THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM : MANYINDO - DCJ, ODER-JSC,PLATT-JSC)

CRIMINAL APPEAL NO.6 OF 1990

BETWEEN

Al. CPL MIKE MUWONGE
A2. KENNEDY BWANIKA
A3. MORRIS KATO========== APPELLANTS
A4. MOHAMMED KYEYUNE
A5. YUSUFU LUBULWA ALIAS KIGANDA

AND

UGANDA==========RESPONDENT

Appeal against conviction and sentence of the H/C decision holden at Kampala (Hon. Mr. Justice Kalanda) dated the HI day of July 1990 from H.C Cr. Ss. Case No.31/88).

JUDGMENT OF THE COURT:

The five appellants and a Captain Kibuuka, who was the first accused and who has since died, were convicted of treason by the High Court and sentenced to death. Hence this appeals.
Ten overt acts of treason were alleged in the indictment. In overt act No.1. it was alleged that the third appellant (Kato) and late Kibuuka were on the 29th day of October, 1986, at Bahai Temple near Kampala introduced to the Police Detective Constable Sserwadda Lubega (PW 1) as members of a group of persons who were plotting to over throw the Government and they did promise to introduce military leaders of their group.
In overt act No. 2 it was alleged that the third appellant and late Kibuuka on 12-11-86, at Bahai Temple attended and discussed in a meeting with police Inspector Kayongo (PW2), Detective Assistant Inspector Alazewa and Lubega.

(PW1) plans to overthrow the Government by force of arms.

The third overt act alleges that on 30-11-86, at Kampala High Secondary school play ground, Kabuuka, Kato and Lubulwa the fifth appellant attended a meeting whereat plans to overthrow the Government by forces of arms were discussed. Overt Act No.4 concerns Lubulwa alone. It alleges that on 1-12-86, he took PW1 to Mbuya Military Barracks and showed him sensitive targets to be attacked. Overt at No. 5 relates to Kyeyune, the fourth appellant only. It alleges that on 3-12-86, at a playground behind Kampala Police Fire Brigade Headquarters he met PWI and Alazewa and discussed with them the plot to overthrow the government by force of arms.

In overt act No. 6, it is alleged that Kibuuka and Kato on 17-12-86, at Jinja, near the source of the River Nile, met with PW1, PW2 and Alazewa to be shown the fighting group from the Eastern Region. Overt act No. *7* alleges that on 1-1-87, Kibuuka, Kato and Lubuiwa held a meeting at Lugogo by-pass play ground in Kampala whereat an operational plan to overthrow the government by force of arms was discussed.

In overt act No.8 Kato appears alone. It is alleged that on 2-1-87, at Channel Street, Kampala, behind a place called Amazima Textiles; he met PW1 and PW2 and sought from them a vehicle to transport the leader of the plotters to attend a meeting on the same subject of over-throwing the Government. According to overt act No. 9 Kyeyune, Kato, and other persons still at large on 3-1-87, met with PW1, PW2 and Alazewa in a house at Kibuye, Kampala, and discussed plans to overthrow the government. And in overt act No. 10 it is claimed that on 6-1-87, at Bahai Temple, Kibuuka, Muwonge (1st Appellant) Bwanika (2nd Appellant) Kato, Kyeyune, Lubulwa and other persons still at large held a meeting and discussed the final plans for the overthrow of the Government.

The prosecution case was that sometime in October 1986, police received information that the appellants, the late Kibuuka and other persons still at large were plotting to overthrow the Government in a coup detat. At the time the late Kibuuka was a Captain in the National Resistance Army. Muwonge was a Corporal while Lubulwa was a Sergeant in the same

Army. The remaining appellants were civilians. D/C Lubega (PW1) Police Inspector (now ASP) Kayongo (PW2) and D/AIP Alazewa were detailed by Detective Senior Superintendent of Police Nekemiya Kibuuka (PW3) to go with one of the informants and infiltrate the plotters and investigate their activities with a view to bringing them to book.

The Police would not reveal the identity of the informant. That is understandable. In a case of this nature the identity of the informants must of necessity remain obscure.

The prosecution witnesses PW1 and PW2 and Alazewa who did not testify easily joined the plotters, posing as members of another group opposed to Government, and based in Jinja District. PW1 had in his pocket a micro compact recorder with which the deliberations at the various meetings were recorded. A Police Photographer was also at hand to take photographs of some of the meetings. The evidence of the tapes and the photographs was relied on by the prosecution as corroboration of the evidence of PW 1 and PW2.

