

SEMPIRA WYCLIFF :::::::::::::::::::::::::::::::::: APPELLANT

UGANDA RESPONDENT

JUDGMENT

The background to this appeal is that the Complainant, Midhat Dulgo (PW 1) and his wife Mpagi Nandaula Louise (PW 2) live in Bwerenga Hossana Estate in Kawuku on Entebbe Road. It is stated that on the 29th of July 2017 PW 1 saw two

men inspecting the plots of land next to their home. He approached them. They both told him that they were the owners of the land. PW 1 offered to purchase the plots. A1 whose name is Mayanja Peter introduced himself as Geoffrey Senyonjo the owner of the first parcel of land Plot 1457 while A2 Mulungi Anatoli presented himself as Kamuhangire Robert the owner of Plot 1458. They showed PW 1 identification documents in those names. He offered to buy both plots which the two accepted. They presented the certificates of title in names that matched the identification documents. PW 1 conducted a search at the Wakiso land office which showed that the titles were indeed in those names. A price of \$8,000 was agreed. Money was eventually transferred to the first two accused persons who received an initial payment of \$ 5,000 each from the PW 2. Agreements and acknowledgement of payments were executed.

It was agreed that the rest of the money would be paid after transfer was made. A1 told PW 1 that a Surveyor called Tom working in the Wakiso land office would process the title quickly. That he would need \$ 200 to facilitate the process. A phone number allegedly belonging to Tom was given and PW 1 who sent 700,000 UgX to the phone number.

Shortly thereafter that the Police in Bulenga, after receiving word that the complainants were dealing with the accused persons, warned them that the men were fraudsters.

A trap was laid. It was agreed that the accused persons come and receive the last instalment from the home of the complainants as the police lay in wait. PW 3, No. 46162 Corporal Kezala Aramathan, was the Police Officer who carried out the operation. On the 1st of September 2017 at 12.00 pm, the men arrived at the house. The appellant, Sempira Wycliff had and was holding the certificates of title which he retrieved from his Jacket. They were in the names of PW 2. As soon as the appellant handed them to PW 2, the Police officer who was hiding in a toilet emerged

and arrested all three accused persons and detained them at Kisubi Police Station. The land titles they had were established to be forged.

The appellant had denied all charges at the trial. His defence was that on that day he was looking for a shop to let along Entebbe Road. When he got to Kisubi he found a building nearing completion. He made inquiries about it and was directed to phone number written on the one of the walls. He called the number repeatedly until a man answered and said he would be at the site shortly. Soon thereafter a car parked by the shop and two policemen emerged and arrested the appellant taking him to Kisubi Police Station. That Mayanja, the 1st accused was in the car with the policemen. At the police, the investigating officer PW 3 - Kozala asked the appellant how he knew Mayanja. PW 3 produced photographs from a file and asked the appellant about the men in the photographs. The appellant did not know them. Just then a white man came in and was asked if he knew the appellant and he said that he did not. The appellant was asked why he called the number earlier and said he was looking for a shop to rent and was given that number to call. When asked about \$ 5,000 he said he did not know about it. The appellant was told if he wanted to save himself he should be a state witness but he refused because he did not know what it meant. That the white man told the police officer that he did not know the appellant and as such I should be removed from the case but the officers declined. That the appellant did not know where the land in issue is and did not receive any money. He insisted that both complainants testified that they do not know the appellant. Besides the appellant does not deal in land but in building materials.

All three accused persons were convicted and sentenced as earlier stated. Being dissatisfied with the conviction and orders, the appellant filed this appeal with the following grounds:

1. That the learned trial magistrate did not properly evaluate the prosecution witnesses before convicting the appellant which led to a miscarriage of justice.

2. That the learned trial magistrate erred in law and fact by shifting the burden of proof upon the appellant which led to a miscarriage of justice.
3. That the learned trial magistrate did not properly evaluate the defence evidence otherwise she would not have convicted the appellant and sentenced him to 5 years imprisonment.

The appellant was self-represented. The Respondent did not file submissions in reply.

