THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL DIVISION

CRIMINAL APPEAL No. 60 OF 2020

(Arising from City Hall Court Case No 4347 of 2018)

PATRICK MUKOSE :::::::::::::::::::::: APPELLANT

vs

UGANDA :::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The Appellant, **PATRICK MUKOSE,** filed this appeal against the judgment, orders and sentence handed down by **HW NABIRYE FATUMA,** Magistrate Grade I City Hall Court, who convicted him on charges of: 1. Causing a Nuisance to Exist c/ss 54, 57 and 133 of **the Public Health Act** and 2. Administering a School Boarding Extension without Permission c/s 40 (c) of **the Education Act 2008.** The appellant was convicted and sentenced to pay a fine of 200,000/- (two hundred thousand shillings) or 4 weeks imprisonment in default. He was ordered to abate the ongoing nuisance and seek the approval of the local authority before he could continue with the operation of the school. On the 2nd count, he was sentenced to a fine of 200,000/- (two hundred thousand shillings) or four weeks imprisonment in default. The Court directed that he stop the operation of a boarding section in the school unless he sought permission from the requisite authority.

The background to this appeal is that the appellant and another, J.C. Kiwanuka, were charged with committing the above offences. Kiwanuka pleaded guilty and was accordingly convicted and sentenced. On the 5th of February 2019 the appellant was produced before the City Hall court and charged as stated above. He pleaded not guilty.

The prosecution then called three witnesses Sempirima Muhammed, a Health Assistant/Inspector, Eva Nattabi, a Supervisor for Education and Bawera Frank Walsh a Medical Doctor and son of JC Kiwanuka.

The basis of the prosecution case was that the appellant run the Mulago Bright Standard Primary School located in UEB zone, Mulago II Parish in Kawempe Division. It is stated that complaints were received by the Kawempe Division about the health conditions at the school. The Health Inspector at the Division was dispatched to go and review the school conditions. On the 18th of September 2018 he filed a report which showed that the school was housed in both temporary and permanent structures. The temporary structures were made of wood. That some class rooms lacked shutters and had old dirty paint. The ventilation was poor in others. The dormitory was a former residential house in a poor state of repair that had a cracked floor. The wooden block housing the P 3 class was said to be termite and posed a danger of collapse. The school sanitary facilities, pit latrines and urinals were full, dirty and littered with faecal matter. The soak away pit was open and effluent was exposed. The school water reservoir was dry and stand tap damaged. There was no drinking water. A pig sty and a structure housing rabbits stood next to the school kitchen. Both were dirty and poorly managed. Photographs of these findings were tendered as exhibits.

On the 5th of October 2018 KCCA issued a notice to demolish the pit latrines, the termite infested P 3 class and the pig sty. These were demolished.

Earlier, on the 6th of July 2017, the Directorate of Education of the KCCA had also carried out an Inspection of the school, to ascertain whether it was complying with the basic requirements and minimum standards for teaching, hygiene and sanitation. It established that the school was owned by the appellant and one Esther Mukose. That it had a total enrolment of 160 children and run as a mixed day

primary school with a nursery school section. The National Water system was disconnected and the premises were depending on rain water harvesting. It had 6 teachers and two none teaching staff members, one acting as warden and the other as cook. There was a makeshift kitchen with a structure for rearing chickens on top of it. No rack for hanging the children's cups and plates had been provided. The school sanitary facilities were dirty and smelly and the roof was perforated. All the children shared these facilities. It was established that there was an illegal, overcrowded boarding section. There was no timetable, class registers or record of attendance. Different classes, for example P 6 and P 7, shared a class room. The entire ambience was filthy. Several recommendations including the closure of the boarding section, the cleaning the school and the demolition filthy sanitary facilities were made.

In his defence, the appellant denied the allegations. His evidence was that the school did not have failed sanitary facilities or that they were full or stinking. He was therefore shocked to see the KCCA come and demolish them. That he was never served with a court order ordering that demolition. As a result he lodged a complaint with the Town Clerk. He also refuted allegations that there was a pig sty or rabbits on the premises. The appellant added that he had never operated a boarding section at the school without a licence to do so. That at one point there were 30 children staying at the school but he had sent them back to Mukono after receiving a notice to return them. That when the trial Magistrate made a locus visit she did not find the boarding section in place. He denied that the premises shown in the exhibited photographs were his. That his compound was clean and structures were permanent in nature not made of wood. It was also stated that there were no dilapidated buildings in the school. That it was not true there were used sanitary towels and leaves around the compound. That garbage collection was done by KCCA whose vehicles came to collect rubbish which the school kept in dustbins.

The Court noted the demeanour of the appellant as he testified. He was said to be defiant and answered unasked questions.

In the end, the trial magistrate believed the prosecution case; she convicted and sentenced the appellant as stated above.

The appellant being dissatisfied with the finding and orders filed this appeal with two grounds namely,

1. The learned trial Magistrate erred in law and in fact when she found the appellant caused a nuisance at a school, Mulago Bright Standard Primary School.
2. The learned trial magistrate erred when she failed to visit the scene of crime/locus before passing judgement.

Appearance

The appellant was self-represented. Mr Elijah Iradukunda from the KCCA Legal Department appeared for the respondent.

Determination

This is a first appellate Court and as such the law is clear on what its duties are. The Supreme Court held in **Baguma Fred vs Ug SCCA No 7/2004** that,

> 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.

In carrying out these duties the court shall remain mindful that the burden of proof rests, throughout, on the prosecution who must prove a criminal case to a standard beyond reasonable doubt.

This Court will deal with the 2nd ground of appeal first.

