigated the case, being a retired police officer, had no capacity to investigate the case against him.

I have perused the charge sheet on the record of the lower Court and noted that the appellant was charged of offences under the Penal Code Act, Cap. 120 Laws of Uganda. The appellant's argument in that regard has no relevancy to his appeal. The appellant was not charged under the Anti terrorism Act. Again, I have looked at the evidence of PW6, Namugerwa Annet, at pages 37 -39 of the record of proceedings in the lower Court. PW6 at the time she investigated this case, she was still a serving officer. In the premises this ground 1 of appeal has no merit. It fails.

On ground 2: The learned trial Chief Magistrate erred in law and in fact when she failed to evaluate the evidence that regard has no relevancy to his appeal. The

appellant was not charged under the Anti terrorism Act. Again, I have looked at the evidence of PW6, Namugerwa Annet, at pages 37 -39 of the record of proceedings in the lower Court. PW6 at the time she investigated this case, she was still a serving officer. In the premises this ground 1 of appeal has no merit. It fails.

On ground 2: The learned trial Chief Magistrate erred in law and in fact when she failed to evaluate the evidence on record as a whole this occasioning a miscarriage of justice on to the appellant.

The appellant submitted that the trial Chief Magistrate disregarded the actual evidence and based her decision on just attractive and or fanciful theories told by the complainant and other state witnesses. In his arguments, the appellant criticized the evidence of PW2 and praised the defence evidence.

I have perused the judgment of the trial Chief Magistrate; from pages 2-5 of her judgment the trial Chief Magistrate evaluated the whole evidence on the lower Court record. She considered both the evidence of the prosecution and the defence which was adduced at the trial. I have perused the evidence of all the prosecution and defence witnesses, and I appreciate the fact that the trial Chief Magistrate in her judgment took time to analyse the evidence of each witness on Court record. She properly evaluated the entire evidence of both the prosecution and defence, and in my own considered view she came to the right conclusion in her judgment.

Therefore, I do not see any merit in the appellant's argument on this ground 2. Thus, ground 2 also fails.

On ground 5 of appeal: The learned trial Chief Magistrate erred in law and fact when she failed to find that the prosecution's evidence had major contradictions, shortfalls, inconsistencies and unfactual grounds that raised many doubts which ought to have been resolved in-favour of the appellant.

The appellant in his submissions argued that the appellant as a matter of fact presented to Court the motor vehicle title (Log Book) and claimed right of the same at the time he sold it. And on count 2, there was no person who complained to have been offended as per the offences. I have analysed the submissions by the appellant on this ground 5 of appeal. In his submissions the appellant did not point out any contradictions, inconsistencies shortfalls and unfactual grounds in the prosecution evidence. I failed to appreciate the appellant's line of argument on this ground 5 of appeal. I perused and evaluated PW1, PW2's, PW3's, PW4's, PW5's and PW6's evidence on the Court record and I did not see any contradictions or inconsistencies as shortfalls in such evidence. If there are any such inconsistencies or/and contradictions, which I did not detect, they must be so minor and do not point to deliberate untruthfulness of the prosecution witnesses **see the case of Constantino Okwel alias Magendo –vs- Uganda, Supreme Court Criminal appeal No. 12 of 1990**. In the result, ground 5, too, fails.

On ground 9 of appeal: The learned trial Chief Magistrate erred in law and fact when she failed to give/provide corroboration direction in respect of the prosecution's uncorroborated evidence.

The appellant in his submissions argued that all the evidence adduced by the prosecution, that it is clear that the learned trial Chief Magistrate based her decision and conclusions on fancy theories and that is why she relied on suspicious and favoured them as facts.

I perused and evaluated the evidence of the prosecution witnesses. PW1, PW2, PW3 and PW4 gave direct evidence in their respective pieces of evidence. These pieces of evidence corroborate each other. These witnesses were consistent in their testimonies. The accused in cross-examination never challenged nor contradicted their respective evidence in examination –in Chief. I find their evidence believable and truthful. I do not, therefore, see any reasons to base on to fault the trial Chief Magistrate. In the result, I find no merit in ground 9 as well. Ground 9 too, fails.