The appellants, except Kyeyune, were arrested together with Pwl and Pw2 while attending the final meeting at Bahai Temple on 6-1-87, by DSSP Nekemiya Kibuuka (PW3). Kyeyune is said to have escaped but was arrested later from his place of work.
At the close of the case for the prosecution the two counsel representing the appellants made a joint submission of no case to answer. It was delivered by the Senior Counsel in the case, Mr. Lugayizi. The submission was overruled by the trial judge whereupon Mr. Lugayizi stood up and said:-

> ***"All our clients Kibuuka, Muwonge & Bwanika won't say a word; and would keep quiet and we are calling no witnesses"***

The other Counsel in the case, Mr. Kasirye stated likewise. He said:-

> ***"I say my clients Kato, Kyeyune and Lubulwa, won 'I say anything-no witnesses."***

The case was then adjourned for one week to allow Counsel time to prepare their final addresses to the Court. The addresses were subsequently made. The trial judge then summed up the case to the Assessors who, in a joint opinion, advised him to convict the appellants and late Kibuuka as charged. In a lengthy and considered judgment the trial judge accepted the evidence of the prosecution eyewitnesses. He found corroboration from the evidence of the tapes and the photographs which photographs incriminated Kato and Kyeyune.

The appellants were at first represented by Mr. Kalule Luyombo who filed two grounds of appeal, but by the time the appeal was heard he had been joined by four other Counsel, namely Remmy Kasule, Ssebunya, Kafuko of Kawanga & Kasule Advocates and Muguluma of Kirenga and Ndizireho Advocates. Each of these two firms filed a supplementary Memorandum of appeal.

In all twenty grounds of appeal were filed but they can be summarised in eight grounds as follows: -

1. That there was a mistrial because after finding that the appellants had a case to answer, the trial judge did not inform them of their rights under Section 71(2) of the Trial on Indictments Decree.

2. That the trial Judge erred in law in convicting the appellants on the uncorroborated evidence of PW1 and PW2 who were accomplices and not genuine spies.

3. That the trial judge erred in accepting the evidence of the tapes and the photographs.

4. That the trial Judge erred in accepting hearsay evidence.

5. That the trial judge erred in ignoring the defence case as put up in cross- examination of witnesses and submissions by Counsel for the appellants, especially with regard to

Muwonge and Bwanika.

6. That the trial Judge erred in law when he considered and believed the prosecution case before sufficiently considering “all possible defences” to the appellants.

7. That the trial judge erred in law in finding all the appellants guilty in an omnibus conviction when they had been charged differently for different overt Acts.

8. That the decision was against the weight of evidence.

Clearly grounds 2 to 7 are alternative to ground 1 because if the trial was illegal or defective, then a retrial ought to be ordered except where it might be prejudicial to appellants.
See: ***Alloys v Uganda*** (1972) EA 469 and ***Fatehali Menji v Republic*** (1966) EA 342.

Accordingly, we will consider this ground first. It is not disputed that in the record of proceedings it is not recorded that section 71 (2) of the Trial of Indictments Decree was complied with. The sub-section requires a trial judge, before putting an accused person on his defence, to inform him of his right (a) to give evidence on his behalf; or (b) make an unsworn statement and (c) to call witnesses in his defence. The Judge must then ask the accused person or his Advocate if it is intended to exercise any of these rights and must record the answer.

Mr. Kasule who argued this ground also relied on the Criminal Procedure (Recording of Evidence) Rules which were made under Legal Notice No. 184 of 1958 and pursuant to Section 201 of the Criminal Procedure Code. In particular, he relied on rules 3 (1) and 3 (4) which provide as follows: -

> ***“3(1). The evidence of witnesses in cases coming before the High Court may be taken down in writing and in the language of the Court by either of the following***

methods, the trial judge may decide-

(a) by the judge himself in long hand;

(b) by another person in presence and hearing, and under personal direction and superintendence, of the judge.

(2) ……

(3) ……

The State Counsel, Mr. Lubwa argued that under section 71(2) the trial Judge must inform the accused of his said rights but he is not required to record the fact. The Judge is only required to record course of action chosen by the accused person or his Advocate. He submitted that there is no prescribed form in the Trial on Indictments Decree as to how the proceedings should be recorded by a trial judge; a trial Judge need not and usually does not record everything that goes on during the trial.

