

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF NWOYA AT ATIAK
CRIMINAL CASE NO. 090 / 2024

UGANDA ::: PROSECUTION

VS

OJOK JAMES **alias**

OJOK JUSTINE ::: ACCUSED

Before: His Worship Kyembe Karim ESQ
Magistrate G.I

JUDGMENT

Introduction.

By charge sheet dated 05th July, 2024, and sanctioned on 8th August, 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 25 years, an Acholi by tribe, carpenter by occupation, resident of Awer-Parker, Amanyokol sub ward, Atiak Town council in Amuru district, on the 03rd day of July, 2024 at Awer-Parker, Amanyokol sub ward Atiak Town council in Amuru district stole a he-goat, brown and white in colour valued at approximately UGX. 250,000/=(Uganda shillings two hundred fifty thousand only) the property of a one, Nsooli Getrude.

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.**

She testified that she knows the accused person who is the son of a one, Ojara Charles, the brother to her husband. That on the 3rd July, 2024 while in the garden, at around 9:00am together with a one, Onen Catusa Ronald-the brother to Ojok, someone called Opoka told her that he had seen the accused with a goat resembling Pw1's being taken to the center. That she keeps goats in her home and when she followed up, she discovered that the goat was no-longer tied at home where she had left it but it was now at police together with the accused who was now

incarcerated. That she identified it and pictures of the same were taken and admitted in evidence as **PEX2**. Pw1 further told court that the entire family had sent a letter to court which was admitted as **PEX1** beseeching court to help with the accused who had become a menace in the community.

Prosecution then called its next witness, a one, **Opira Alphonse** whose testimony was taken down as **PW2**.

He testified that he knows the accused who is a son to his brother. That on the aforesaid date, while attending a funeral, he received a telephone call informing him about the accused who had been seen herding a goat towards the centre and the same was suspected to have been stolen, which prompted Pw2 to mobilize some people to intercept the accused.

Pw2 re-echoed testimony of Pw1 that the accused was a habitual offender, having stolen his uncle's iron sheets, his brother's bicycle, smokes marijuana and also once threatened to kill his step mother. He concluded by asking court to send the accused to prison because, he might be lynched.

No. 36637- Detective Corporal Ntende Richard the investigating officer also testified as the 3rd prosecution witness and his testimony was taken down as **Pw3**.

Pw3 told court that when he interrogated the accused, he told him that he untied the goat because of anger after they had a misunderstanding with the complainant who had promised to kill him, so, he wanted to sell the goat and move away from home but he was arrested on his way.

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, the accused duly exploited the opportunity.

Upon closure of the prosecution case and having heard all the evidence from the prosecution this court, on the 29th August, 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 affirmed and testified as his own witness, as **DWI- Odoch James**.

He told court that on the said day, he was weeding his maize and cassava garden when his brother came and asked him to go and cut some trees. That an argument then ensued between him and the complainant as regards where the accused was cultivating. That the accused maintained the land belongs to his father, while the complainant

claimed superior rights over the same and yet, she derived rights to cultivate the same by virtue of being married to the accused's uncle.

That while the accused entered the bushes following the said brother to go and cut trees, the complainant also stopped him, insisting that she wanted to sell the trees, that when he (Dw1) returned to his place of abode and it is then that the complainant came with some boys alleging that the accused had stolen her goat, to which Dw1 wondered when he stole the goat and yet he had just been with the complainant in the gardens whereof a quarrel had transpired. That they took the photo of the accused and also the goat.

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.

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 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 of cattle, goats, cows etc.

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...”

After hearing the prosecution evidence, no doubt is left in my mind that indeed, there existed a goat, the property of Pw1. The testimony of all witnesses, Pw1, Pw2, Pw3 and even Dw1 shows that indeed, the complainant rears goats at her home. The picture of the goat allegedly stolen was exhibited in court as **PEX 2**.

Pw1 testified that:

“...I keep goats in my home and when I followed up, I discovered that the goat was no-longer tied at home where I had left it but it was now at police together with the accused who was now incarcerated...”

By that evidence, I am satisfied that the allegedly stolen cattle/goat was asported from the home of Pw1. The prosecution proved this ingredient beyond reasonable doubts.

Ingredient 2: The property belonging to another.

No documentary proof was adduced by prosecution to prove ownership of the allegedly stolen goat. However, I am alive to the principle laid down in the aforesaid authority of **Haji Asuman Mutekanga -Vs- Equator Growers (U) Ltd, supra**, whereof it was stated that:

“...proof does not necessarily always require documentary evidence. Oral testimony is also good evidence to prove a fact in issue...”

All prosecution witnesses testified that the allegedly stolen goat belonged to Pw1. That testimony was not discredited in cross-examination. I have not found any reason to believe otherwise.

It is also my finding that the cattle, the property of another (*other than the accused*) was indeed asported from Pw1's home as evidenced in

PEX2. The prosecution proved this ingredient beyond reasonable doubts to the satisfaction of this court.

Ingredient 3: Intention to permanently deprive the owner.

The prosecution evidence that spoke to the intention to permanently deprive the owner was that of Pw3.

