

THE REPUBLIC OF UGANDA  
IN THE CHIEF MAGISTRATES COURT OF NWOYA AT ATIAK  
CRIMINAL CASE NO. 094/ 2024

UGANDA ::: PROSECUTION

VS

A1. OCAYA DENIS

A2 OKEMA JESUS INYAMI ::: ACCUSED

---

Before: His Worship Kyembe Karim ESQ  
Magistrate G.I

**JUDGMENT**

---

**Introduction.**

By change sheet dated 29<sup>th</sup>/July/2024 and sanctioned on 31<sup>st</sup> July, 2024, the Accused were jointly charged with one count STEALING A MOTOR VEHICLE Contrary to then, Section 265, now, **Section**s 237 and 248(a) of the penal code Act cap 128, laws of Uganda, one count of CONSPIRACY TO COMIT A FELONY contrary to then, Section 390, now, **Section** 363 of the Penal Code Act cap 128 laws of Uganda and one count of UTTERING A FALSE DOCUMENT contrary to then, section 351, now section 328 of the penal code Act cap 128 laws of Uganda.

**Brief background**

**Count 1:** It was the prosecution’s allegation that A1, a male adult aged 24 years, an Acholi by tribe, peasant farmer by occupation and resident of Agooro village Paraca Parish, Atiak sub-county in the Amuru district in the month of January, 2024 at Smart and Fresh corner, Atiak town council in the Amuru District stole a motor cycle registration No. UFY 740 Y Bajaj boxer, Red in color valued at

UGX.6,060,000 (*Uganda shillings six Million sixty thousand only*), the property of Cycle Connect Ltd.

**Count II:** It was also the prosecution's allegation that A1 and A2 in the month of January, 2024 between Atiak and Elegu in Amuru district conspired together to commit a felony; to wit; uttering a false document; to wit; Motor cycle Registration log book for motor vehicle registration no. UFY 740Y Bajaj boxer, Red in color to Julius contrary to section 390 of the PCA.

**Count III:** It was also the prosecution's allegation that A1 and A2 between Atiak and Elegu in the Amuru district knowingly and fraudulently uttered a false document, to wit; a forged log book for Reg. No. UFY 740Y Bajaj Boxer, Red in colour purporting the same to have been signed by Uganda Revenue Authority staff.

When the charges were read to the Accused, they both 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 they are 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 3 (three) witnesses.

Prosecution first called SANKARA MARTIN whose testimony was taken down as **Pw1**.

He testified that he knows the accused A1 as a person who came on the 28<sup>th</sup> September, 2023 with a one, wokrach cosmas collect a motor cycle on loan basis. That as for A2, Pw1 came to know him wahren A1 was arrested and he stated that he had sold the motor cycle to a Muganda in Elegu but A1 directed them to go to A2 who thereupon also directed them to a man who, they found had also registered a case in Elegu.

He told court that his responsibility is to upraise new clients and follow up on credit and police cases against defaulting clients. That his company gives clients various items on loan, including ox ploughs motor cycles and money amongst others.

That on the 28<sup>th</sup> September, 2024, a one, Kosmas Wokrach came with A1 and they wasnted a motor cycle on loan, which they gave to them and A2 was one of the guarantors. That all requirements were collected and they handed over the said motor cycle to the said Wokrach Kosmas who then took it to work at Atiak Town council stage.

That the original loan agreements were signed but the said Wokrach Kosmas defaulted for 5 months and he was no where to be seen which prompted them to reach out to the stage master who then informed them that the subject motor cycle had been bought by A1 who had only used the said Wokrach Cosmas as a proxy.

That when they started looking for both of them, they received information that A1 had been arrested, and on interrogation, he stated

that the only way to recover the motor cycle was to look for A2, which they did.

That A2 was then found in Bibia and he took them to the man whom they found with a log book and police advised them to compare the two log books and also checked with URA and it was discovered that the said A2's log book was forged. The two log books were collected for further investigations.

The loan agreement and the log book were admitted as prosecution evidence as **PEX1** and **PEX2** respectively.

On cross-examination by the accused, Pw1 testified further that the Motor cycle was given to the said Wokrach Kosmas, that A1's ID was required as a guarantor after the LC1 recommended; that Pw1 did not execute the agreement personally but they have officers for that purpose; that it took Pw1 about 2 months to find the accused; that the motor cycle was taken from Elegu to Atiak police station and that the complainant has many bikes given out on loan.