There is no specific requirement in the Decree for the trial judge to record the proceedings in the case. However, section 139 and 140 of the Decree seem to cover the point. They state as follows:-

"139. When no express provision is made in this Decree, the practice of the High Court in its Criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of the High Court of Justice in its Criminal jurisdiction and of Courts of Oyer and Terminer and General Goal Delivery in England.

140. ***If any person affected by any judgment or order passed in any proceedings under this Decree desires to have a copy of the judgment or order or any part of the record, be shall on applying for such copy be furnished there-with provided he pays for the same, unless the court for some special reason thinks fit to***

furnish it free of cost'

Now the provision in Section 139 above is not very helpful in some ways as it requires the High Court of this Country, a court of record to sometimes follow the unspecified practice of the various Courts of England. However, the cardinal aspect of a court of record is that the proceedings in that court are recorded and presented as a permanent record. In our view the combined effect of these two Sections is that a record of proceedings must be made by a trial Judge. There is also the provisions in Article 83 (3) of the Constitution and Section 3 (1) of the Judicature Act (No.11 of 1967) that the High Court shall be a superior court of record.

Mr. Kasule contended that failure by a trial judge to record that he informed the accused person of his rights under Section 71 (2) means that the accused was not so informed which amounts to a miscarriage of justice as the accused cannot properly put forward his defence. The trial becomes a non-trial. He submitted that that is what happened in this case. Authorities were cited in support of that preposition. The first case is: ***Sitapakwe s/o Kilembo. v.R*** *(1945)* 12 EACA 41. The appellant, Sitapakwe, was convicted by the High Court of the then Tanganyika of the murder of his wife. On appeal it was not clear to the Court from the record whether at the close of the prosecution case the trial judge had explained to the appellant his rights under Section 267 of the Criminal Procedure Code, it being recorded merely that his Advocate had informed the Court that the accused had "nothing to say".

The Court of Appeal observed that it was not enough for the Counsel for the appellant to state the course to be followed by his client unless he stated that he had explained the rights to his client who thereafter elected to say nothing. The strange thing about this case is that the Court merely stated the principle; it did not apply it. It went on to dismiss the appeal on the ground that there was ample evidence, including the appellant's admission to the killing, to support the conviction. If the omission by Court to inform the appellant of his rights and the failure by his own Counsel to consult him on the matter were fatal, then the Court of Appeal perhaps should have allowed the appeal since the confession might have been challenged. In the premises, we cannot agree with Mr. Kasule that the irregularity there was incurable. We think that it must have been cured inter alia by the evidence which proved the charge against the

appellant.

The second case was: ***Bwanika v. Uganda*** (1967) EA 768. That was a High Court decision on appeal against the judgment of a Magistrate. The appellant had been convicted of theft from a motor vehicle, contrary to Sections 252 and 256(c) of the Penal Code and sentenced to a term of imprisonment. On appeal Sir Udo Udoma CJ *(as* he then was) found no record that the appellant's rights under section 210 of the Criminal Procedure Code Act had been explained to him. That section has been repealed by re-enacted as section 126 of the Magistrates Courts Act (MCA). These sections are identical with S.267 of the Tanganyika Criminal Procedure Code. The learned Chief Justice held that the trial Magistrate should have recorded such an explanation but that the error was not fatal as the judgment showed that the appellant had "opted" to make an unsworn statement. That meant that his rights had been explained to him. It is noteworthy that in the repealed Section 210 CPC and the present section 126 of MCA there is no mention of Advocate, unlike the wording of Section 71(2) of the Trial on Indictments Decree. This is presumably so because unlike in the Magistrates' Courts, an accused person is always represented by Counsel in the High Court, in capital offences. That is the position at least in this Country.

Mr. Kasule's other case was another High Court of Uganda case: ***Jada v. R*** (1956 — 57) 8 ULR 71 where on appeal Sheridah J. (as he then was) set aside the conviction on the grounds that the trial Magistrate had not complied with s.210 and had wrongly shifted the burden of proof onto the defence.

In our view if failure to comply with Section 210 had been fatal requiring a retrial then there was hardly any need to consider the burden of proof.

Under Section 71(2) the trial Judge is required to inform the accused person of his rights and elicit an answer either from him or his Counsel. This is a departure from the provision in the Magistrates' Courts Act where the Court must address itself to the accused person and not his Counsel.
In his Judgment the trial Judge stated what happened in this case. He said (page 2)): -

"At the close of the prosecution's case the accused opted not to give any evidence and had no witnesses to call"

The implication of that statement is that the appellants were informed of their rights. The trial Judge was entitled under s.71(2) to take the answer either from the advocate or the appellants. In this case the answers given by both Counsel for the appellants leave no doubt that the Appellant's rights had been explained to them and a deliberate decision taken that it was better for the appellants not to offer a defence. The failure by the trial Judge to record that he had complied with the section was in the circumstances of this case curable and did not occasion a miscarriage of justice. Accordingly the first ground of Appeal fails.

