

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF NWOYA AT ATIAK
CRIMINAL CASE NO. 070 / 2024

UGANDA PROSECUTION

VS

WATMON FRANCIS ACCUSED

Before: His Worship Kyembe Karim ESQ
Magistrate G.I

JUDGMENT

Introduction.

By charge sheet dated 30th May, 2024, and sanctioned on 4th June, 2024, the Accused was charged with one count of stealing cattle Contrary to formerly, **Section 254** and **264** of the Penal Code Act, Cap 120, and now **sections 237** and **247** Cap 128 Laws of Uganda, 2023 revised edition.

Brief background.

It was the prosecution's allegation that the accused, a male adult aged 34 years, an Acholi by tribe, peasant farmer by occupation, resident of Kal village, Pawel parish, Opara sub county in Amuru district, on the 29th day of May, 2024 at Kal village in Amuru district stole one goat, valued at approximately UGX. 250,000/=(Uganda shillings two hundred fifty thousand only) the property of a one, Abili Innocent.

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

By denying the Charges, the accused placed in issue all and every essential ingredient of the offence with which he is being charged.

The prosecution bears the burden to prove the ingredients beyond reasonable doubts as laid out in the case of **MILLER VS MINISTER OF PENSIONS (1947)2 ALLER ER AT 372.**

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution evidence and not the weakness of the Accused's defence as laid out in **SEKITOLEKO VS UGANDA (1967) EA AT 531.**

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

In attempt to prove the charge, the prosecution first called the complainant who testified as **PW1- Abili Innocent.**

He testified that he knows the accused who is his biological brother. That on the 29th May, 2024 when he returned back home and took a nap, he realized, on waking up that the kitchen door was open. That he got up and closed the door but did not bother to check on the goats. That the following morning when he checked, he found one of the goats which was pregnant missing. That he then reported the matters to his neighbours including a one, Achieng, Watmon Joseph, the Lc1 and was also directed to report at police.

That before the police came to arrest the accused, Pw1 had found the said goat at the accused's place and he reported him to the LCs who also referred him to police.

Prosecution also called **Okenyi Justine** whose testimony was taken down as **Pw2**.

He told court that he is the biological father of the accused together with the complainant. That the accused dropped out of school in primary four and ever since, has resorted to living a life of drunkenness, stealing amongst others. That he enrolled the accused in an institution for rehabilitation and also attempted to get him a wife but he has not changed. As regards the goat, he told court that he is sure the accused is the one who strangled it. He concluded by asking court to commit the accused to prison for a period not less than 6 months, hoping by then, he would have reformed.

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.

Upon closure of the prosecution case and having heard all the evidence from the prosecution this court, on the 03rd, September, 2024 ruled that a prima facie case had been established; hence the accused was placed to his defence.

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

1. Give evidence on Oath, whereby he will be subjected to cross examination by the prosecution.

2. Give evidence not on Oath whereby the accused will not be subject to cross examination.
3. Elect to keep silent.

The Accused opted to give evidence on Oath.

He swore in and testified as his own witness, as **DWI- Watmon Francis**.

He told court that the goats that had been brought as dowry for his sister were dying frequently. That on the said day, one goat died at around 8:00am and he went and called a one, Abang and a one, Amony, whom he asked to skin the said goat. That when Pw1 came, Dw1 tried to explain that he had found the said goat dead but he (Pw1) instead insisted that Dw1 had stolen the said goat and should first be taken to prison. Dw1 further testified that he and his brother, a one, Apil Innocent were caretaking the goats and that he did not deny skinning the said goat and that he could not have skinned it from home. He concluded admitting that it would have been better to first ask permission from his said father.

THE LAW AND ANALYSIS OF THE EVIDENCE

The offence of stealing cattle is created under formerly, **Section 254** and **264** of the Penal Code Act, Cap 120, and now **sections 237** and **247** Cap 128 Laws of Uganda, 2023 revised edition.

According to Section 2 of the Evidence Act Cap 8 “evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, judicial notice,

presumptions of law and ocular observation by the court in its judicial capacity.

