

THE REPUBLIC OF UGANDA  
IN THE CHIEF MAGISTRATE'S COURT OF NWOYA AT ATIAK.  
CRIMINAL CASE NO. CO. 17 OF 2024

UGANDA ::: PROSECUTION

VS

KAAKATI MEDDY ::: ACCUSED

BEFORE: H/W KYEMBE KARIM ESQ

LEARNED MAGISTRATE G.I

**JUDGMENT**

**Introduction**

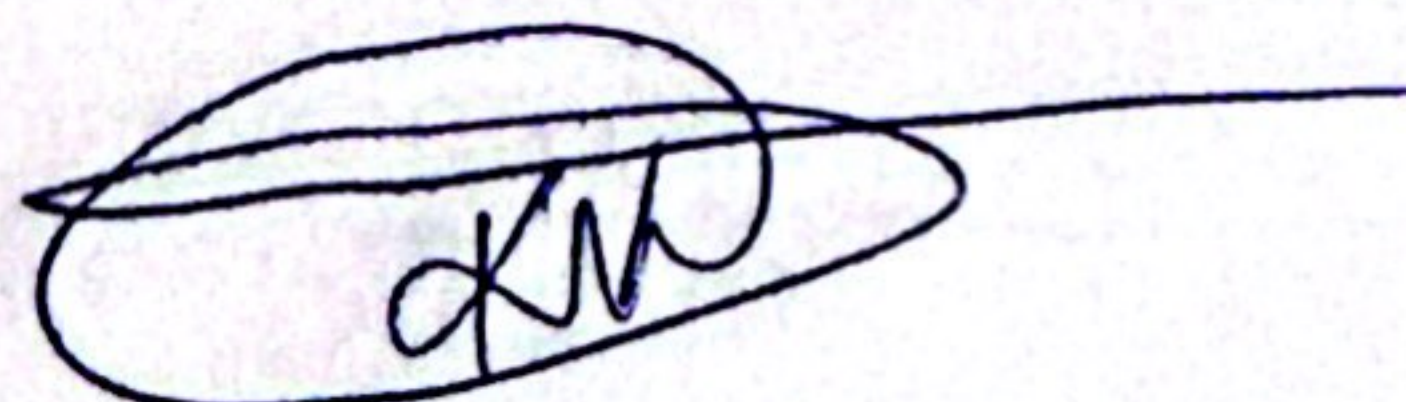
By change sheet dated 08<sup>th</sup>/February/2024 and sanctioned on 12<sup>th</sup> February, 2024, the Accused was charged with one <sup>Count</sup> ~~count~~ STEALING A MOTOR VEHICLE Contrary to sections 265 of the penal code Act cap 120, laws of Uganda.

**Brief background**

It was the prosecution's allegation that the accused and others at large, on the 24<sup>th</sup> day of January, 2024 at Opiro, Pabbo sub county, in Amuru district, stole a motorcycle Reg. No. UFE 880M bajaj red in colour valued at UGX. 5.300.000/= (five million three hundred thousand only,) the property of a one, Kamyia Henry.

When the charges were read to the Accused, he denied the charges and a plea of NOT GUILTY was accordingly entered.

By denying the charges, the Accused put in issue all and every essential ingredient of the offence with which he is being charged.





The prosecution bears the onus to prove the ingredients beyond reasonable doubts as categorically laid out in MILLER VS MINISTER OF PENSIONS (1947)2 ALLER ER 372.

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution case;- Not on the weakness of the accused's defense, as held in SEKITOLEKO VS UGANDA (1967) EA 531.

Bearing the above principles in mind, I have also cautioned myself that the accused has no obligation to prove his innocence.

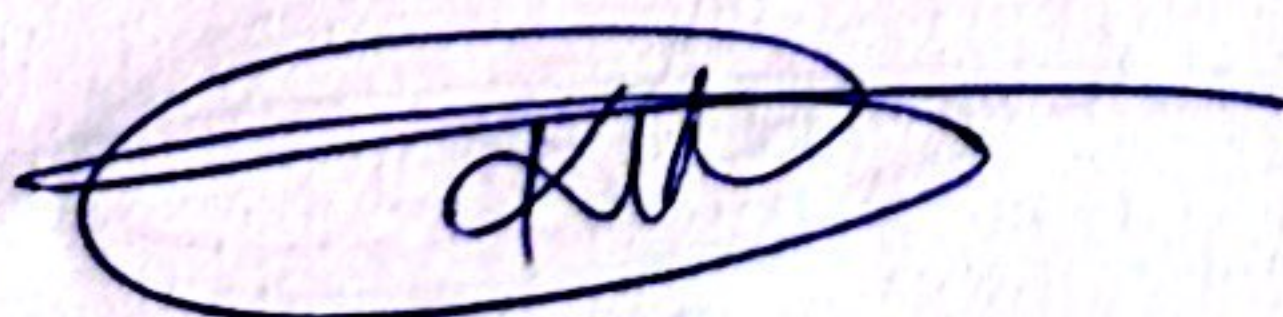
In attempt to prove the charge, the prosecution called 3 (three) witnesses.

Prosecution first called the complainant whose testimony was taken down as **Pw1: Kamya Henry**

He testified that he is 38 Years Born Again and he took Oath in Luganda. He told court that he is a Farmer, Resident of <sup>Opira</sup> ~~Opium~~ Village, Pabbo Sub county, Amuru Distruct

He testified that he knows the accused person as a resident of their village; that he first came on the 19<sup>th</sup> of January to ask Pw1 for a Motorcycle of which he wanted to use to collect sacks of maize (100) in number; that the Motorcycle was Reg no. UFE 880M Red Bajaj having been bought for 5,000,000/=.