We will next consider grounds 5 and 6 together. The complaint here was that the trial Judge erred in not addressing the suggestion put to PW1 and PW2 in cross-examination, that Kato and Kyeyune - the appellants appearing in the photographs - were forced to appear there in after their arrest and not during the meetings as claimed by PW 1 and PW2. In respect of Muwonge and Bwanika it had been suggested in cross-examination that they were not arrested at Bahai Temple but elsewhere.

It is hard to see how these can possibly be regarded as possible defences, in view of the fact that the appellants chose not to make any defence. If they were defences then they must have been abandoned. But what defences would they be? The position of the appellants all along was that they never attended the meetings. To suggest, as did Mr. Sebunya their Counsel, that Kato and Kyeyune were coerced, would thus be a contradiction in terms. The defences of alibi and coercion cannot possibly go together because if you were coerced then you were there, yet alibi means elsewhere. These two defences can only be argued in alternative. As for Muwonge and Bwanika, if their defence was one of alibi then it was not pursued. They had to raise it in their defence and then establish it on the balance of probabilities. This they did not do.

Mr. Sebunya appreciated this point and therefore shifted his ground. He submitted that the only possible defence was that of a framed up case against the appellants. In our opinion

there is no merit in the submission. Whether the case was framed up or not is a question of fact and not a defence as such. Clearly the trial Judge ruled out the suggestion of a framed up case when he considered and believed the evidence of the prosecution witnesses. These two grounds must fail.

We now come to ground 3. first, the photographs. These were taken by Detective Senior Superintendent, Kitamirike who passed away before the trial commenced. The photographs relate to the scenes at Bahai, Jinja, Kampala Fire Brigade and Kampala High School. It was submitted for the appellants Kato and Kyeyune that the photographs should not have been admitted in evidence - (a), because the trial Judge did not visit the alleged scenes to verify them, and (b), there are no land marks such as the Bahai Temple. Source of the Nile or School buildings at Kampala High Secondary School, to connect the photographs with the alleged scenes of crime.

Admittedly, these matters were not raised before the trial Judge, when they should. It was not fair for Counsel to raise them on appeal. Be that as it may, it is clear that these matters could not per se render the photographs inadmissible. There can be no hard and fast rule as to what should be included in a photograph of a scene of crime. It would all depend upon the angle of the camera or even the intentions of the photographer.

We note that in these particular photographs the background is blurred. In the end it is all a matter of evidence. Here the trial Judge believed the evidence of PWI and PW2 that the photographs were taken at the places in question. That is what matters.

With regard to the tapes, the complaint was that the dubbed and not the original tapes were played in Court when the dubbing and transcribing was done in absence of the appellants and their Counsel and also not done in accordance with the instructions given by the trial Judge. It was contended that the appellants were entitled to listen to the original tapes but were not allowed to do so.

Therefore, it was submitted, the evidence of the tapes should not have been admitted, let alone relied on in convicting appellants, Kato, Kyeyune and Lubulwa.

According to the record, there was an attempt to play the original tapes in Court and in the hearing of all parties. But they were not clear enough as they were very small so Counsel in the case agreed to the used of dubbed ones. The idea was to make them easy to hear. It is clear from the record (P.20) that the dubbed tapes were played and compared with the transcripts in Court and in the hearing of all the parties and that PW1 explained to the Court as to who was saying what. The appellants and their Counsel were apparently happy with that so it is surprising that this point was taken on appeal.

Again the record shows that it was the leading Counsel for the Appellants, Mr. Lugayizi, who informed Court that the presence of Counsel during the dubbing would not be necessary provided a Court official was appointed to supervise the exercise. Ms. Wolayo (PW7) now an Asst. Registrar of the High Court but who was then a Grade I Magistrate was appointed by the Court in that regard. Clearly the appellants cannot now be heard to complain on this point.

The directive of the trial Judge regarding the dubbing and transcribing the tapes was this:-.