Section 237 Penal Code Act Cap 128 Laws of Uganda, 2023 revised edition provides:

A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing. (UNDERLINING ADDED FOR EMPHASIS)

Section 247 Penal Code Act Cap 128 Laws of Uganda, 2023 revised edition provides:

If the thing stolen is a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, weather, goat or pig, or the young of any such animal, the offender is liable on conviction for a first offence to imprisonment for seven years and for a subsequent offence to imprisonment for fifteen years.

In **UGANDA VS MUNGURIEK JOSEPH ALIAS ONDIKI & ANOR**
Criminal Session Case No. 008 Of 2017.

Justice Steven Mubiru stated the ingredients of the charge of theft of cattle to be;

1. Taking / asportation/ fraudulent conversion of cattle, goats, cows etc.
2. The property belonging to another.
3. Intention to permanently deprive the owner.
4. The accused's participation.

Ingredient 1: Taking / asportation/ fraudulent conversion of cattle, goats, cows etc.

After hearing the prosecution evidence, no doubt is left in my mind that indeed, there existed a goat, the property of Pw2 having received the same as dowry for his daughter. The testimony of all witnesses, Pw1, Pw2 and even Dw1 shows that indeed, the complainant together with Pw2 rear goats at their home.

By that evidence, I am satisfied with the existence of the allegedly stolen goat, the property of someone else.

As regards asportation of the said goat, the evidence before this court establishes that the allegedly stolen cattle/goat was slaughtered by the accused. I have not seen evidence to show that it was asported elsewhere.

However, **Section 237** Penal Code Act Cap 128 Laws of Uganda, 2023 revised edition which creates the offence provides several ways through which the said goat could be stolen. I reproduce it hereunder for ease of reference:

A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing. (UNDERLINING ADDED FOR EMPHASIS)

My interpretation of that section is that the goat could be stolen by outright **“taking/ asportation”** or it could be stolen by **“fraudulent**

conversion” to the use other than that for which the owner grazed the same.

The evidence before court shows that the said goat, the property of Pw2, having received the same as dowry for his daughter was being reared at their home. I have not seen evidence to show that the same was being reared for purposes of **“slaughtering”**, as the accused did. None of the witnesses, Pw1, Pw2 and even Dw1 testified that the goats were reared for that purpose.

Had the accused reported the said death to the owner before embarking on the **“slaughtering,”** possibly would have swayed court to believe that there wasn't a fraudulent intent behind the acts.

The said owner, PW1 and Pw2 were well within the vicinity but the accused did not report the alleged death. Neither did he seek their permission before slaughtering.

Pw1 testified that:

“...I got up and closed the door but did not bother to check on the goats. The following morning when I checked, I found one of the goats which was pregnant missing....”

Dw1 testified in his defence that:

“...on the said day, one goat died at around 8:00am and I went and called a one, Abang and a one, Amony, whom I asked to skin the said goat. When Pw1 came, I tried to explain that I had found the said goat dead but he (Pw1) instead insisted that I had stolen the said goat...”

“...I and my brother, a one, Apil Innocent were caretaking the goats and I do not deny skinning the said goat...”

To do as the accused admittedly did by slaughtering the goat without notifying the owner first and in the absence of any lawful or reasonable explanation as to why he failed to notify the owner leaves this court with no doubt but to conclude that the same was done with a fraudulent intent.

For that reason, the prosecution proved this ingredient beyond reasonable doubts that the goat was fraudulently converted for a purpose for which it was not meant for by the owner. Proof of this element suffices even though I have not seen evidence of asportation.

I conclude as I have, because, the law provides the alternative element of fraudulent conversion. It provides:

“...fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing ...”

While I mentioned at the outset, the burden of proof lies upon the prosecution and does not shift to the accused and the accused is only convicted on the strength of the prosecution evidence and not the weakness of the Accused’s defence as laid out in **SEKITOLEKO VS UGANDA (1967) EA AT 531**, this court is satisfied with the prosecution evidence to the effect the accused converted the goat by way of slaughtering it inconsistently with the purpose of which the owner was rearing the said goat.

Ingredient 2: The property belonging to another.