Pw1 testified further that he (Pw1) lent him (accused) the motorcycle to use for one week, even Mulani (Imran) was around; that before the end of the week on the 26<sup>th</sup>, Pw1 asked him (accused) where his(Pw1's)





bike was and he (accused) said his brother had it, and he was at home where he was.

Pw1 testified further that, on that day he (accused) didn't have the motor cycle, but that, before, his brother had picked the piece of the number plate that had been broken, from pw1's motor cycle at home.

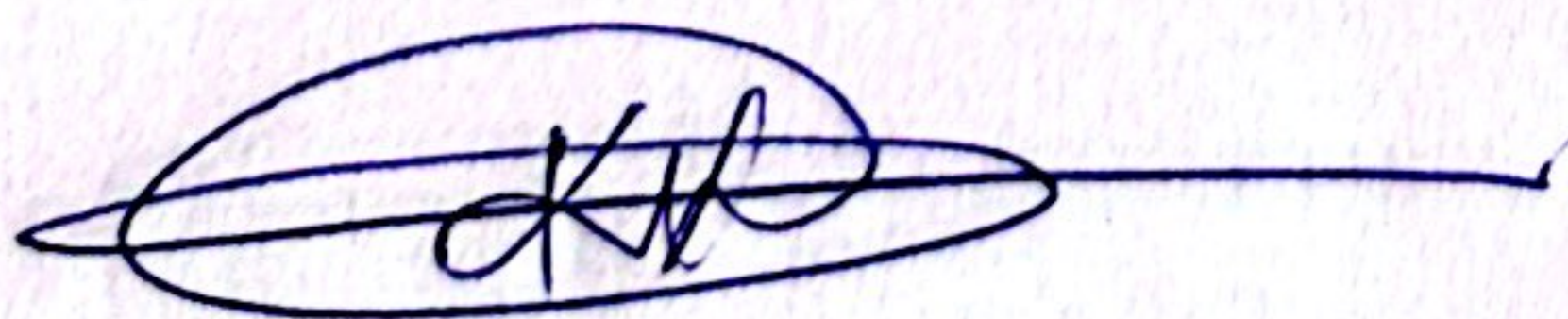
He testified further that they used to take the bike on a daily and they would bring it back at 6:00pm; that they then looked for the accused's brother on phone but in vain, upon which they went to the LC1 and subsequently, to the accused's home whereof they asked him for the motorcycle and he said his brother had it but that he was also not seeing him.

Through Pw1, Prosecution exhibited Purchase documents in names of Kanya Henry Kibogoza (Pw1) for the alleged stolen motor cycle and the same was admitted as **PEX1**.

Pw1 testified further that when they took the accused to the scene of crime, he accepted that indeed Pw1 gave him the motorcycle but it is his brother who took it and that his brother's name is MUGANZA FAROUK.

Pw1 concluded by asking court to help him get his motorcycle back because it is the one that has been generating income for him to look after his family and that if the accused fails to give it back, then, he should serve a sentence.

**On Cross- Examination by the Accused,** Pw1 testified further that he has seen the accused for the last 5 years; that when the accused asked for the motorcycle, Pw1 simply asked him if he (accused) would keep the motor cycle safe and he(Pw1) was convinced that the accused would keep it safe, upon which, Pw1 told the accused that he doesn't know the accused's brother, but he (Pw1) was giving the motor cycle to





the accused. Pw1 restated that he had seen the accused for 5 years and he had never heard anything bad about him.

Pw1 continued to testify that at that time, he didn't take any pictures and neither was chairman present but that Pw1's neighbor was present and even the store man where they were keeping the maize was there and Pw1 can bring the boss. He testified further that he can bring the person for whom they were ferrying the farm products and that even his (pw1's) neighbor witnessed that.

At that point, the accused told court that his heart is aching, and he couldn't ask any more question.

**On re -Examination by the learned State Attorney,** Pw1 re-stated that he has known the accused for 5 years, with no problem; that he (Pw1) was sure the accused would return his motor cycle as he even used to give to Pw1 for taking his children to hospital. The witness was thereupon discharged.

Prosecution also called **PW2: Imran Kyazze,** 37 years, Moslem by faith who Affirmed in English. He told court that he is Opiru Village Resident of Pabbo SC, Amuru District. And he knows the accused. He testified that they stay on the same village together with the accused and they have stayed with him as a friend for some time; that the complainant has never asked anyone for an agreement when they were taking his motor cycle; that on the 19<sup>th</sup> of January 2024, he (Accused) came with his brother Farouk while he (Pw2) was in the house and told him(Pw2) that a one, Meddy had come with his brother





to ask for the motor cycle. That Pw2 asked Pw1 if he knew the accused's brother, of which he responded that he didn't know the brother but he knew the accused; that upon that response, Pw2 told Pw1 to go ahead and give the motor cycle to the accused since they had known him for some time.

