

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CR-CN-0036-2014
(ARISING FROM MUYEMBE CRIMINAL CASE NO. 28/2013)**

NANGAI CHRISTOPHER	VERSUS	APPELLANT
UGANDA	RESPONDENT

BEFORE; THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellant was dissatisfied with the judgment and orders of **Baligeya Moses** in Muyembe Criminal Case 23 of 2013; on grounds that:

1. The learned trial Magistrate erred in fact and in law when he did not properly evaluate the evidence on record thereby arriving at a wrong decision occasioning a miscarriage of justice.

2. The learned trial Magistrate erred in law and in fact when he made the appellants to serve a sentence which is not part of or indicated in his judgment thereby occasioning a miscarriage of justice.

The duty of a first appellate court is to re-evaluate the evidence and make its own conclusions thereon- aware that it did not have a chance to observe and see the witnesses.

I have duly re-evaluated the evidence. I have also looked at the submissions in this matter. All evidence indicates that the lower court was hearing a land dispute. PW.1, PW.2, PW.3, PW.4, PW.5, DW.1, DW.2, DW.3, DW.4 all gave evidence alluding to a land transaction between accused and the complainant.

In his judgment notes that:

“The accused in his defence alleged he bought the land from one William Kamushendo who testified as defence witness no.2 but analyzing the evidence of both sides critically find that the accused person bought the land in 2008 but the neighbours to that land nor LCs were not present, a situation I found very strange. Therefore action of accused amounts to trespass.”

That finding by the learned trial Magistrate, shows that accused had a defence of reasonable claim of right.

Under Section 7 of the Penal Code Act, it is provided that:

“A person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by the person with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.”

The appellant submitted on this point at length. I do agree that section 7 of the Penal Code Act, favours the appellant. The learned trial Magistrate did not consider the above defence and therefore reached an erroneous decision on the evidence. This ground of appeal succeeds and it answers ground 2.

This appeal succeeds on grounds as above. The lower court judgment is accordingly set aside. The conviction is set aside; the sentence is set aside and the fine paid of shs. 500,000/= be refunded to the appellant.

I so order.

Henry I. Kawesa

JUDGE

2.5.2017