The duty of a first appellate Court was laid out in the Supreme Court decision in the case of **Kifamunte Henry vs Ug SCCA 10 of 1997**,

The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour, the appellate Court must be guided by the impressions made on the judge who saw the witnesses.

It is also a tenet of criminal law that the burden of proof rests with the prosecution which bears a duty to prove all the elements of the charged offences to a standard beyond reasonable doubt.

Submissions

This court will examine the grounds of appeal jointly.

The appellant challenged his conviction on the first count of Obtaining Money by False Pretence. He submitted that the evidence adduced was that the land in question is next to PW 1's home who one day saw the 1st and 2nd Accused persons inspecting the land and offered to purchase it. That the parties agreed and money was paid to the first two accused person. That all dealings were between those two accused persons and the complainants. That it was those two who received money. That the

agreements of sale and the forged land titles were executed in favour of the 1st and 2nd accused persons. The appellant stresses that as no evidence was presented against him personally on this count he prays this court find in his favour.

On the 2nd count where he was charged with forgery, the appellant again challenges only his participation in the commission of the offence and not whether the documents were forged. He states that PW 1 stated that the original certificate of title to the plots was presented to him by A1 and A2. That PW 1 did a search and found them genuine. It was A1 and A2 who gave the complainants false names and received money. They also presented forged identification papers namely a driving permit and identification card. That PW 4, Nsubuga Galiwango, the land officer in Wakiso, confirmed that the certificates of title presented to PW 1 and PW 2 were forged. That they were signed by Francis Barnabas who was formerly a land officer in Wakiso but who was not stationed there anymore. That the court should find that it was Francis Barnabas and the co accused persons, A1 and A2, who did the forgery and not the appellant. That none of the prosecution witnesses state that the appellant did the forgery.

That all the offences and sequence of events started and concluded with A1 and A2 and not the appellant. He could not therefore have uttered the false titles.

Regarding personation, the appellant argued there was no evidence of personation adduced against him. The others had false identification documents and he did not. The charge cannot therefore be sustained against him.

Lastly he states that as he did not participate in the commission of the offences then he could not be said to have conspired to commit any of the crimes. That he was only arrested on the 3rd of September 2017 the day he had gone to look for a shop to rent and called a phone number given to him at the site of a prospective shop he was looking at. Consequently, the appellant argues that because he did not participate in

the commission of the offences, he cannot be said to have conspired to commit any of the crimes.

In his view, by connecting him to an offence where he was not party, the trial magistrate shifted the burden of proving his innocence to him.

That he did not know any of the accused persons or Francis Barnabas. He was only connected by the phone call made the day he was looking for a house to rent.

The appellant submits in the alternative that the period spent on remand be deducted from his sentence.

Determination

As stated the DPP did not put in a reply to these submissions despite timelines within which to make their submissions in reply. In view of the above this appeal is resolved based solely on the appellant's submissions.

As seen from the submissions, the extent of the appellants challenge to the conviction is that he did not participate in the commission of this offence.

It is the evidence of the appellant that while he was at a site of a shop near Kisubi police station, he was directed to a number written on a wall which he could call if he wanted to rent a shop. That when he called the number someone asked him to wait at the building as he would come shortly. A vehicle drove up with two policemen and A1 Mayanja Peter in it. The policemen arrested him and took him to Kisubi Police Station. That this is how he came to be arrested.

On the other hand, the prosecution evidence was that when Midhat Dulas - PW 1 expressed interest in the purchase of the plot he asked for identification documents. In his testimony of the 24th of January 2018, PW 1 stated that all accused persons, including A3 (the appellant) showed him identification documents. That after A 1 and A2 had received the initial payments of \$ 5,000 each and another \$ 1000 to A2, the 1st accused - Mayanja told the complainant that he had a surveyor at the Wakiso

land office called Tom who could get the title quickly. That the Police in Bulenga informed the complainant that the men he had been seen with were conmen. A trap was consequently laid at the home shared by PW 1 and PW 2. That the perpetrators would be arrested when they came to collect the rest of the promised or outstanding money. A police officer, PW 3, Kozala Aramathan, hid in a toilet. From where he watched and followed the proceedings.

