

I have perused the said submissions. I have also re-appraised all evidence adduced in the lower court, and submissions thereat.

The following facts are worth of noting.

In all criminal cases the burden of proof rests upon the prosecution on a standard of proof that is “beyond all reasonable doubt”

See: ***Woolmington V. DPP (1935) AC 462.***

I noted that all the charges related to a land dispute. The evidence as adduced by all parties and acknowledged by the learned trial Magistrate on record (page 86-87) of record of proceedings, is to the effect that “*this is yet another case where defence counsel believes a land matter is being criminalized...*”

I have taken judicial notice of the fact that the parties were also before court under a land dispute filed by the complainant under CS/ 008 Of 2013 of Chief Magistrate’s Court of Tororo.

I have also taken judicial notice of the fact that the court record contains exhibited documentary evidence received by court as PXI , from office of LCIII Nabuyoga sub-county, Tororo showing that by 27th March 2017 parties already were having a claim of grabbing their land before the local authorities.

PE5 -Shows a list of complainants from Musasa community.

DX3 -letter of CM LCIII of Nyamalogo Parish, also dated 26.3. 2012 shows that whole communities were having land claims over the land which was the subject of the case in court.

The evidence above (documentary) when considered together with the oral evidence in court, shows that the accused persons had a civil claim (mistakenly or rightly) as against the complainant. This is the gist of appellant’s counsel’s arguments on submissions under grounds 4 and 7.

Having those observations as background to this appeal. The court now resolves this appeal as follows:

Ground 4 and 7

These grounds are to the effect that appellants had a reasonable claim of right to his land and should therefore not have been convicted.

This raises a legal principle contained in section 7 of the Penal Code Act thus.

“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 accused did not defend and opted to keep quiet. This means that the prosecution assumed the duty to prove beyond doubt that all accused had no such defence available to them. The evidence adduced through documentary evidence and the witnesses before court all proved that the matter before court was a civil dispute involving land, titles, boundaries, etc. This defence was therefore available to the accused. Though they did not raise it in defence, it was highlighted in the trial and at submissions. However, it was not given sufficient consideration by the prosecution to destroy it. Also the learned trial Magistrate did not sufficiently consider its implication. The implication of section 7 of the Penal Code Act is to protect claimants of property from such criminal prosecutions instead of civil remedies.

In the result, the effect that accused could not be found criminally liable for the alleged offences on this land whose ownership was still subject to civil litigation, and in which they held a honest claim of right.

For this reason and those argued by appellants counsel I find that ground 4 and 7 are proved.

The finding under ground 4 and 7 do answer the rest of the grounds 1, 2, 3, 5 and 6. Since the accused had a honest claim of right, the learned trial Magistrate could not have convicted them of these offences. Ground 1, 2, 3, 5 and 6 succeeds as argued.

For the reasons above this appeal succeeds on all grounds. The Judgment, conviction and sentence of the accused by the learned trial Magistrate are hereby set aside. Accused are not found liable on this charge. They are acquitted thereof. All monies paid as bail or fines be refunded to them.

I so order.

Henry I. Kawesa

JUDGE

02.05.2017