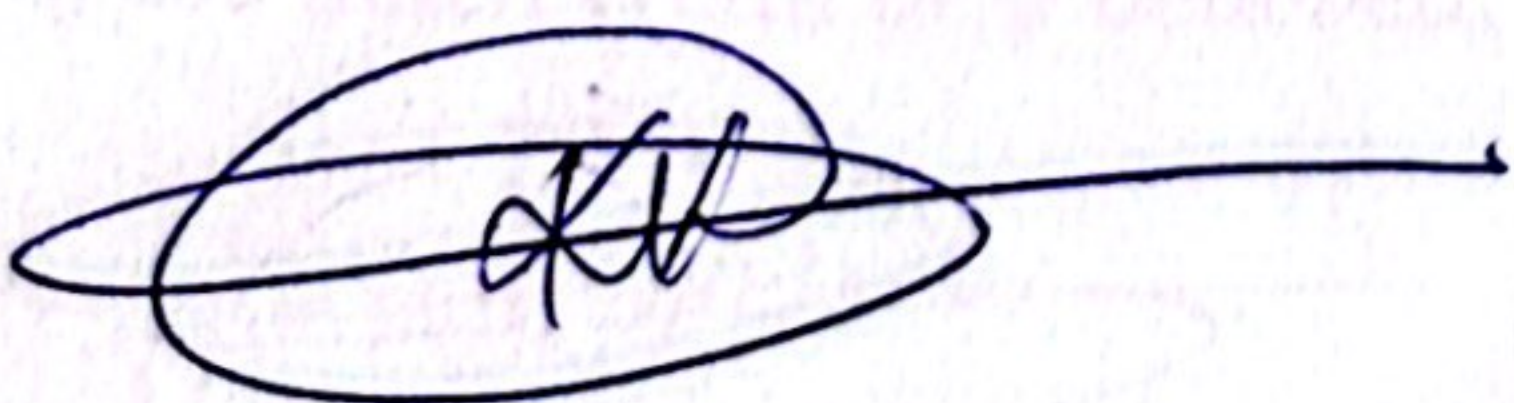
Pw2 testified further that, the accused and his said brother were given the bike initially for one week; that he rode the bike for less than a week; that on the fateful day, Pw2 asked the complainant about the whereabouts of the motor cycle but he said he wasn't seeing the brothers; that he had gone to check on the accused's brother but he wasn't at his home and his known numbers were switched off and that's when Pw1 approached the local council officials.

He went ahead to testify that they then went to police and the accused was arrested and that's why he is in court today. He further told court that the fact that the accused did not help them in finding ways of recovery of the motor cycle, it may cause suspicions on his side.

No questions were led in cross examination or re-examination.

**On being questioned by court,** Pw2 testified further that he did not see the accused when they were picking the motorbike; that Pw1 told Pw2 that he had given the motor bike to the accused on the 14<sup>th</sup>/01/2024; that it was a few days after the motor bike was taken that the accused came and told Pw2; that they used to bring back the motorcycle everyday evening and it is the accused's brother who used to bring it back; that Pw2 had seen the accused's brother for only one week.

On the 30/04/2024 when the trial resumed, prosecution called their last witness, **Force No. 63663 D/C MUKANGA KEFAH**, 34 Years of age, Christian by faith and his testimony was taken down as **PW3**.

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He testified that he is a police officer attached to Amuru c.p.s; that he knows the accused person as a suspect in a theft of a motorcycle; that Pw3 was the investigating officer in this case; that it was the month of January while on official duty in office and he received 2 people, that is, Pw1 and the accused.

That Pw1 explained to them that the accused came to him and told him / requested him to give a motorcycle to this brother who was jobless; that Pw1 initially refused but the accused kept on insisting that it is his brother and has no Criminal record; that it is against that background that Pw1 gave out the Motorcycle Bajaji Reg. no. UFF880M to the brother of the accused.

That Pw1 explained to them further that after one week, the accused's brother, a one Farouk disappeared with the motorcycle; that when Pw3 interrogated the accused, he admitted to the happenings, whereupon Pw3 asked Pw1-Kamya to bring witness, and they all gave evidence to the effect that it all happened as earlier explained.

Pw3 testified further that Pw1 claimed he had the number of the accused's brother and he called him but it was switched off; that Pw1 also tried to call the parents but they also intimated that he was not there in the village and that that's all Pw3 did on this file.

**No questions** were led in cross examination or re-examination and the witness was accordingly discharged.

Thereupon, prosecution closed its case and court ruled that a prema facie case had been established.

This court reminded itself of the principle laid down in **WIBIRO ALIAS MUSA VS REPUBLIC (1960) EA 184** Whereof it was stated that:-

*"this court is not even obliged at this time to find whether the evidence is worthy of too much credit or if believed, is weight enough to prove the*





*case beyond reasonable doubts. That conclusion can only be made after the defence case is heard."*

All the three modes of defence were explained to the accused. That is;

1. Give evidence on oath whereby she would be subjected to cross examination.
2. Give evidence not on oath whereby she is not subject to cross examination.
3. Elect to keep silent.