Prosecution then called the 2<sup>nd</sup> witness, NAMAJE JULIUS, whose testimony was taken down as **Pw2**.

He testified that he knows A2 who sold to him a motor cycle. That on the 7<sup>th</sup> day of May, 2024, A2 approached him with a motor cycle for sale. At the time, Pw2 was at Elegu but A2 did not have the motor cycle, which prompted Pw2 to demand to inspect it and the next day, he came and they negotiated UGX. 2,300,000/=, of which they initially did not agree upon, but later, A2 called Pw2 and they agreed on the said UGX.3,500,000/=.

That they then agreed to meet at Tayo stage and A2 came with a person called Victor and they came with a log book in the names of A2 and the it was in respect to motor cycle registration number UFY 740Y

That Pw2 then called a one, Ashraf, Afash Amos and Muzenero Robert to witness the agreement and also required the said Victor to bring A2 so that he can be satisfied. That the said Victor called A2 on the phone and he confirmed ownership and okayed the sale. That after about 4 months, A2 then approached Pw2 stating that the motor cycle he had given him belongs to Cycle Connect ltd and he tried to convince him to put south Sudanese registration number plates, a suggestion, pw2 refused, then A2 advised Pw2 to hide the motor cycle because the company is looking for it, to which, Pw2 responded by demanding his money back.

That A2 went ahead and advised Pw2 to hide for a week but Pw2 refused because he had bought the motor bike and he had a log book, which prompted Pw2 to go to police and report himself and also got a reference.

**No. 36637 D/C** Ntende Richard also testified as prosecution witness and his testimony was taken down as **PW3**

Pw3 re-echoed testimony of Pw1 of how the motor cycle was loaned out and further that upon arrest of A1, he admitted that he got the motor cycle from Wokorach Kosmas but his friend A2 had sold it off in Elegu and shared the money. That when A2 was arrested and interrogated, he admitted to having sold of the motor cycle to Pw2 and even issued a log book in the names of A1.

Pw3 testified further that they also filled **PF28** to find out the ownership of the motor cycle and found that it was still registered in the names of Cycle Connect Ltd and not A1. The motor cycle was

impounded and parked at Atiak Police and the Exhibit slip dated 03<sup>rd</sup> August, 2024 was admitted as prosecution evidence as **PEX4**.

Thereupon, prosecution closed its case and on the 08<sup>th</sup> October, 2024, this court ruled that a prima facie case had been established hence place 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.”*

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

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

The accused opted to give evidence on oath.

A1 testified first and his testimony was taken down as **Dw1**.

He told court that he does not recall the exact date in July when he was arrested and taken to police where he spent 4 days and he only thought he had been arrested for jumping police bond. That he later came to learn that he had been arrested in connection with a motor cycle and upto now, he doesn't know anything about it and he does not see the said Wokrach Kosmas whom it is claimed gave him the motor cycle.

On cross-examination, Dw1 denied making a statement at police but Prosecution exhibited his statement and it was admitted as **PEX5**.

A2 testified as the 2<sup>nd</sup> defence witness and his testimony was taken down ad **Dw2**.

He told court that it was on a Friday in March after over working himself and having some rest that he received a call from his friend, a one, NYOK DENG. That he left to go and meet him around the Taxi park and then someone hooted behind him. On checking out the person, he said that Dw2 must be financially stable considering the rate at which he was changing motor cycles, to which, Dw2 replied that the one he was riding was not his but belonged to A1. Dw2 went home but then received a call after 3 days from the complainant, then Pw2 who asked if Dw2 had sold off the motor cycle. He replied that he had not but had to first talk to A1. That he met A1 and they agreed to stop at a price of UGX. 3,500,000/=.

That Dw2 then called Pw2 and informed him that he was still at Ruby gardens and when Pw2 arrived, Dw2 left to pick the log book and they concluded the transaction.

That after 5 months while standing at URA waiting for a colleague, Dw2 received a call from Pw2 who told him to go and meet him at police. That there were other two people under the tree to whom, Dw2 was introduced as the person who had sold the motor cycle. That on asking the motor cycle's whereabouts, he was arrested and locked up and since he had his phone with him, he called Pw2 inquiring what he had done wrong who responded that they would settle the matters the next day.

On cross-examination, Dw2 testified that he borrowed the motor cycle from A1 registration no. UFE002X and he hasn't borrowed any other motor cycle and A1 was not around when A2 sold the motor cycle to

Pw2 and he brought the money as it was to A1 amounting 3.5m and he gave him 20,000/= for transport and that the log book he got from A1 was genuine log book.

