

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

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**CORAM: HON. JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE S.B.K. KAVUMA, JA**

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CRIMINAL APPEAL NO.336 OF 2003

15 **SEKIDDE GODFREYAPPELLANT**

V E R S U S

UGANDA.....RESPONDENT

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**[Appeal against the judgment of the High Court
(Wangutusi, J) dated 23/12/2003] in C.S.C. No.271/2003]**

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JUDGMENT OF THE COURT:

30 This is an appeal against the judgment of the High Court sitting at Mukono in which
the appellant was convicted of the offences of Murder and Aggravated Robbery and
was sentenced to death. The facts of the case as found by the trial judge are as
follows:-

“The prosecution’s story is that PW3 Ssali owned a boat and had employed two young men namely PW4 Ssebanakita and PW5 Steven Koodo to run his fish business.

5 **On the 21st November 2000 PW3 went to the Landing Site and gave PW4 shs.1,500,000/=, and out boat motor engine and 18 jerrycans of petrol all to do with the fishing industry. It’s alleged that he handed these things to PW4 in presence of the accused who had requested for a lift on the Ssali boat to Bugaya. According to PW4 the accused brought two other people**
10 **for whom he requested a lift. They were to pay 6,000/= for the trip while the accused was to pay nothing since he was known to PW4 and PW5.**

It is alleged that on the way to Bugaya, they made a stop over at Kitongo where at they bought a sack of charcoal and also took two young boys
15 **both now deceased namely, Ssentongo and Nsamba.**

They set off when night was falling and some where on the late(sic), the accused and his friends, commanded the boat, put all the others under gun point and directed that the boat be driven towards Mpuga Island.
20 **That some distance from the island the accused and his colleagues ordered PW5 and the two deceased to jump off the boat. Koodo survived but the two Ssentongo and Nsambu drowned.**

The accused and his colleagues are then said to have driven to Wanyange Landing Site, where they received the engine, five jerrycans of fuel and retaining the 1,500,000/=, they ordered PW4 to go away.
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PW4 reported the matter to Jinja Police and the accused was allegedly caught with the engine on his way to Wahawaha in Mayuge.

30 **The police suspecting him to be one of the pirates, charged him with murder and robbery.**

On his part the accused denied being Ssekasi. He denied ever hiring a boat. He denied owning a pistol.”

The appellant was convicted and sentenced as aforesaid, hence this appeal.

The memorandum of appeal raises seven grounds of appeal as follows:-

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1. **The learned trial judge erred in law and fact when he failed to evaluate the evidence on record to regard to identification of the appellant.(sic)**
2. **The learned trial judge erred in law and fact when he relied, instead of rejecting the prosecution evidence that had wide discrepancies and inconsistencies.**
- 10 3. **The learned trial judge erred in law and fact when he found that the evidence of the prosecution witnesses was corroborating.**
4. **The learned trial judge erred in law and fact when he failed to note that there was no flow and investigation in the evidence that led to impounding**
- 15 **of stolen engine from appellant, never exhibited the stolen item and the exhibit slip is missing on the court record.**
5. **The learned trial judge erred in law and fact when he failed to note that the identification parade was never/properly conducted.**
6. **The learned trial judge erred in law and fact when he convicted the**
- 20 **appellant yet the prosecution didn't adduce evidence to reveal how investigations were done that led to the arrest of the appellant.**
7. **The learned trial judge erred in law and fact when he convicted the appellant using evidence from the bar and not the witnesses.**

25 At the trial of the appeal, Mrs Janet Kigozi Nakakande appeared for the appellant on state brief and Ms Jane Abodo, a State Attorney, represented the respondent.