Pw3 testified that:

“...he told me that he untied the goat because of anger after they had a misunderstanding with the complainant who had promised to kill him, so, he wanted to sell the goat and move away from home but he was arrested on his way...”

This evidence was not discredited in cross-examination. I also find corroboration in the testimonies of both Pw1 and Dw1. The circumstantial evidence given by both when they testified as to the disagreements they both had as regards the land whereof they were cultivating.

Pw1 testified that:

“...when I followed up, I discovered that the goat was no longer tied at home where I had left it but it was now at police together with the accused who was now incarcerated...”

Testifying in his defence as Dw1, the accused told court that:

“...I returned to my place of abode and it is then that the complainant came with some boys alleging that I had stolen her goat, to which I wondered when I stole the goat and yet I had just been with the complainant in the gardens whereof a quarrel had transpired...”

However, Pw2 told court that:

“...I received a telephone call informing me about the accused who had been seen herding a goat towards the centre and the same was suspected to have been stolen. This prompted me to mobilize some people who intercepted the accused...”

From the above testimony and all circumstances leading to the arrest of the accused who was now in possession of the goat allegedly stolen, there is no doubt left in my mind that indeed, the accused was intercepted while herding the stolen goat towards the center, whereof he indeed intended to sell off the same and permanently deprive the owner of the same.

The net effect is that I am also satisfied that this ingredient was proved by the prosecution beyond reasonable doubts.

Ingredient 4: participation of the accused

The ingredient of participation of the Accused is not a difficult one. All the prosecution witnesses testified to having been present when the accused was intercepted with the goat alleged to have been stolen.

Pw1 testified that:

“...I keep goats in my home and when I followed up, I discovered that the goat was no longer tied at home where I had left it but it was now at police..”

Pw2 testified that:

“...while attending a funeral, I received a telephone call informing me about the accused who had been seen herding a goat towards the

centre and the same was suspected to have been stolen, which prompted me to mobilize some people to intercept the accused...”

Pw3- the investigating officer told court that:

“...when I interrogated the accused, he told me that he untied the goat because of anger after they had a misunderstanding with the complainant who had promised to kill him, so, he wanted to sell the goat and move away from home but he was arrested on his way...”

In his testimony as Dw1, the accused raised a general defence of denial and this court is aware that he is not under obligation to prove his defence.

His evidence, in a nut shell is that he was being falsely accused because of the disagreements he has with Pw1 regarding land rights.

Testifying as Dw1, the accused told court that:

“...while the I entered the bushes following my said brother to go and cut trees, the complainant also stopped me, insisting that she wants to sell the trees. I then returned to my place of abode whereof the complainant came with some boys alleging that I had stolen her goat, to which I wondered when I stole the goat and yet I had just been with the complainant in the gardens whereof a quarrel had transpired. That they took a photo of me and also the goat...”

It is the prosecution’s burden, beyond reasonable doubts to uproot that defence from being entrenched and believed by a court of law.

This court is also alive to the principle laid out in **ABDALLA BIN WENDO & ANOR V.R (1953) EACA AT 166** and **RORIA V REPUBLIC (1967) EA**

AT 583 and also, in **BOGERE MOSES & ANOR V UGANDA SC** cr **Appeal no.1 of 1997** to the effect that where prosecution does not produce identifying witnesses, the court must exercise the greatest care so as to satisfy itself that it is free from the danger of mistaken identity.

To do so, this court is enjoined to evaluate evidence having regard to factors that are favorable and those that are unfavorable to correct identification.

In this case the evidence of all witnesses, including Dw1 indicates his access to the said goat which was in their home and also, that upon interception, the said goat was with him, upon which pictures were accordingly taken.

Article 28 of The Constitution of the republic of Uganda, 1995 presumes all accused persons innocent until proven guilty or if they have pleaded guilty.

The prosecution bears the onus to adduce evidence before this court can take away this constitutional presumption of innocence.

This court also looked at prosecution Exhibit PEX1, a list of more than 60 people imploring this court to convict the accused. Unfortunately, none of them came to testify in this case.

Nonetheless, their failure to attend court does not discount nor reinforce the veracity of the evidence already on court record. And for the avoidance of any doubts, this court has warned itself not to be influenced by the contents of the said PEX1.

This is a court of law and not a question of how many people beseech the court to convict an accused. It is not a contest of how popular or unpopular the accused might be back at his home village.

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 this case, the prosecution evidence, especially of Pw2 is of the eye witness who mobilized the people who intercepted the accused with the stolen goat heading towards the center. Other circumstantial evidence as regards the motive behind the theft was duly led by prosecution through Pw3.

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

In the instant case, like I have already noted here-above, prosecution produced an eye witness (Pw2) who saw the accused being intercepted with the goat.

It is my finding that the evidence before me meets the minimum threshold of establishing proof beyond reasonable doubt as specifically required in **SEKITOLEKO VS UGANDA**, Supra.

The evidence before me fully establishes that the accused had full participation and substantially contributed to or had a substantial effect on the consummation of the offence with which he is being charged.

I find that the prosecution proved this ingredient beyond reasonable doubts.

Having found that the prosecution satisfied court on all the ingredients of the offence charged, 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.

He should 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