On being questioned by court, Dw2 testified further that A1 gave him the motor cycle to use without a log book

## **THE LAW AND EVALUATION OF EVIDENCE**

**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.

### **COUNT I: Stealing a motor vehicle.**

The offence of Stealing a motor vehicle is provided formerly under **Section 261 and 265 (a) now section 237 and 248 (a) of The Penal Code Act cap 128** 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. Formerly, **SECTION 2 (1) (OO)**, now **Section 1 OF THE TRAFFIC AND ROAD SAFETY ACT, CAP 347**, 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. 20 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 led evidence to show that the subject motor cycle belonged to Cycle Connect Ltd, a company that loans out motor cycles to clients who make weekly payments. In this respect,

prosecution exhibited **PEX1**- a loan agreement executed between Cycle Connect Ltd and a one, Wokrach Cosmas And PEX 4. A police form 28 stipulating the registered owner of the subject motor vehicle.

Pw1 testified that:

*“...my company gives clients various items on loan, including ox ploughs motor cycles and money amongst others. On the 28<sup>th</sup> September, 2024, a one, Kosmas Wokrach came with A1 and they wanted a motor cycle on loan, which we gave to them and A2 was one of the guarantors. All requirements were collected and we handed over the said motor cycle to the said Wokrach Kosmas who then took it to work at Atiak Town council stage.*

*“...the said Wokrach Kosmas defaulted for 5 months and he was nowhere to be seen which prompted us to reach out to the stage master who then informed us that the subject motor cycle had been bought by A1 who had only used the said Wokrach Cosmas as a proxy...”*

**No. 36637 D/C** Ntende Richard who testified as **PW3** told court that:

*“... we also filled **PF28** to find out the ownership of the motor cycle and found that it was still registered in the names of Cycle Connect Ltd and not A1.*

On the strength of the evidence above, this court is satisfied that the alleged stolen motor cycle was the property of Cycle connect Ltd whereof Pw1- the complainant worked and the same was given to the said Wokrach Cosmas on loan arrangements the terms of which are set out in **PEX1**.

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 (Cycle connect ltd), 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 237 (1) of The Penal Code Act, cap 128** defines theft as “fraudulently and without claim of right [taking]

While A1 in his testimony in court as Dw1 denied any knowledge about the said motor cycle, this court has looked at **PEX 5** – the statement made at police wherein the said Dw1 indeed acknowledged the said motor cycle and how he acquired it on loan using the said Wokrach Cosmas as a proxy.

On the other hand, A2 testifying as Dw2 told court that:

*“... replied that the one I was riding was not mine but belonged to A1. I went home but then received a call after 3 days from the complainant, then Pw2 who asked if I had sold off the motor cycle. I replied that I had not but had to first talk to A1. I met A1 and we agreed to stop at a price of UGX. 3,500,000/=...”*

While Pw1 told court that:

*“...my company gives clients various items on loan, including ox ploughs motor cycles and money amongst others. On the 28<sup>th</sup> September, 2024, a one, Kosmas Wokrach came with A1 and they*

wanted a motor cycle on loan, which we gave to them and A2 was one of the guarantors.

In the said **UGANDA VERSUS OMONA FRANK**, supra, Hon. Justice Steven Mubiru discussed further that:

*Theft involves an unauthorized taking, keeping, or using of another's property. It is committed by a person who has no lawful justification in taking possession of the property in issue.*

*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 formerly **Section 254 (1) and (2), now Section 237 (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 formerly **Section 254 (1) and (2), now Section 237(1) and (2) of The Penal Code Act, cap128** 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 disposition of another's property as if it were one's own; an act or series of acts of willful 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 formerly, **Section 254 (2), now Section 237 (2) of The Penal Code Act cap 128.**

After hearing all evidence, this court is inclined to believe that the said motor cycle was taken wrongfully. I say this, mainly because;

Whereas it is evident that the motor cycle was acquired for the full benefit of A1 using the said Wokrach cosmas as a proxy, that arrangement was never disclosed to Pw1 or the said company – Cycle connect Ltd. I have perused **PEX1** together with **PEX5** and I am satisfied that whereas this seemed a civil transaction, both A1 and the said Wokrach Cosmas concealed a material fact that the motor cycle was being acquired by A1.

To do as the said Wokrach and A1 did by concealing material facts, in addition to conduct after the fact, whereof A1 denied in court knowledge about the said motor cycle whereas he had already admitted knowledge thereof at police in **PEX5** leaves this court with no option but to agree with the prosecution that the said motor cycle was acquired through false pretenses and hence, intentionally and wrongfully.