GROUND 1, 2 AND 3:

30 Mrs Nakankande criticised the trial judge for failing to evaluate the evidence properly and relying on evidence of identification that was full of contradictions. She submitted that though the learned trial judge found that the offence was committed in broad daylight, there was a lot of evidence showing that the crime charged was actually committed during the night. Other contradictions include the fact that it was

not established on which date of the month the crime was committed. Some witnesses stated it was on 21-11-2001 while others mentioned the 23rd November 2001. There were contradictions regarding the manner the deceased persons met their death. One witness said they were ordered to jump into the lake and they did so
5 whereas another stated that they were actually pushed into the lake. In learned counsel's view, these were not minor inconsistencies and they create a doubt as to whether the witnesses witnessed the incidents they testified upon. In her view, this doubt should have been resolved in favour of the appellant.

Ms Abodo for the respondent in reply, submitted that the prosecution witnesses had
10 plenty of opportunity to identify the appellant. They had known him before the date of the incident. On the fateful day some of the witnesses were with him from 4 pm in the afternoon up to 10 p.m. at night in the same boat and could not have made any mistaken identification.

15 On the date when the offence was committed, she conceded that there was some confusion on the date but that was why the charge sheet was amended to state that the offence was committed between 21st and 23rd November 2001. She submitted further that these were mere minor discrepancies which were not made deliberately to deceive court and they did not go to the root of the prosecution case in order to render
20 it not credible. In her view, all the so called discrepancies the appellant has raised were minor. She asked us to ignore them and to hold that the appellant was properly identified.

We have carefully read all the evidence that was adduced before the learned trial
25 judge. He carefully evaluated the evidence of identification and concluded that the appellant was properly identified. This is what he said:-

**“On whether the accused participated in the act causing death. The two
30 prosecution witnesses namely PW4 and PW5 have told court that the two men the accused had introduced drew pistols and commandeered the boat, and put the occupants under gun point. PW5 told court that the accused is the one who got them by the belts and tossed them into the lake. The accused denied. He said he never moved in that boat. While his advocate submitted that the accused was actually a victim of**

circumstances who found himself on a boat that had pirates as passengers.

5 As to whether the accused travelled on that boat PW3 the owner of the boat told court that when he delivered the engine, fuel and money the accused who he called Ssekasi by virtue of his father's name was with PW4 and PW5. That PW4 told him that the accused was one of the fishermen. PW4 told court that he had known the accused for a week as a person working on Mr. Mukiibi's boat. That it's because of this
10 collegiability that they were not going to charge him. All this evidence was given in the presence of the accused. It was not contested that he asked for a lift and that the lift was given. It was not at that time contested that he travelled with them. Chances of mistaken identity did not rise because it was day time, and PW3 and PW4 knew him before.
15 The accused's defence that he did not travel on that boat is therefore unsustainable the accused travelled with PW4 and PW5 and the two gun men”

We have found no good reason to fault this finding of the learned trial judge. While
20 we agree that the prosecution evidence contains some discrepancies, they are generally of a minor nature and do not in any way affect the strong evidence of identification of PW3, PW4 and PW5. They all had known the appellant before the incident and PW4 and PW5 travelled with him on the boat from 4 p.m. in the afternoon till 10 p.m. at night. There is no chance that they could have mistaken him
25 for someone else. This ground of appeal should fail.

GROUND 4, 5 AND 6

Counsel for the appellant complained that the investigations leading to the discovery
30 of the engine were done so badly that the evidence which was adduced did not connect the appellant with its discovery. She further complained that there was no cogent evidence to connect the appellant with the recovered engine or to explain how the appellant was arrested. In her view, so many people were arrested in connection with the offences clearly showing that that the arresting officers had no clear idea as

to who had committed the offences. She complained that the engine itself was never exhibited in court which showed that the prosecution was concealing evidence. He relied on the case of **Okello Richard vs Uganda Criminal Appeal No.26 of 1995 (S.C.)** (unreported) to support her submission that where the prosecution has
5 previously indicated that at the trial, it will exhibit an item, failure to do so leads to an inevitable inference that if it had been exhibited, it would have proved fatal to the prosecution case.