On ground 10 of appeal: The sentence of two (2) years on count 1 and one (1) year count 2, all custodial sentences, without an alternative of a fine was excessive given the circumstances.

The appellant in his submissions argued that given his belief, the sentences were excessive, harsh in the given circumstances. Apart from this statement, the appellant fell short in faulting the trial Chief Magistrate on her sentences she handed down on the appellant.

At page 6 of the judgment of the trial Court the prosecution and Counsel for accused gave mitigating factors for sentence.

At page 7 of the trial Chief Magistrate's judgment, the latter gave reasons for the sentences she passed against the convict/appellant. She properly followed and applied the sentencing principles in her sentencing process. These sentences on counts 1 and 2 are within the law. It is also important to note that the maximum sentence provided for stealing vehicle Contrary to Section 265 of the Penal Code Act on count 1 is 7 (seven) years; and that of obtaining money by false pretence Contrary to Section 305 of the Penal Code Act on count 2 is 5 (five) years.

The trial Court considering the mitigating factors for sentence that were advanced by both parties sentenced the appellant to 2 years imprisonment on count 2, and both sentences to be served concurrently was within the law. The sentence to be passed by the trial Court is within its discretion. In the circumstances of this case, in my considered view, the trial Chief Magistrate gave the appellant a sentence which was manifestly too low. But since the prosecution did not appeal against that sentence I cannot interfere with the sentences that were imposed by the trial Court. In the premises, I answer ground 10 of the appeal in the negative.

On grounds 3,4,6,7 and 8 of appeal, the complaints raised by the appellant therein can be summarized in two grounds:-

- 1) That the trial Chief Magistrate erred in law and fact when she failed to evaluate the evidence against the ingredients of the offence of theft.

In determining the case in the lower Court, the trial Chief Magistrate raised at page 2 of her judgment two issues:-

1. Whether the accused stole motor vehicle registration No. UAM 292H Toyota Hiace from Mulindwa Christopher.
2. Whether the accused obtained 12 million shillings by false pretences from Rashid Mutebi.

In her judgment, the trial Chief Magistrate applied the evidence on Court record to each of the above stated issues. She answered both issues in the affirmative. By not outlining the ingredients of the charged offence in her judgment did not cause any injustice to the appellant. I have evaluated the entire evidence on Court record; the prosecution adduced enough evidence that proved the charged offences against the convict/appellant beyond reasonable doubt. The prosecution discharged its duty of the burden of proof.

The second ground is the Court did not consider the element of ownership of the stolen vehicle. At page 5 of the judgment of the lower Court, the trial Chief Magistrate, determined ownership of motor vehicle Registration No. UAM 292H Toyota Hiace in favour of PW2. More still, at page 5 paragraph 2 and 3 of her judgment, the trial Chief Magistrate found that the appellant (accused) having fraudulently obtained the said motor vehicle from PW2, sold the same motor vehicle to PW1. In the result, I find no merit in grounds 3, 4, 6, 7 and 8 of appeal. They, too, fail.

5. Conclusion

In closing and in consideration of the entire evidence on the lower Court record, the judgment of the trial Court, the submissions by both parties; the law applicable in this case and my analysis of this appeal. I hold that this appeal lacks merit. It is accordingly

dismissed. The convictions on 2 counts and the sentence against the convict by the lower trial Court are upheld. PW2 and PW1 are at liberty to take civil proceedings against the appellant in the appropriate Court for Civil remedies.

Dated at Kampala this 27th day of June, 2016.

Joseph Murangira
Judge.

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UGANDA:::

RESPONDENT

PRESENTATION

The appellant is in Court, representing himself.

Ms. Kyomugisha Barbra, State Attorney, for the respondent.

Ms. Margaret Kakunguru the Clerk is in Court.

Court: Judgment is read to the parties.

Right of appeal is explained to the parties.

Joseph Murangira

Judge.

27/6/2016