> ***"Court: The tapes are already Court exhibits. The transcribing will be done by the Court. Let the Registrar or Magistrate Grade 1 or Chief Magistrate be detailed to do so. He or she has to use computer new sealed tapes and has to be present full time."***

It seems that the word "transcribing" was intended to mean "dubbing." Of course the two words to not mean the same thing. This was in oversight. The dubbing was done by Sentongo (PW6) who testified that it lasted for, a good six hours and that Wolayo was present throughout. The transcribing (from Luganda to English) was done by Kirumira (PW5). His evidence on the point was that Wolayo was present most of the time when the transcription was done. The transcription was disputed by Counsel for the appellants who requested us to

test Mr. Kirumira by making him play the dubbed tapes again and make transcripts of the same.

We wondered why this course of action should be adopted since the appellants' case was that they never attended the alleged meetings. Nevertheless we granted the request. Mr. Kirumira played two tapes selected by Counsel for the appellants out of the five tapes. The transcripts turned out to be substantially the same as the original ones.

This then leaves only the question whether it was proper for the Court to use the dubbed tapes. As we understand it, the law on this point seems to be this. Ideally, original tapes should be produced and used at a trial. A transcript may be used if the Court is satisfied of its accuracy. See: ***R. v. Robson and Harris*** (1972) 2 ALL.E.R. 699 and Cross on Evidence *5th* Edition Page 13. Copies or dubbed tapes may be used where, as in the instant case, the original micro tapes cannot be heard clearly. See: ***R. v. Mausud Ali Ashiq Hussain*** *(1965)* A2 AR. E.R. 464.

The point was made that the Police investigators PW1 and PW2 should never have tested the dubbed tapes before the trial as that would amount to interfering with evidence. We cannot agree. How were they to know if the tapes were of any use? We therefore see no merit in this ground. The fourth ground was about hearsay evidence. It was not pursued seriously, presumably because there was no material on the record to support it. It has no merit. It should have been abandoned by Mr. Kafuko, who did not seem to appreciate the necessity for evidence of consistency in a case like this.

With regard to ground No.7 Mr. Kafuko was again not able to press his point that there was an omnibus conviction although he refused to abandon it. All he could concede was that it was a weak ground. As already pointed out, different appellants appeared in different overt acts. The trial Judge was alive to this fact. This is how he dealt with the matter of the convictions.

> ***"In view of what I have stated herein above, and in total agreement with both Assessors, I do find that the prosecution has lived to the expected standard of proving beyond reasonable doubt all the over acts against the accused and are found guilty as charged and are convicted of the charge of treason contrary to Section 25(1)(c) of the Penal Code Act."(sic)***

The Judge had earlier in the judgment dealt with the overt acts separately and had found that each appellant participated as alleged in the relevant overt act. He finally convicted them in the above terms. There are nothing wrong with that. There was no omnibus conviction and this much was conceded by Mr. Kafuko. This ground fails.

We will consider the remaining grounds 2 and 8 together. The contention in these grounds was that the evidence led by the prosecution was given by accomplices; that it required corroboration but there was none. Therefore, it was not sufficient to warrant the convictions of the appellants.

It is not disputed that PW1 and PW2 are Police Officers or that they participated in the meetings where the plot to overthrow the Government was hatched. It was argued that PW1 and PW2 were not genuine spies because (a) they selected some of the meeting places and even set up their own camp in a forest and took some of the appellants there in order to convince them that they were serious in the matter.
In the circumstances, it was contended, the witnesses were accomplices whose testimony required corroboration. The cases of: ***Ndibowa & 2 Others v. Uganda*** Criminal Appeal No.2 of 1988 Supreme Court (unreported) ***Brannan v. Peek (1948) IK.B 68*** and ***Jathasa v.R.*** (1969) E.A. *459* were cited in support of the argument.

The law regarding Agent Provocateur seems to us to be fairly well settled. It is this. An Agent Provocateur is a person who seeks to encourage another person to commit an offence in order to detect or obtain evidence of the commission of the offence by that other and to secure his conviction. In other words, he is a spy. in the case of a genuine Spy there is no need for corroboration of his evidence. See: **Ndibowa (supra), Juthwa** (supra) ***Mullins v. R.*** **(1848) 3**

Cox 526 and ***Githea v. R.*** (1956) 23 EACA 440.

As was pointed out in those cases, where an Agent Provocateur goes beyond the role of a genuine Spy then he becomes an accomplice. In that case corroboration of his evidence is required. If there is no corroboration then the Court must warn itself of the dangers of relying on the uncorroborated evidence of the accomplice before convicting the accused person.