That on the 1/9/2017 when the men arrived PW 1 and PW 2 were waiting. That the appellant had the fake titles in his jacket from where he removed and presented them to the complainants. They were written in the names of Louise Mpagi Nandawula - PW 2, the wife of PW 1. PW 1 had spoken to the appellant on phone. He told PW 1 that he was the surveyor and would require 700,000/- to quicken the process of obtaining the titles. The complainants were travelling around the time and had wanted to hasten the process. The money was wired by phone.

As soon as the appellant handed over the title, PW 3 emerged and arrested all three accused persons. They were arrested and taken to Kisubi Police station. The titles were later confirmed by the Land Registrar in Wakiso as fake. He drew two lines across their face and marked them as fake.

It should be noted that that a court always has a duty to evaluate evidence as a whole. In **Okethi Okale v R 1965 (EA) 555** it was stated that,

In our view, it is the duty of the trial judge, both when he sums up to the assessors and when he gives judgment, to look at the evidence as a whole ... Indeed, we think that no single piece of evidence should be weighed except in relation to all the rest of the evidence.

Therefore weighing the prosecution case against all the defence raised and vice versa, I have noted here that the appellant adduced evidence to say he was not arrested at the home of PW 1 and PW 2. From the record and looking at the testimonies of PW 1 and PW 2, both state they were at the scene when the appellant

presented the fake titles and was arrested. They were not challenged by the appellant on any part of this evidence. The only inference the court can draw from this is that the appellant accepted that evidence and had nothing to challenge. The evidence of PW 1 and PW 2 was consistent. I have not seen anything from the record, nor has the appellant suggested that they were unreliable. Their evidence tallies with that of the PW 3. I compared this with the defence where the appellant says he was arrested at Kisubi. The first time he raised the question of arrest in Kisubi was in his defence. It was also the first time he stated that PW 3 pinned the matter on him because the appellant refused to be a state witness. These two matters never arose anywhere in cross examination during the prosecution case. The trial magistrate also noted the demeanour of the appellant. That he avoided eye contact. Both PW 1 and PW 2 have properly placed him at the scene during the arrest of both A1 and A2. It is therefore this court's finding that the defence was an afterthought crafted by the appellant after hearing the prosecution evidence.

The crux of appellant's argument is based on the fact that he was not present when the money was paid to A1 and A2. That he is therefore innocent.

I find however find that this crime was an elaborate ruse. Because it was a criminal enterprise that required the accused persons to gain the trust of their victims, each person had an essential role to play. The appellant posed as a surveyor. A crucial part to hoodwink PW 1 and PW 2 into believing the land deal was legitimate. Just before arrest, it was he who produced the documents which he has admitted in his written submissions were forged. The fact he was the one in possession of the fake titles makes him a key player and principal offender in the commission of all the offences he was charged with.

I therefore find that all the grounds of appeal had not merit and are dismissed.

With regard to sentence, I note that on the 2nd count of forgery of a land title the appellant was sentenced to 5 years.

On the Charge of forgery of a land title and its uttering the max sentence provided for in Section 348 of the PCA imprisonment for life.

For conspiracy the max is 7 years.

In this case the appellant was found guilty of forging a land title. He intended by trick and deception to trick the buyer and deprive a third party, the owner, of his property. It is pertinent that this particular category of offence is especially rampant today. It completely undermines the land registration system in Uganda and it ought to be severely punished and deterred. I have taken into account the mitigating factors raised by the appellant at his trial in the lower Court.

I find that the sentence imposed did not fit the crime. The sentences are revised as follows:

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| 1. Count 1 | - | 2 years imprisonment |
| 2. Count 2 | - | 6 years imprisonment |
| 3. Count 3 | - | 6 years imprisonment |
| 4. Count 6 | - | 1 year imprisonment |
| 5. Count 7 | - | 1 year imprisonment |

The sentences to be served concurrently

The period spent on remand shall be deducted from the sentence.

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Michael Elubu

Judge

18.4.2021