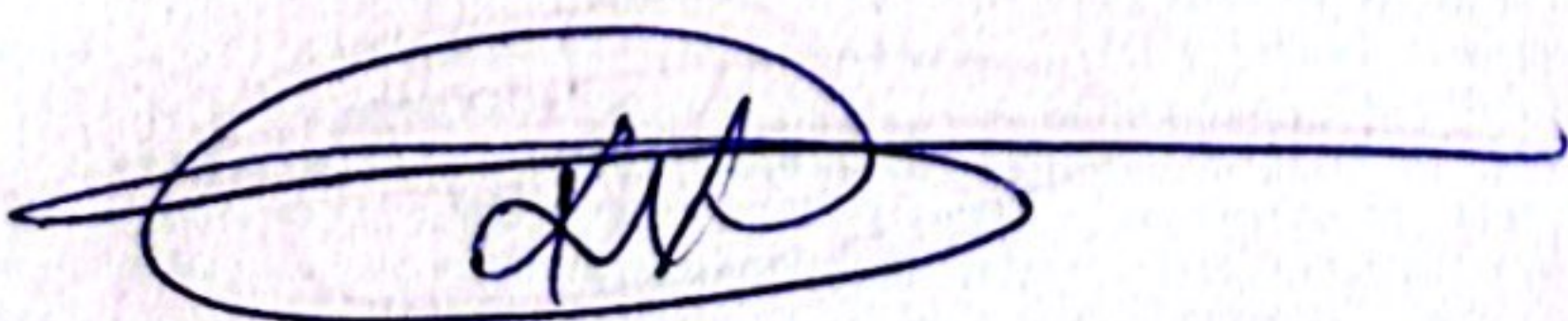
The accused opted to give evidence on oath.

Court adjourned the case upto the 21<sup>st</sup> /05/2024 for defence hearing, and the accused was further remanded.

When the matter resumed on the 30<sup>th</sup>/05/2024, before the defence case was heard, the accused expressed desire to sell his land and compensate the complainant. The prosecution did not have objection but declined to involve itself in the processes of raising that money. Court advised the accused to contact the relatives and direct them how he wished to be assisted.

After several adjournments without progress with what the accused had proposed, prosecution prayed that the hearing resumes and the accused testified as his first witness. His testimony was taken down as **Dw1- Kamy Meddie**. He asked for a translator and **Force No. 78258: detective constable Ibanda Aron** assisted court translating from English to Luganda & Lusoga.

Dw1 testified that he is 42 Years of age, Peasant Farmer, Muslim by faith, Resident of Apil, Pabbo Sub-County, Amuru District; that on the 24<sup>th</sup> June /2024, Pw1 came to his home and told Dw1 that his brother had stolen his motorcycle whereupon, Dw1 went with Pw1 to the LC1





who advised them to go and sort their issues at police; that upon reaching the police, Pw1 made a statement that Dw1 went with his brother to Pw1's home and they asked for the motorcycle, which Pw1 handed over to Dw1 who subsequently gave it to Dw1's brother.

Dw1 testified further that, previously, he had been approached by Pw1 who asked him to come help him cut trees; that Pw1 told Dw1 that the machine was spoilt, but if Dw1 had money, he should give Pw1 and he repairs the machine and that indeed, Dw1 gave Pw1 150,000/=.

That when Dw1 left, his brother remained at the Apil Trading Centre whereof Pw1 and Dw1's brother developed a friendship; that on the day of cutting Dw1's tree, Pw1 said that the machine had some pending work and he asked for 2 days then he would later do Dw1's work; that Pw1 then gave the machine to Dw1's brother to cut down the tree, but he however didn't pay him; that the following morning, Pw1 told Dw1 that his brother didn't know how to use the machine and even spoilt it; that Pw1 then gave Dw1 another person to do his work at the very site and that they used to move on that motorcycle which is allegedly stolen.

Dw1 went on to testify that one day, at around 5:00am in the morning, Dw1 heard a motorcycle park at his brother's home and he heard Pw1 give him work to drive some items to Pabbo; that on that day they ferried a couple of items like charcoal, maize etc. which transportation went on for 2 days and Dw1's said brother later disappeared with the motorcycle and that's how Dw1 was later arrested on allegations that he had stolen the motorcycle; that even when this court asked if the store man could come and testify, the said store man has not turned up because he knows the truth. Dw1 concluded by stating that Pw1 has made him leave his children and that they are not going to school.



