THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CRIMINAL APPEAL NO. 0025 OF 2013

(ARISING FROM BUKEDEA CRIMINAL CASE NO. 0072 OF 2012)

UGANDA::APPELLANT

VERSUS

OCHOM SILVESTOR & ANOTHER::::::::::::::::::::::::::::::RESPONDENTS

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE

Judgment

The respondents were charged before H/W Kaweesa Godfrey the Senior Principal Magistrate Grade1 (as he then was) at Bukedea. It was alleged that they jointly uttered a forged document C/S 352 of the Penal Code Act. In count II A2 was charged with destroying evidence C/S 102 of the Penal Code Act. The trial Magistrate found no evidence strong enough to sustain a conviction and acquitted both.

Grounds by Appeal

1. The Learned trial Magistrate erred in Law and fact when he failed to properly evaluate the evidence on record and came to a wrong decision that the accused were not as guilty as charged.

2. The Learned trial Magistrate erred in Law and fact when he failed to write a judgment in accordance with the Law thereby coming to a wrong decision of acquitting the respondents.

3. The Learned trial Magistrate erred in Law and fact when he disbelieved the hand writing expert's evidence and thereby reached a wrong decision.

I find the three grounds vague and not concise.

In fact they do not tell me exactly the point of Law or fact where the trial Magistrate went wrong. It looks like a general complainant that the trial Magistrate did not evaluate the evidence at all. I believe he did. He discarded the hearsay and examined the authenticity of the original document relied upon. There was no single correct original and that was it. The cases of forgery and uttering a false document collapsed in the absence of one correct original version.

The trial Magistrate rightly noted that there were two secretaries to the clan meeting. Even before this case came up, the two secretaries failed to present acceptable minutes. The meeting ordered them to first harmonize the two sets of minutes and present one set of minutes which they have failed to do up to now. The trial Magistrate rightly ruled that the charges could not stand in the absence of one original document. Any of the yet-to-be-agreed upon version could be correct and could be uttered to third parties like the police. I would agree with him.

In the world of meetings, minutes of a previous meeting are read, corrected and amended by the persons who attended the previous meeting even when the secretary is one. Such minutes may contain errors, spelling mistakes, wrong names, missing names and addresses and sometimes wrong resolutions. Draft minutes are not forged documents. Before the meeting confirms such minutes no one may be held and charged with forgeries and uttering false documents. The remedy lies in the meeting reconvening to read, correct and pass or reject the minutes.

If I were the police investigator, I would not take these draft minutes as evidence of an original document. I would advise that the clan meeting sits to discuss the minutes of the previous meeting and go along with the minutes as passed. That would arrest any intended fraudulent land transaction. Treating the minutes and draft resolution as forgeries was pre-mature and high handed. The effect was to politicize and criminalize a land civil matter. This police action was uncalled for and could have been avoided. The prosecution solved no land problem at all.

There is a probability that the accused may have wanted to use the clan meeting minutes to grab the land in question. The clan should have used civil and not criminal procedure to beat them at their own game by showing that the minutes are yet to be passed by the clan meeting. Then the clan meeting would pass and confirm what is right without involving police at all.

The circumstances of this case show that the clan was mislead into running to police for a remedy. The actual true and lawful remedy lay in the hands of the clan meeting or, at worst, a civil case.

Before I take leave of this matter, let me point out the fact that there are so many land matters that are turned into criminal matters by police so as to gain jurisdiction over the matter. A police officer and the State Attorney will prefer criminal charges in civil matters well knowing that a criminal conviction will NOT solve the land dispute. There are borderline matters. Such matters as the instant case, matters of uprooting boundary marks, criminal trespass and threatening violence are easy to prosecute but just fuel enemity and do not grant land rights to any one or solve the question of ownership. Courts of Law should be aware of such uncalled for prosecutions and advise parties to go to civil Courts for long lasting remedies. Justice must not only be done; it must be seen to be done.

This criminal appeal is dismissed in the interest of land justice.

Judge
19/04/2017