

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
HOLDEN AT KABALE.
CRIMINAL SESSIONS CASE NO.87/91

UGANDA:..... PROSECUTOR.

VERSUS

A1: MEDADI TINDARWESIRE

.....ACCUSED.

A2: WILLIAM GURIKACHA

BEFORE: THE HON.MR.JUSTICE J.W.N.TSEKOOKO:

R U L I N G:

When Mr. Kikomeko, the learned Resident State Attorney, attempted to introduce the photographs of the deceased, the dead cow, the destroyed houses and the destroyed Matooke plantains in evidence by PW 5 Sgt. Baryaguma, son of the deceased who claims to have taken those photographs, on 20/12/198 at the scene of the crime, Mr. Zagyenda objected to their admissibility. His main ground of objection is that the exhibits were not tendered in the court during the committal proceedings as provided for by Section 177 of the Magistrates Courts Act, 1970. Actually the Section is 176 Mr. Kikomeko in opposition submitted that the photographs should be admitted because the new law does not provide for the listing of the exhibits and witnesses as submitted by Mr. Zagyenda.

This is one of the situations about which I have been expressing my fears Since the Magistrates Courts Act (Amendment) Statute, 1990 was enacted. The new law introduced Section 163A which deals with Summary of Evidence which it describes as the summary of the case. In the important Section 163A (2), that law talks about providing such particulars as are necessary to

give the accused person reasonable information as to the nature of the offence with which he is charged

The subsection is similar in essence to Section 23 of TID 1971 which deals with indictments) and is completely silent about exhibits. Worse still Section 9 of the same statute repealed part XV of the MCA 1970. By so repealing Part XV, as from 28/9/1990 the section referred to by Mr. Zagyenda ceased to be part of our law. The legislature however attempted to protect accused by replacing Section 78 of the TID, 1971 with a new Section which was introduced by the Trial On Indictments (amendment) Statute 1990. The new Section states thus:

“No additional material fact which does not form part of the summary of the case against the accused person shall be alleged by the prosecution unless the prosecution has given reasonable notice in writing to the accused person or his advocate of the intention to allege such fact but no such notice need be given if the prosecution first becomes aware of it on the day on which it is alleged in evidence during trial”

Mr. Kikomeko states that the photographs have been with him since May this year. No notice was given as required. In these circumstances, Mr. Zagyenda's objection appears valid as no notice was given as stipulated by the new law. The objection is, therefore, upheld not for reasons given by Mr. Zagyenda but because of the proviso of new Section 78.

J.W.N.Tsekooko,

6th November 1991.