

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE’S COURT OF NWOYA AT ATIAK.

CRIMINAL CASE NO. CO. 12 OF 2023

UGANDA :: PROSECUTION

VS

A1. BINEN DANIEL GINO

A3. OCHAN DENIS :: ACCUSED

A3. OCAKACON INNOCENT

BEFORE: H/W KYEMBE KARIM ESQ

LEARNED MAGISTRATE G.I

RULING

Introduction

By change sheet dated 4th/October/2023 and sanctioned on 5th October, 2023, the Accused were jointly charged with one court STEALING A MOTOR VEHICLE Contrary to **Section 265** of the Penal Code Act cap 120, laws of Uganda.

Brief background

It was the prosecution’s allegation that Binen Danielgino, Ochan Denis, Ocakancon Innocent and others still at large stole a motor cycle Reg. No. UFY 131C Bajaj CT Red in colour valued at 5,000,000/=(five million shillings only) the property of Kilama Denis.

When the charges were read to the Accused, they 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 have no obligation to prove their innocence.

In attempt to prove the charge, the prosecution called 1(one) witness.

Prosecution called **Kilama Denis**, the complainant, aged 23 years, resident of Lulai village, Lulai parish, Opar subcounty and a catholic by faith who testified and his evidence was taken down as **PW1**.

He told court that he knows the accused persons; that he came to know A1, A2 and A3 the day they were arrested; that on the 24th of September, 2023, they had a burial at their place; that they left the burial at 8:00pm because PW1 was not feeling well; that when he came back, PW1 pushed his said motorcycle (UFY 131 C) CT Bajaj inside the house; that the motorcycle was valued at approximately, 5,000,000/=; that PW1's

mother and children are the ones that sleep in the house, whereof he had parked.

PW1 further testified that he woke up at midnight to check on his motorbike and that he found it still there; that when he checked again at around 3:00 am, he found that the motor bike was now missing and that the door was completely broken; that his mother had not yet returned but the children were inside.

PW1 further testified that he went to police immediately; that after recording his statement he was called the next morning by the CID that suspects had been found; that he found when A3 was the first suspect to be arrested; that he talked to him and he was telling PW1 about some other people that he was just a Boda boda rder and he had carried people from Balcoli Paciro to Atiak, where the motor cycle had been parked.

PW1 further told court that he had carried a one, Ocakachon and Bulutali; that at that time, A3 did not know those people. He further testified that A3 is the one who mentioned A1 who was then arrested from Elegu. PW1 furter testified that He had not seen any of these people at the burial; that he got the motorcycle as a loan from Bodaboda banjs Ltd, a company based in Guulu and that he had just used it for 2 weeks; that he took all documents regarding the motorcycle to police and the documents were received in evidence and collectively exhibited as **PEX 1**.

PW1 went ahead to testify that A2's name is Omonya; that the 3rd accused person carried 4 people who include A2 (omonya) and that he could not recall the 4th person. PW1 concluded by asking this court to

teach the accused a “lesson”; that if the accused wanted to bring back the motor cycle, they should have done so on the day they were arrested.

On cross examination by A1- Binen Daniel gino, PW1 further testified that he thinks A1 was arrested because A3 mentioned his name; that PW1 has never seen A1 at PW1’s place; that A1 said in his statement at police that he is the one who stole the motor cycle.

On cross examination by A2, Ochan Denis, PW1 further testified that A3 is the one who mentioned A2(Omonya) and A1 plus another person.

On cross examination by A3 (Ochacacon), PW1 further testified that he cannot differentiate because he had not mastered their names; that A3 mentioned the names of A2 and A1 at police; that PW1 had not known A3 before; that yes, A3 was arrested because of a stolen motor bike; that A3 mentioned it himself while at police

In re-examination, PW1 further testified that he was at police when A3 was mentioning the names of A2 and A1; that they were with the investigating officer; that A3 was arrested by them (PW1) over the issue of goats; that PW1 was later told by the investigating officer that A3 was mentioning other 3(three) people over the theft of a motor cycle.

After several adjournments to enable the investigating officer to appear and give testimony but in vain, prosecution case was closed court decided to proceed without his input and set down the case for ruling on whether or not the accused have a case to answer (prima facie case).

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.

As the prosecution case was closed with testimony of only one witness, presumption is that that is all the evidence they had to present to court.

This ruling therefore is to determine whether or not a prima facie case has been established against the accused, as to require them to be put to their defence.

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 weighty enough to prove the case beyond reasonable doubts. That conclusion can only be made after the defence case is heard.”

In **UNIVERSITY OF CEYLON VS FERNANDO (1960), WLR 233** Court observed that the opportunity to cross examine the adversary witness is a fundamental one but where that opportunity is extended and the party does not take it up, does not amount to denial of that opportunity.

In this case, all the Accused duly exploited the Opportunity.

From the testimony on record elicited during examination in chief, cross examination and reexamination I find that none of the accused persons was identified by the prosecution witness. There wasn't any remote evidence linking them to the scene of crime. Whereas, it is apparent that the motor cycle registration no. UFY 131C Bajaj CT was indeed missing; I have failed to find any remote evidence of asportation, let alone, attributable to the accused. This court cannot be sure whether indeed; the motorcycle was stolen, to begin with.

I am not satisfied that this is a case where the accused should even be placed to their defence.

In the circumstances, I hereby find all the Accused not guilty and acquit them of the offence of stealing a motor vehicle contrary to **Section 265 of the Penal Code Act.**

They should be set free forth with unless they are being held for any other lawful reason.

I so order.

Dated at ATIAK this _____ day of _____ 2024.

H.W. KK

.....

H.W KYEMBE KARIM

MAGISTRATE GRADE 1