2. **The learned trial magistrate erred when she failed to visit the scene of crime/locus before passing judgement.**

The appellant in his testimony as DW 1, recorded in the 5th paragraph at page 18 of the certified court record stated that,

> … The magistrate came to the school. She sat in the hall which also serves as a church …

The appellant also stated in his oral submissions that the trial magistrate visited the school on a locus visit.

From his testimony and the submissions made by the appellant, this court finds that the appellant himself adduced evidence to show that the trial magistrate visited the locus.

In the result, the 2nd ground of appeal has no merit and is dismissed.

Ground 1

> **The learned trial Magistrate erred in law and in fact when the found the appellant caused a nuisance at a school, Mulago Bright Standard Primary School.**

The appellant's submission was that his was a Muslim school and it could not be true he had rabbits and pigs. That it was demolished without a court order as he was falsely accused of having flowing sewerage yet the toilets were new. All structures in the school were in good order and none termite infested as reported.

With regard to children in the boarding section, that in the past he kept children on the request of the Bishop of Mukono but when the DEO directed he stop it, the children were returned in 2017. There were no children there in 2019.

He was never availed with a copy of the reports made by the inspectors. That the allegations were made after the demolition had been effected. That he tried to explain to the trial magistrate in vain. He also argued that the trial magistrate visited the school. That she stated in her order that she found rabbits and pigs and the school was in-operational but she later retracted saying the orders were made in error.

In reply, the respondent argued that the trial magistrate properly defined what a nuisance was and found that the prosecution adduced sufficient evidence to prove the offence. Additionally from the locus visit and the photographic evidence there is evidence of dilapidated structures and poor sanitation at the school

Determination

A first appellate court bears the duty to re-examine the trial evidence and arrive at its own conclusions.

On the first count the appellant was charged with causing or suffering a common nuisance to exist. These offences are provided for under **the Public Health Act**. The ground of appeal as framed and from his submission, the appellant clearly denies the charge and states the evidence to prove it was insufficient.

The offence is defines in Section 57 of **the Public Health Act**. The following are the subsections relevant to the instant case,

> The following shall be deemed to be nuisances liable to be dealt with in the manner provided in this Part of this Act—
>
> (b) any dwelling or premises or part of the dwelling or premises which is or are of such construction or in such a state … or so dirty … as to be likely to be injurious or dangerous to health or which is or are liable to favour the spread of any infectious disease;
>
> (c) any … gutter, … water tank, cistern, water closet, earth closet, … urinal, cesspool, soakaway pit, septic tank, … drain, sewer, garbage receptacle, dust bin, dung pit, refuse pit, … so foul or in such a state … as to be offensive or to be likely to be injurious or dangerous to health;
>
> (f) any noxious matter, or waste water, flowing or discharged from any premises, wherever situated, into any public street, or into the gutter … thereof not approved for the reception of the discharge;
>
> (g) any collections of… sewage, rubbish, refuse, ordure, or other … substances which permit … the breeding or multiplication of … parasites of men … which are known to carry such parasites or which may otherwise cause or facilitate the infection of men … by such parasites;
>
> (o) any dwelling or premises which is so overcrowded as to be injurious or dangerous to the health of the inmates or is dilapidated or defective in lighting or ventilation, or is not provided with or is so situated that it cannot

be provided with sanitary accommodation to the satisfaction of a medical officer of health;

It is true that the appellant denied the reports complied by the local authority. However during trial the appellant did not challenge the authenticity of the reports. Instead he inquired whether there were photos of the toilets and class room. In the case of the first report by the DEO, he only challenged on the basis of whether he signed it.

The principle is that where a party does not specifically challenge evidence adduced by the opposite side, then he is deemed to have accepted the evidence as true. The court will evaluate the evidence for probity from that perspective.

Secondly there were photographs of the school that were exhibited. They showed the deplorable state of repair of some of the facilities. There was a termite infested wooden classroom that whose collapse looked imminent. There were partly exposed manholes with channels leading from them. Some rooms were exposed to the elements with no panes in the gaping windows. The water tank had a gaping hole on the side and it was stated there was no water reservoir. These findings were reduced into a report. Again the appellant did not properly challenge the authenticity of the report. In view of the clear evidence the rebuttals by the appellant denying the prosecution evidence could not stand.

The health inspector who was PW 1 was satisfied that this situation posed a danger. I am satisfied that a nuisance under Section 57 of Public Health Act was established that prosecution proved the first Count to a standard beyond reasonable doubt.

With regard to Count 2 the Appellant was charged under Section 40 (c) of **The Education Act 2008.** It states as follows,

> A person who administers or permits to be administered an extension as part of an existing registered school in contravention of section 38, commits an offence and shall be liable on first conviction to a fine not exceeding twenty currency points and on second or subsequent conviction, to a term of imprisonment not exceeding twelve months.

Section 38 reads,

> If the Permanent Secretary, chief administrative officer or town clerk, is satisfied that a proposed extension to an existing registered school cannot properly be administered as part of the existing registered education institution, he or she may require the school owner to apply for classification of the proposed extension as a new school.

Both inspections report finding a boarding section. There are pictures on record showing beddings and belongings of children who are clearly boarders. Although the appellant denied this was true, on the basis of the photographic evidence, to corroborate the two inspection reports, I see no grounds to doubt these findings. Consequently I find that the second count was also proved to a standard beyond reasonable doubt.

It is therefore the holding of this court that the trial magistrate properly evaluated the evidence and arrived at the proper conclusions.

In the result the second ground of appeal fails.

This appeal stands dismissed.

The conviction, sentence and orders of the lower court are hereby confirmed.

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Michael Elubu

Judge

17.6.2021