

IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAM: MANYINDO, DC.J, ODER J.S.C. & PLAT, J.S.C

CRIMINAL APPEAL NO. 15/78

BETWEEN

CHRISTOPHER KASOLO..... APPELLANT

AND

UGANDA RESPONDENT

(Appeal from the conviction and
sentence of the High Court of
Uganda at Masaka (Mr. Justice
G. Engwau) dated 15/9/78).

IN

H.C. CR. SS. CASE NO. 57/78

JUDGMENT OF THE COURT

Christopher Kasolo and William Semanda were sentenced to death on 15th September 1978, having been convicted of robbery contrary to Sections 272 and 273 (2) of the Penal Code. It appears that only Christopher Kasolo has appealed; but we are uncertain why that is so. We are informed that he is not in prison, so that there is no further step we can take at present.

The burden of the appeal is that the entire record of the high Court is missing, and from what we are told, appears to be irretrievably lost. Therefore the Appellant says he cannot effectively appeal.

There are several decided cases on this point, which were conveniently collected, in Clement Gama Vs Uganda Criminal Appeals No's 20, 21 & 22 of 1977. The Court of Appeal of Uganda reviewed them. It might be that in the circumstances of Rev. Vs Abdu Moge (19148) 15 E.A.C.A. 86 (where the judge first appeal did not realise that part of the record was missing) the final appellant court felt that the appellant might have been prejudiced so ordered that the

appellant should be acquitted. It might be as Goudie J decided in *Ahmada Kasita Vs Uganda* (196) M.B. 55 that the judgement being so entirely clear that the appeal should be dismissed. But the general position is that a re-trial should be ordered where the Court of Appeal cannot re-evaluate the evidence merely from the judgment. *Suleiman Waibi Vs Uganda Criminal Appeal No. 739 1972* (before the East African Court of Appeal).

In the instant case, the judgment is somewhat confused. It was necessary that the case for the prosecution be contrasted with the defence of each accused before final decisions of fact were made, which then led to the law being applied on a number of quite difficult issues. We are far from sure that those issues were dealt with soundly, e.g. that the Court realised the result of the Appellant and his co-accused not giving confessions or giving their defences on oath. Consequently we were unable to follow many of the directions especially on corroboration. At the same time we were not sure that if the issues had been clearly dealt with, that there could not have been evidence which supported a conviction.

On this basis, therefore, we should have concluded that the proper course would be to order a re-trial. We have however looked at the situation which faces the Appellant. His conviction occurred in 1978. It is not known whether the witnesses are available. On the other hand, the driver of the stolen vehicle died from an outrageous assault upon him. Bearing both sides in mind, it is our view that there should be a re-trial, if that is possible.

It follows that the appeal is allowed, the conviction of the Appellant quashed and sentence set aside, but there will be a re-trial. The appellant is to be remanded in custody for that purpose.

Dated at Mengo this 8th day of January 1990.

SIGNED

S.T. MANYINDO

DEPUTY CHIEF JUSTICE

A.H.O. ODER

JUSTICE OF THE SUPREME COURT

H.G. PLATT

JUSTICE OF THE SUPREME COURT

I certify that this is
a true copy of the original.

B.F.B. BABIGUMIRA,
REGISTRY SUPREME COURT.