For those reasons, it is my finding that this ingredient was proved by the prosecution beyond reasonable doubts.

**Ingredient 3:**

***“anything capable of being stolen.”***

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. Prosecution proved this through Exhibit slip admitted as **PEX4**. The defence did not elicit any evidence discrediting this issue.

This court also takes due judicial notice that a motor cycle is by its nature capable of being stolen.

For those reasons, this court is also 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.***

Pw2 told court that:

*“...we then agreed to meet at Tayo stage and A2 came with a person called Victor and they came with a log book in the names of A2 and the it was in respect to motor cycle registration number UFY 740Y...”*

In a nut shell, that testimony is to the effect that the accused had forged a log book to pass off as being that of the subject motor cycle so as to facilitate its sale to PW2.

It doesn't take a rocket scientist to realize that a person who forges documents of title harbours the intention of permanently depriving the owner of that chattel mentioned therein. I have not seen any evidence to the contrary.

Whereas the accused are 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 14** of the PCA, amongst others, none was raised, apart from general denials.

Whereas I am alive to the principle that the accused is not under obligation to prove their innocence, as held in **SEKITOLEKO VS UGANDA** supra, I am not satisfied that the general denials dislodged the prosecution evidence.

Given all the circumstances of the case, this court is satisfied that this ingredient was also proven beyond reasonable doubts by the prosecution.

## **Ingredient V:**

### **Participation of the accused:**

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 the said **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.**”*

### **Participation of A1:**

**PEX1** –being the statement made at police by A1 admitting knowledge about the motorcycle and testimony of Dw2 properly places A1 in the sequence of the acquisition of the subject motor cycle. He also received the proceeds of the sale of the motor cycle from A2 amounting to UGX.3,500,000/=



### **Participation of A2:**

After hearing all evidence, A2 appears to have been an innocent participant. The same way A1 used Wokrach Cosmas as a proxy to acquire the motor cycle from Cycle connect Ltd on loan while conveniently covering his own tracks, prosecution evidence also shows that A1 superintended the sale of the motor cycle through A2 to Pw2 and also collected the proceeds from A2.

In conclusion therefore, the evidence before me as a whole does establish beyond reasonable doubts that A1 was the brain behind the stealing of the motor cycle, while fronting other individuals to cover his own tracks.

Accordingly, I find A1 GUILTY and CONVICT him of the offence of stealing a motor vehicle contrary to **Section 248 of the Penal Code Act cap 128**.

As for A2, it is the finding of this court that his participation was not accompanied by *mensrea*. His participation was an innocent but unfortunate event. I have not seen evidence to show that he intended to deprive the owner of the motor cycle.

Accordingly, I find A2 NOT GUILTY and ACQUIT him of the offence of stealing a motor vehicle contrary to **Section 248 of the Penal Code Act cap 128**.

### **COUNT II:**

#### ***Conspiracy to commit a felony***

The offence of conspiracy to commit a felony is created under, formerly, **Section 390**, now, **Section 363 of the Penal Code Act cap 128** laws of Uganda. It provides:

*Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Uganda would be a felony and which is an offence under the laws in force in the place where it is proposed to be done, commits a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.*

In **R v Mulji Jamnadas and Others (1946) 13 E.A.C.A. 14, Seriiso v Uganda 2004 KA LR 67** and **Ongodia v R 1967 EA 137**, Court laid out the ingredients that constitute a “*Conspiracy*” are as follows:

- i. Existence of two or more persons.
- ii. Agreement to pursue an unlawfully purpose. It does not matter if the purpose is criminal or amounts to a civil wrong.

In **Director of prosecutions Vs Nock (1978) 2 ALLER 654**, it was held;

*“The offence of conspiracy to commit a felony is complete as soon as there is a meeting of minds and unity of purpose between the perpetrators to do an illegal act”*

Not only is the prosecution required to prove intention but also, there was an agreement to carry out the object of the intention, which is an offence.

In **Papalia Vs the Queen (1979) 2 SCR 256 at P. 276, Dickson, J.** (as he then was) described the offence as an “***inchoate or preliminary crime***”

**Ingredient 1: Existence of two or more persons.**

In the instant case, the testimony of Pw1 shows that the original agreement to acquire the motor cycle from Cycle Connect ltd was between A1 and the said Wokrach Cosmas. Unfortunately, the said Wokrach Cosmas was not charged and thus can't be tried in absentia.