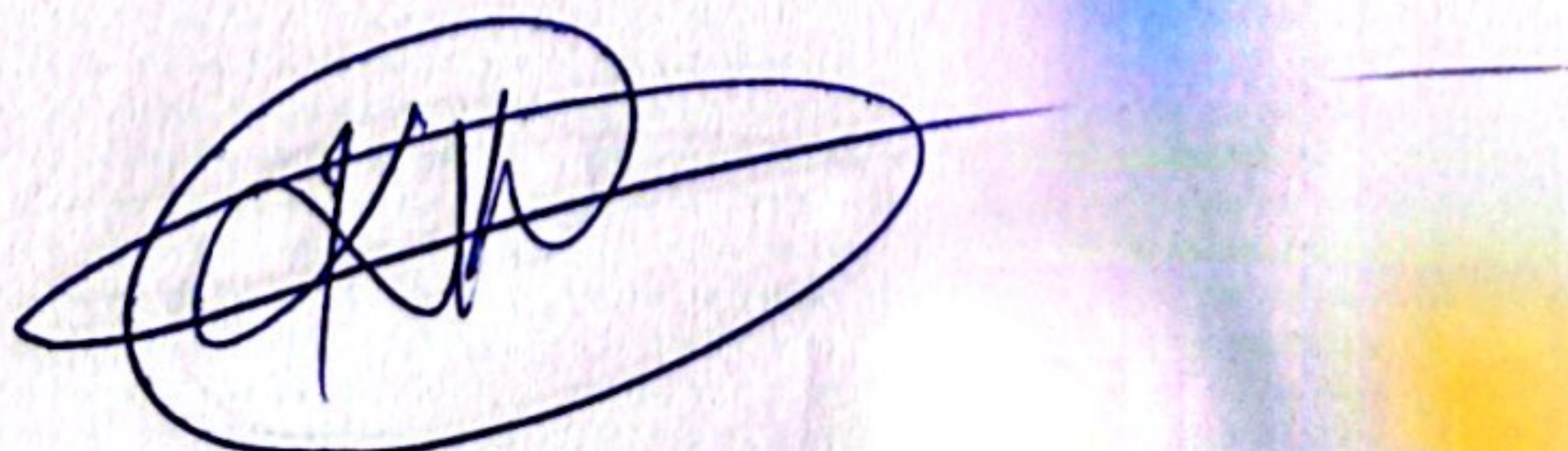


**On cross- Examination by the prosecution,** Dw1 testified further that his said brother is called Farouk Kamula; that they were staying next to each other; that Dw1 got to know Pw1 first; that it is not true that Dw1 guaranteed his brother to Pw1 and he doesn't even know how they became friends; that Dw1 told Pw1 while still in Pabbo that he could help look for his brother (Kamila Farouk) because he(Dw1) knew his home in Kamuli but Pw1 refused; that Dw1 has been in that place for 4 years and he has never been charged of any offence and this is the first allegation that has made him reach police; that Dw1 had been friends with Pw1 because Dw1 even gave Pw1 work to do for him various times.

**On being questioned by Court,** Dw1 testified further that he was the first to come to that area; that Dw1 is the one who invited Pw1 to come; that Dw1 tried to call his brother and his number was switched off but he asked his elder brother to arrest him at first sight; that Dw1 doesn't know why Pw1 trusted his brother; that Dw1 doesn't even know what they agreed; that Dw1's land lord fears court but he is one of the people who would help Dw1 be a witness but he did not have the landlords number. The witness was then discharged, defence case closed and the matter set down for judgment.

The evidence of the only eye witness- (pw1) was tainted with motive to lie, having been jilted by the accused as a girlfriend.

It would have served the prosecution better to discredit that evidence through cross examination, or calling a rebuttal witness but that was not done.





## **THE LAW AND ANALYSIS**

The offence of Stealing a motor vehicle is provided under **Section 261 and 265 (a) of The Penal Code Act**. The prosecution had to prove each of the following essential ingredients beyond reasonable doubt;

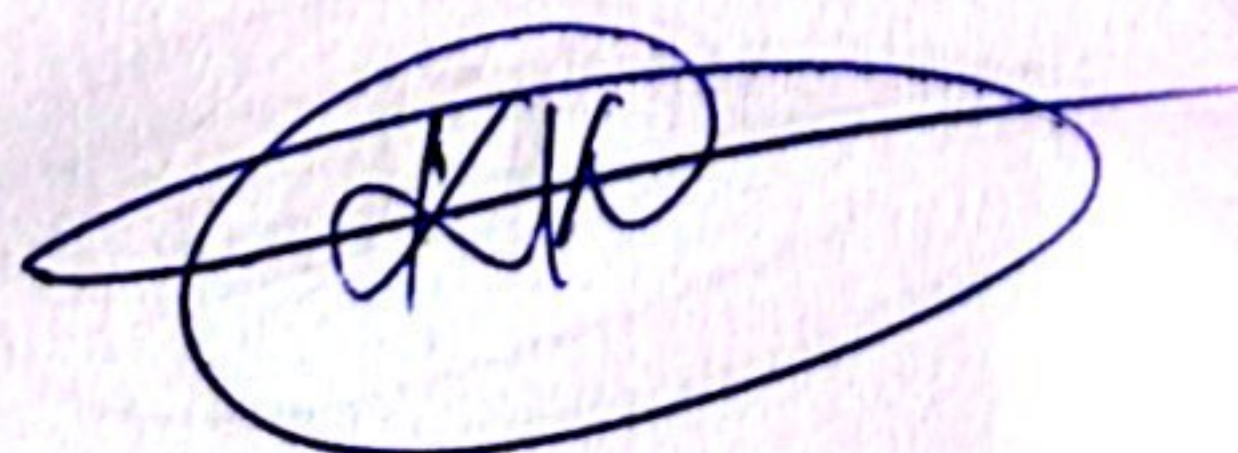
1. The motor vehicle in issue belonged to or was in possession of the complainant.
2. The motor vehicle was intentionally taken wrongfully or without a claim of right.
3. With the intention to permanently deprive the owner of the motor vehicle.
4. The accused took or participated in taking the motor vehicle.

The above were discussed in detail by Justice Steven Mubiru in **UGANDA VERSUS OMONA FRANK CRIMINAL APPEAL NO. 15 OF 2018**.

A motor vehicle is a self-propelled vehicle that runs on land surface and not on rails. It is a mechanically propelled vehicle made, intended or adapted for use on roads. **SECTION 2 (1) (OO) OF THE TRAFFIC AND ROAD SAFETY ACT, CAP 361**, defines "motor vehicle" as any self-propelled vehicle intended or adapted for use on the roads.

Possession within the meaning of this section refers to effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession.

The legal position in Uganda, as stated by the Supreme Court in **Sula Kasiira vs Uganda S.C. Crim. Appeal No. of 1993**, regarding what the crime of theft is, stands as follows:-





*"There must be what amounts in law to an asportation (that is carrying away) of the goods of the complainant without his consent... The removal, however short the distance maybe, from one position to another upon the owner's premises is sufficient asportation..."*

**Ingredient 1:**

***The motor vehicle in issue belonged to or was in possession of the complainant***

Through Pw1, Prosecution exhibited Purchase documents in names of Kamyia Henry Kibogoza (Pw1)- the complainant, for the alleged stolen motor cycle and the same was admitted as **PEX1**.