In this case the trial Judge correctly summed up this legal position to the Assessors. He also directed himself accordingly in his judgment before holding that the witnesses were not accomplices but genuine spies.

With respect, we are satisfied that the trial Judge came to a correct finding on the evidence before him which clearly showed that the meetings were arranged by PW1 and the appellants and others not before Court. In our view even if these witnesses had arranged the places and even persuaded the appellants to go there, that alone could not amount to reason. Treason lay in what was said at those meetings and not the meetings themselves. If the alleged treason was discussed by the appellants then PWI and PW2 could not be guilty of any impropriety. The actors would have been the appellants.

But this defence was fraught with another difficult. The appellants' case was, as already pointed out, that they never attended the alleged meetings.

If that is so then what the prosecution witnesses did at the meetings was immaterial. This is why **Brannan** (supra), must be distinguished from this case. In that case the Court found that the Police not only committed the offence but encouraged and persuaded the reluctant appellant to commit the same.

In the instant case the plotters had already begun to discuss their plans before PW1 and PW2 came in as spies. Mr. Muguluma's main point was that the appellants were not present at

those meetings. Therefore his claim that PWI and PW2 were not spies at the meeting as far as the appellants are concerned was untenable. The attack on PWl and PW2 that they were not spies faded away.

Now, were they there? The evidence came from PWI and PW2. The trial Judge found these witness to be substantially truthful. Their evidence clearly showed, in respect of Kato, that 29-10-86, he attended a meeting at Bahai Temple where they agreed to fight and remove the Government. He also attended the meetings of 12-1 1-86 at the same place (he appears in a photograph taken at the meeting). On 30-11-86, he attended the meeting at Jinja, and appears in the photograph which was taken there and then. He attended the meeting at Jinja on 17-12-86, and appears in the photograph of that meetings.

On 1-1-87, he was at the meeting at Lugogo where he even explained the coup plans. On 2-1-87, he met PW1 at a shop in Kampala. On 3-1-87, he attended a meeting with the group's patron, Prince Kimera, at Kibuye where the coup was again discussed. Finally, he was arrested in the last meeting of 6-1-87, at Bahai Temple.

According to PW1 and PW2 Kato was an active participant in the discussions at those meetings. This is borne out by the tapes. Mr. Kirumira (PW5) was challenged in cross-examination at the trial as to how he could tell the voices of the concerned appellants on the dubbed tapes. He explained that he had listened to the tapes several times and had come to know those voices of the concerned appellants very well.

There can be no doubt that treason was discussed at those meetings. We are satisfied that Kato was properly convicted.

The same goes for Kyeyune. He attended the meeting of 29-1-86, at Bahai Temple and clearly agreed that the Government must be overthrown. He and his colleagues repeated the same thing on 3-12-86, at Kampala Fire-Brigade. He appears in the photograph which was taken there and then. On 3-1-87, he attended the Kibuye meeting. At all these meetings the treason was discussed. This is confirmed by the tapes. Like in the case of Kato the evidence

of the photograph and the tapes clearly corroborated that of PW1 and PW2.

Lubulwa was also rightly convicted in our opinion. He did not only participated in the meetings of 30-11-86 (which as we think is also supported by a photograph) 1-12-86, 1-1-87, where he explained the coup plans and 6-1- 87, but also led PW1 to Mbuya Military Barracks and showed him targets to be attached during the coup.

The convictions of Muwonge and Bwanika are doubtful. They were charged only in overt act No.10 which relates to the very last meeting. They never attended any other meeting. They only evidence against them is that they attended that meeting on 6-1-87, at Bahai Temple where they were arrested with the other appellants. Many others escaped.

There is no evidence that either Muwonge or Bwanika said anything at that meeting. The claim by PW1 and PW2 that these two appellants were introduced as commandos and that they willingly accepted their assignments by Late Kibuuka is not clearly borne out by the tapes. Yet the trial Judge appears to have heavily relied on that claim in convicting them.

In the circumstances we are of the view that the charge against them was not proved beyond reasonable doubt. We accordingly allow their appeal, quash the convictions, set aside the sentence and order that they be released from custody unless they are held there on other lawful grounds. The appeals of Kato, Kyeyune and Lubulwa alias Kiganda are dismissed.

Dated at Mengo this 19th day of July 1993.

S.T. MANYINDO
DEPUTY CHIEF JUSTICE

A.H.O. ODER
JUSTICE OF THE SUPREME COURT

H.G. PLATT
JUSTICE OF THE SUPREME COURT