However, testimony of Pw1, Pw2 and Dw3 shows that A1 later agreed with A2 to dispose of the motor cycle to Pw2 at a consideration of UGX.3,500,000/=.

This court is satisfied that prosecution proved ingredient 1 beyond reasonable doubts.

**Ingredient II: Agreement to pursue an unlawfully purpose**

In **Angodua Kevin Vs Uganda Criminal Appeal no. 0013 of 2016**, Hon. Justice Steven Mubiru stated that:

*“The important inquiry is not as the acts done in pursuance of the agreement but whether there was in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy.”*

In the instant case, this court has already found in evaluation of evidence of the ingredient of participation in count 1 that whereas A2 participated in the course of the events, he innocently found himself entrapped in the transactions initiated by A1 whereas, he did not know the motive.

It is the finding of this court that prosecution did not prove the meeting of minds between A1 and A2 with the purpose of committing the offence. To say, this court has failed to see the *mensrea* on the part of A2.

As the prosecution failed to prove meeting of the minds, I find both accused not guilty of the offence of conspiracy to commit a felony.

### **Count III:**

#### ***Uttering a false document***

The offence of uttering a false document is created formerly, under **Section 351**, now **Section 328** of the penal code Act cap 128 laws of Uganda.

It provides:

*“Any person who knowingly and fraudulently utters a false document commits an offence of the same kind and is liable to the same punishment as if he or she had forged the thing in question.”*

Underlining added for emphasis.

In **Baigumamu Vs Uganda (1972)EA 16** it was held that:

*“...the falsity of a document is what it purports to be and not the contents therein”*

**Black’s law dictionary** defines “uttering” as:

*“The act of knowingly offering or presenting as true a forged instrument with the intent to deceive or defraud another person.”*

In the instant case, it was testimony of Dw2 that:

*“...I replied that the one I was riding was not mine but belonged to A1. I went home but then received a call after 3 days from Pw2 who asked if I had sold off the motor cycle. I replied that I had not but had to first talk to A1. I then met A1 and we agreed to stop at a price of UGX. 3,500,000/=...”*

*“...I then called Pw2 and informed him that I was still at Ruby gardens and when Pw2 arrived, I left to pick the log book from A1 and we concluded the transaction...”*

The false document alleged to have been uttered is the one purporting to be the log book of the subject motor cycle registration no. UFY 740Y registered in the names of **“Mr. Denis Ochan” -A1** and the same was exhibited as **PEX2**

To prove the falsity of the said document, prosecution exhibited **PEX4** – a police form 28 showing that the proper log book is still registered in the names of *“Cycle connect Ltd”* as opposed to *“Mr. Denis Ochan.”*

From that evidence, it is the finding of this court that the said purported log book in the names of Mr. Denis Ochan was a false document. It is also the finding of this court that the said false document was originally uttered by A1 to A2 who subsequently, also uttered it to Pw2.

As to whether the said uttering was done *“knowingly,”* this court finds that only A1 uttered the document *“knowingly”* and is accordingly found guilty of the offence and accordingly convicted.

While it is true that A2 also uttered the said document to Pw2, this court is not convinced beyond reasonable doubts that A2 had knowledge that the said document as handed to him by A1 was a false document. Nor did I see proof of intention to deceive. He appears to be one of the people who was deceived by A1.

For that reason, this court finds him not guilty of the offence and is accordingly Acquitted.

In conclusion, I make the following orders:

1. A1 is found guilty and convicted of count 1 & count 3.
2. A1 is found not guilty and Acquitted of count 2.

3. A2 is found not guilty on all 3 counts and accordingly acquitted of the same
4. A1 shall remain on remand until hearing on *allocutus*.
5. A2 is hereby discharged and should be set free unless he is being held on any other lawful charge.
6. An order of restitution hereby issues against A1 for UGX.3,500,000/= less by 20,000/= given to A2.
7. An order of restitution hereby issues against A2 for UGX.20,000/=.
8. The said total UGX.3,500,000/= shall be paid back to Pw2.
9. By order of this court dated 08<sup>th</sup> October, 2024, the subject motor cycle Reg. No. was released back to Cycle connect Ltd the registered owner and the same is hereby confirmed.

I so order.

Dated at ATIAK this \_\_\_\_\_17TH\_\_\_\_\_ day of  
\_\_DECEMBER\_\_\_\_\_ 2024.



.....  
**HIS WORSHIP KYEMBE KARIM**

**MAGISTRATE G.1**