In his testimony in chief, Pw1 testified that:

*"when they took the accused to the scene of crime, he accepted that indeed Pw1 gave him the motorcycle but it is his brother who took it and that his brother's name is MUGANZA FAROUK."*

On the strength of the evidence above, I am satisfied that the alleged stolen motor cycle was the property of Pw1- the complainant and that he had been in possession of the same at all material time.

This ingredient was proven by the prosecution beyond reasonable doubts.

**Ingredient 2:** \*

***whether the motorcycle was intentionally and wrongfully taken or without a claim of right.***

The prosecution had to prove what amounts in law to an asportation (that is taking away) the motorcycle from possession of the complainant (pw1), without the complainant's consent or any claim of right.



The offence of theft is committed when the vehicle is taken by a person not having lawful access. **Section 254 (1) of The Penal Code Act**, defines theft as "fraudulently and without claim of right [taking]

The evidence before this honorable court is contradictory.

Pw1 told court on cross-examination that:

*"when the accused asked for the motorcycle, I simply asked him if he (accused) would keep the motor cycle safe and I was convinced that the accused would keep it safe, upon which, I told the accused that I don't know your brother, but I am giving the motor cycle to you."*

*"I didn't take any pictures and neither was chairman present but my neighbor was present and even the store man where they were keeping the maize was there and I can bring the boss."*

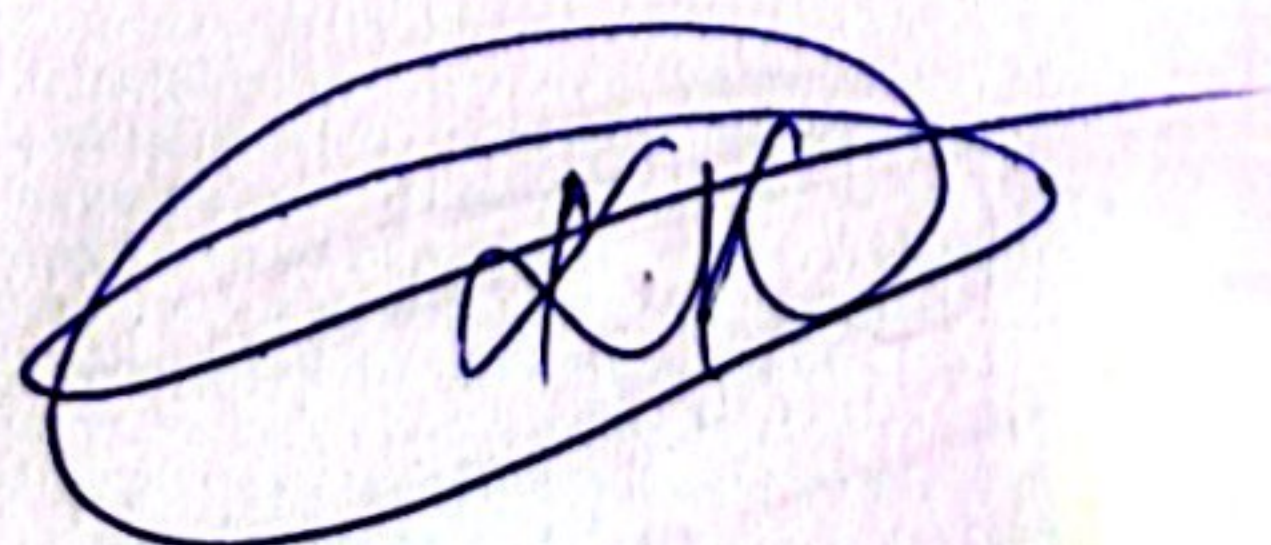
PW2 on the other hand told court that:

*"On the 19<sup>th</sup> of January 2024, pw1 came while I was in the house and told me that a one, Meddy (accused) had come with his brother to ask for the motor cycle."*

*"That I asked Pw1 if he knew the accused's brother, of which he responded that he didn't know the brother but he knew the accused"*

On the other hand, the accused while testifying as Dw1 denied ever being given the motorcycle. On cross examination, he testified that:

*"it is not true that I guaranteed my brother to Pw1 and I don't even know how they became friends"*





The question of whether the motorcycle was intentionally and wrongfully taken or without a claim of right is answered in the negative.

I say this, because;

*First*, I am not satisfied that the motor cycle was given to the accused personally. It is the evidence of the prosecution that the motor cycle was given to the accused's brother after ascertaining from the accused if he knew him.

The evidence before me shows that the motor cycle was given to the accused's brother on the personal oral guarantees of the accused, which on the face of it appears to be a civil transaction.

Now that the motor cycle has disappeared, the accused is being dragged into the transaction after failing to trace the said accused's brother.

*Second*, even if it is true that the motor cycle was indeed handed to the accused (*which I have already said I am not satisfied with the truthfulness thereof*), the evidence before me shows that it was on the free volition of the complainant-Pw1. I have difficulty believing that the "taking" of the said motor cycle was "**wrongful**" as to amount to a criminal intent.

For those reasons, it is my finding that this ingredient was not proved by the prosecution beyond reasonable doubts.

### **Ingredient 3:**

***anything capable of being stolen.*** Theft involves an ***unauthorised taking, keeping, or using of another's property.***

It is committed by a person who has no legal justification in taking possession of the property in issue.