In reply, Ms Abodo, the learned State Attorney, could not agree. She submitted that
10 PW2, one Cpl. Kasereka gave very cogent evidence as to how he traced and recovered the engine from Iganga Revenue Authorities Office. The complainant who had all the receipts of the engine was called to identify the engine which he did. The receipts had the engine number thereon and there was no doubt that it belonged to PW3. The engine was later handed over to PW3 for safe custody with an undertaking that he
15 would produce it whenever needed. He was never asked to produce it at the trial but this was not prejudicial or fatal to the prosecution case as its existence and recovery in connection with the offences had been established by the prosecution.

In these three grounds of appeal, the appellant raises three major complaints namely:

- (a) That there was no evidence to connect the appellant with the alleged stolen
20 engine.
- (b) That the prosecution did not lead evidence to prove how the appellant was arrested.
- (c) That failure to exhibit the alleged stolen engine was fatal to the prosecution case.

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Regarding the alleged failure to connect the appellant with the engine, there is the evidence of PW3, Dr. Emma Ssali, who was the owner of the engine in question. He testified that he gave it to PW 4 and PW5 in the presence of the appellant who had asked for a lift to be transported to one of the islands in Lake Victoria. PW4 and PW5
30 testified how in the middle of the lake, the appellants and his friends turned against them and how two boys and PW5 were forcefully removed and were thrown in the lake. PW4 continued with the appellant up to Wanyange Landing Site where the appellant and his friend took with them the engine, the money and 5 jerrycans of petrol. That was early on the morning of the 24th November 2000.

PW3 the owner of the engine in question testified that around 25th November 2000 he received a phone call from one Semboga that there was an engine being sold around Jinja. PW3 advised him to pretend to purchase it but to ask for its receipts. That
5 when Sembogo tried to buy it from the accused who was selling it, he tried to hide it by removing it from Jinja and he (accused) was arrested by Revenue Authorities. Eventually PW3 who was that morning looking for his engine found the appellant arrested by a Captain Seguya and in company of Sembogo. The appellant revealed the names of his corroborators. Eventually those arrested together with the engine
10 were taken to Lugazi Police Station where they were detained. The engine was transferred to Kampala. Weeks later, PW3 went to a Resident State Attorney in Mukono with his receipts and was able to claim and receive the engine. He was asked to keep it till it was needed.

15 It is true that the officer who arrested the appellant and impounded the engine from him did not give evidence. However, PW3 found the appellant shortly after his arrest together with the impounded engine which he identified as his. He also participated in the search for other suspects and witnessed all the arrested suspects being transferred to Lugazi Police Station. It is true that part of this evidence may be
20 hearsay. However, the evidence of PW3, PW4 and PW5 credibly traces the journey of his engine to Lake Victoria, to Wanyange Landing Site up to the point where the appellant was arrested by Captain Seguja. The same evidence also adequately explains how the appellant was arrested and detained in connection with the murder and the robbery for which he was tried. In our view, this ground of appeal fails.

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GROUND NO. 7.

In this ground of appeal, the appellant complains that in convicting him, the learned trial judge relied on the evidence from the bar and not from witnesses. Learned
30 counsel tried to point out that by using expression as “Counsel for the appellant” or “it was not contested” repeatedly, the trial judge was relying on statements from the advocate’s submissions at the bar on which he relied to convict the appellant.

With respect, this ground is not only totally misconceived but it is totally unjustified and very unfair to the trial judge. We have already quoted above and outlined the evidence on which the trial judge relied to convict the appellant. The main evidence was that of PW3, PW4 and PW5. No evidence whatsoever was given from the bar and no such evidence was relied upon to convict the appellant. Learned Counsel who raised the ground of appeal did not point out to us any single piece of evidence that was adduced from the bar. This ground of appeal must be totally rejected and it must fail.

10 In the result, we find no merit in this appeal which we dismiss accordingly.

Dated at Kampala this 2nd day of March 2010.

15 Hon. Justice L.E.M. Kikonyogo
DEPUTY CHIEF JUSTICE.

20 Hon. Justice A. Twinomujuni
JUSTICE OF APPEAL.

25 Hon. Justice S.B.K. Kavuma
JUSITCE OF APPEAL.