All prosecution witnesses, Pw1, Pw2 and even Dw1 shows that indeed, the accused was rearing the said goat, the property of Pw2 who had received the same as dowry for his daughter.

Under **Section 58 of the Evidence Act cap 8, Laws of Uganda, 2023 revised edition**, provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document. No evidence was led in defence or under cross-examination to show that the testimony of Pw1 and Pw2 was untruthful as regards the ownership of the said goat.

In ***Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995***, it was stated that:

“...it is trite law that strict proof does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue...”

For those reasons, this court is also satisfied that this ingredient was proven beyond reasonable doubts by the prosecution.

Ingredient 3: Intention to permanently deprive the owner.

In evaluation of ingredient 1, this court has already found that the accused, by slaughtering the goat without notifying the owner first and in the absence of any lawful or reasonable explanation as to why he failed to notify the owner left this court with no doubt but to conclude that the same was done with a fraudulent intent.

In this ingredient, I have also not found any evidence to show that the accused notified the owner, even after slaughtering the said goat.

Pw1 testified that:

“...The following morning when I checked, I found one of the goats which was pregnant missing....”

The accused testifying as Dw1 in his defence told court that:

“...on the said day, one goat died at around 8:00am and I went and called a one, Abang and a one, Amony, whom I asked to skin the said goat. When Pw1 came, I tried to explain that I had found the said goat dead but he (Pw1) instead insisted that I had stolen the said goat...”

“...I and my brother, a one, Apil Innocent were caretaking the goats and I do not deny skinning the said goat...”

The accused did not inform the said Apil Innocent with whom he was caretaking the goats. Neither did he inform Pw1, who, evidently had slept in the house nearby. He instead went and called the said *Abang and a one, Amony!*

The motive behind concealing the alleged death and the subsequent clandestine slaughter of the goat leaves no doubt in this court’s mind that the accused harbored the intention to permanently deprive the owner of the said goat.

For that reason, I am satisfied that this ingredient was equally proven beyond reasonable doubts.

Ingredient 4: Accused's participation.

Pw1 testified that:

"...I got up and closed the door but did not bother to check on the goats. The following morning when I checked, I found one of the goats which was pregnant missing...."

Dw1 testified in his defence that:

"...on the said day, one goat died at around 8:00am and I went and called a one, Abang and a one, Amony, whom I asked to skin the said goat. When Pw1 came, I tried to explain that I had found the said goat dead but he (Pw1) instead insisted that I had stolen the said goat..."

"...I and my brother, a one, Apil Innocent were caretaking the goats and I do not deny skinning the said goat..."

Under **Section 28 of The Evidence Act, cap 8, Laws of Uganda, 2023 revised edition** admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

The accused cannot turn around and deny participation, yet, testifying under oath as Dw1, he told court that:

"...I do not deny skinning the said goat..."

Under **Section 28 and 57 of The Evidence Act cap 8, Laws of Uganda, 2023 revised edition** the prosecution would ordinarily stand discharged from adducing any further proof of participation of the accused.

Besides the above, Pw1 also testified that:

“...I then reported the matters to my neighbours, including a one, Achieng, Watmon Joseph, the Lc1 and I was also directed to report at police. Before the police came to arrest the accused, I had found the said goat at the accused’s place and I reported him to the LCs who also referred me to police...”

For those reasons and the testimony led, I am also satisfied that the accused participated in the slaughter of the goat, which I have already stated that the act was a fraudulent conversion. The prosecution proved this ingredient beyond reasonable doubts.

Having proven all the essential ingredients beyond reasonable doubts this court is satisfied that the offence with which the accused is being charged was indeed committed by him and accordingly, I find the Accused GUILTY and CONVICT him of the offence of stealing cattle Contrary to formerly, **Section 254** and **264** of the Penal Code Act, Cap 120, and now **sections 237** and **247** Cap 128 Laws of Uganda, 2023 revised edition.

The accused, cum convict shall remain on remand until hearing on *allocutus* and subsequent sentencing.

I so order.

Dated at ATIAK this _____^{25th}_____ day of _____November_____ 2024.

HW. KK

HW Kyembe Karim

Magistrate G.I