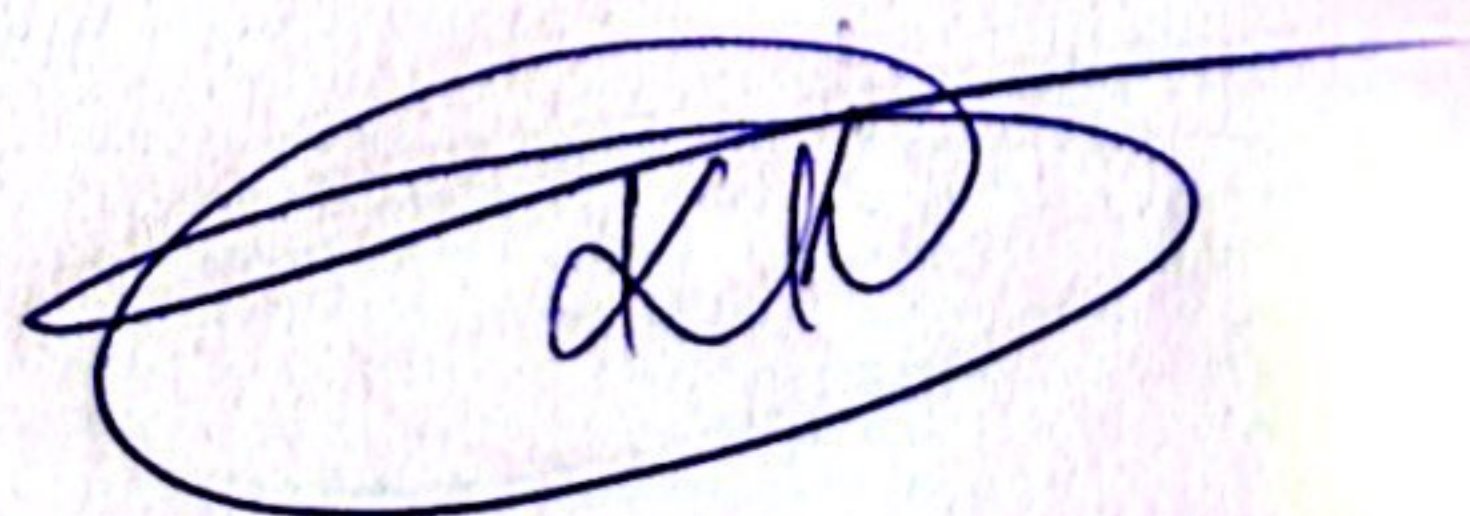
The evidence before me shows that the subject matter was a motor cycle. No doubt, a motor cycle is asportable and cable of being stolen. And as it has never been recovered, this court is safe to presume that it indeed was stolen. Prosecution proved this ingredient to the satisfaction of court.

However, unlike the offence under common law which can only be committed by a person who initially did not have possession of the item, under **Section 254 (1) and (2) of The Penal Code Act**, the actus reus of stealing may occur either by "taking" or "converting" the thing capable of being stolen.

These provisions are explicit that stealing can also be committed by conversion. The fraudulent taking of property belonging to another is stealing just as the fraudulent conversion of property belonging to another to the use of the taker or to the use of any other person is also stealing.

What is essential in either situation is that the taking or the conversion must be fraudulent. Whereas at common law theft is an offence against possession and a person already in possession of property cannot commit theft of it. **Under Section 254 (1) and (2) of The Penal Code Act**, stealing can be committed by conversion. This is one of the areas that give the offence of stealing under a wider scope than the offence theft.

Conversion is committed by a person who deals with chattels not belonging to him or her in a manner inconsistent with the rights of the owner. In **Garner B.A. (ed.), Black's Law Dictionary (8th edn., 2004)**, at 1453, conversion is defined in terms of tort and criminal law as: "the wrongful possession or disposal of another's property as if it were one's own; an act or series of wilful interference,





without lawful justification, with an item or property in a manner inconsistent with another's right whereby that other person is deprived of the use and possession of the property."

Therefore, the "act of taking" as an actus reus of the offence includes taking possession, refusing to give up possession upon demand, disposing of the goods to a third person, or destroying them, provided that it is also established that there is an **intention** on the part of the accused in so doing to deny the owner's right or to assert a right vested in the owner.

Stealing of a motor vehicle involves a person, who without having the consent of the owner or other lawful authority, takes the vehicle for his own or another's use or, knowing that the vehicle has been taken without such authority, drives it away.

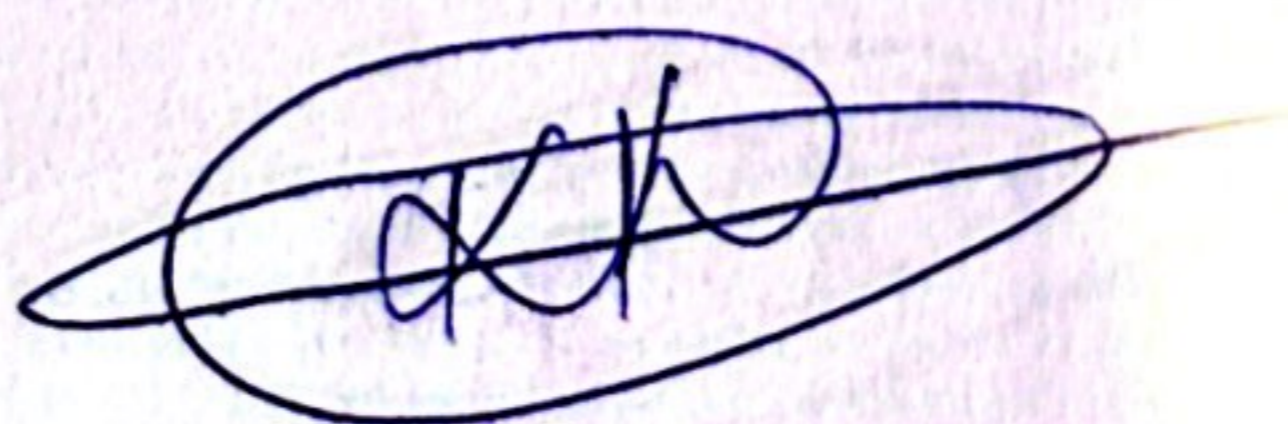
Stealing of a vehicle has a wider scope than the offence theft, in that stealing can also be committed by conversion. The offence is committed when the vehicle is taken by persons not having lawful access, or converted by one who had lawful access. For conversion to amount to stealing, it must be done with one of the fraudulent intents under **Section 254 (2) of The Penal Code Act**.

As I have already resolved in ingredient 1, I am not satisfied that the motorcycle was ever given to the accused. Neither was it discovered in his possession. He therefore could not have converted it.

For those reasons, I also not satisfied that this ingredient was proved beyond reasonable doubts by the prosecution.

**Ingredient 4:**

***With the intention to permanently deprive the owner of the motor vehicle.***





The evidence before this court, that is, testimony of PW1, PW2 and PW3 shows that the motorcycle was handed to the accused's brother with alleged oral guarantees from the accused that he knows him. I have failed to see evidence that shows that the accused ever received rode or even kept custody of that motor cycle at any one time. I am not satisfied that the prosecution discharged the burden of proof on this ingredient either.

An accused is entitled to certain defences, for example, honest claim, of right under **Section 7** of the Penal Code Act, Mistake of fact under **Section 9** and compulsion under **Section 15** of the PCA, amongst others.

The accused in this case raised the defence of general denial. I am satisfied that the prosecution has not dislodged his defence.

In **UGANDA VS WANYAMA STEVEN CRIMINAL SESSION CASE NO 0405/2015** Hon. Justice Steven Mubiru held that for the prosecution to secure a conviction there must be credible and direct circumstantial evidence placing the accused at the scene of crime as an active participant in the commission of the offence.

In **UGANDA V WANYAMA STEVEN** supra, court further held that:

*“ in a case depending exclusively on circumstantial evidence, the court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.”*

*“The circumstances must be such as to produce moral certainty to the exclusion of any reasonable doubt. It is necessary before drawing the inferences of the accused's responsibility for the offence from circumstantial evidence to be sure that there are no*

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other co-existing circumstances which would weaken or destroy the inference as held in **SHUBADIN MERALI & ANOR VS UGANDA (1963) EA 647.**”

This is however, not to say that the complainant cannot sustain a cause of action against the accused in this court constituted as a civil court.

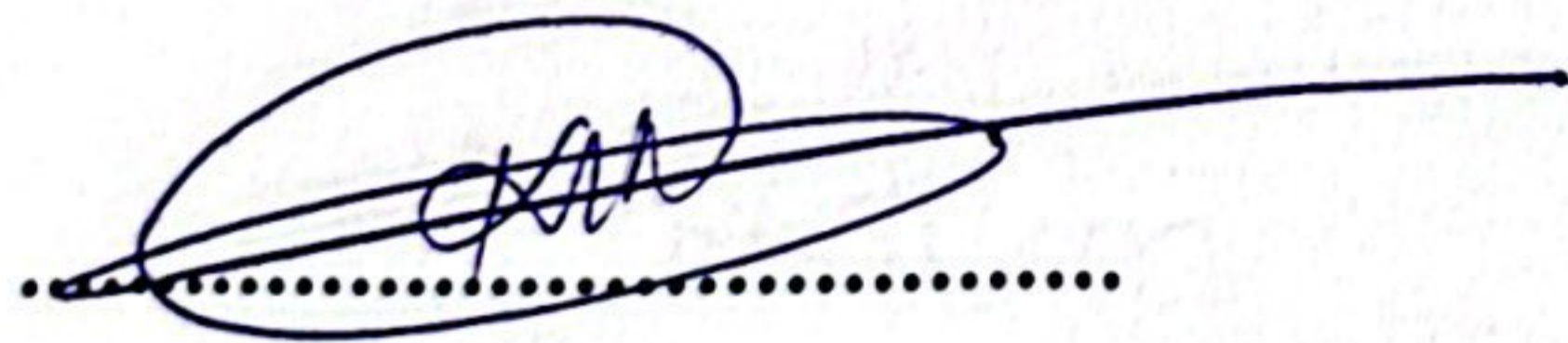
In conclusion therefore, the evidence before me as a whole does not establish beyond reasonable doubts that the accused stole the complainant's motor cycle. Neither am I satisfied that he had any fraudulent participation and motive to deprive the complainant of the subject motor cycle.

Accordingly, I find the Accused not guilty and acquit him of the offence of stealing a motor vehicle contrary to **Section 265 of the Penal Code Act.**

He should be set free forth with unless he is being held for any other lawful reason.

I so order.

Dated at ATIAK this 06<sup>th</sup> day of August 2024.



**HIS WORSHIP KYEMBE KARIM**

**MAGISTRATE G.1**