

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF NWOYA AT ATIAK
CRIMINAL CASE NO. 095/ 2024

UGANDA ::: PROSECUTION

VS

OJARA SUNDAY WILLIAM ::: ACCUSED

Before: His Worship Kyembe Karim ESQ
Magistrate G.I

JUDGMENT

Introduction.

By change sheet dated 25th/July/2024 and sanctioned on 31st July, 2024, the Accused was charged with one count of OBTAINING GOODS BY FALSE PRETENCES Contrary to then, Section 305(a), now, **Section 285** 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 the accused, a male adult Ugandan, Acholi by tribe, peasant farmer by occupation and resident of Karakwal village, Atiak sub county in Amuru district, on the 26th June, 2024 at Atiak trading center, Atiak Town council in Amuru district with intent to defraud, obtained motor cycle registration number UGD 929U Bajaj Boxer, Red in colour from a one, Ouma

Henry by falsely pretending that he was going to be paying to Watu Credit Ltd on a weekly basis whereas not.

Count II:

It was also the prosecution's allegation that the accused, on the 2nd day of July, 2024 at Okidi trading center, Okidi Parish, Atiak sub-county in Amuru district knowingly and fraudulently uttered a false document; to wit; a motor cycle registration log book for motor cycle registration number UGB 566Z Bajaj Boxer Red in colour purporting that it had been signed by Uganda Revenue Authority Representative called Katushabe Winstone.

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 offences 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 OUMA HENRY whose testimony was taken down as **Pw1**.

He testified that he knows the accused as a boda boda cyclist whom he met on the 26th June, 2024 while headed towards Kal-Awal and he offered him (Pw1) a lift since they were both headed the same direction. On the way, the accused convinced Pw1 to help acquire a motor cycle in his names since he had paid up his loan. Later, the two agreed to acquire the motor cycle from Watu Credit Ltd. That the accused gave Pw1 UGX. 500,000/= as initial deposit required by the said Watu credit Ltd. That Pw1 together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price.

Pw1 told court further that after only one week, he did not receive a message notifying him of the said weekly deposit and instead received a warning message. The default persisted until Pw1 later saw the accused in town without the motor cycle and on being contacted by Watu credit ltd, Pw1 advised them to impound the motor cycle, but the same was now untraceable until the tracker located it in Pacilo East. When Pw1 went to report the matters at police, he found the accused already in custody, having been arrested on a separate case and when Pw1 asked him the whereabouts of the motor cycle, he stated that he had sold it to a one, Karaveli Livingstone, of whom, he also disclosed his telephone contact.

When the said Livingstone was called by police, he arrived at police with the subject motor cycle, but now, with a different number plate. On checking the engine number and chassis number, it was discovered that it was the motor cycle that Pw1 together with the accused had acquired from Watu credit Ltd.

The number plate was also later retrieved from Elegu whereof the accused had sold it for UGX.160,000/=

Prosecution also called the said KALAVERI LIVINGSTONE whose testimony was taken down as **Pw2**.

He testified that he knows the accused whom he met when he was selling to him the subject motor cycle at a consideration of UGX.3,000,000/=. That the accused told him that the motor cycle was his and also showed him a log book of the said motor cycle. That Pw2 first paid 2,300,000/= and before he could pay up the balance to receive the log book, police called him and told him to surrender the motor cycle, which he did.

NO. 36637 D/C NTENDE RICHARD testified as the last prosecution witness and his testimony was taken down as **Pw3**. He told court that it was 18th July, 2024 when he received a case file of stealing a motor cycle reg. No. UGB929U. The complainant was, a one, Chakara Martin and the suspect of first information was a one, Wokrach Kosmas who upon interrogation, told police that the subject motor cycle had been taken by the accused, who at the time, was already in custody on another related case involving a motor cycle as well.

Upon interrogation of the accused, he told Pw3 that it was an arrangement whereof the said Wokrach would go to Watu credit Ltd and apply for a motor cycle on loan on behalf of the accused, whose failure to personally do the application was attributed to being without a national ID. That when the application succeeded and the said Wokrach got the motor cycle, he handed the same to the accused who was supposed to make weekly payments to watu Credit Ltd until the full purchase price had been paid.

On receiving the motor cycle, the accused removed the tracking device, changed the registration number from UGB929U to UGB566Z and sold the same to Pw2.

Police then filed **PF28** with URA to ascertain the particulars of the motor cycle which showed that the motor cycle with chassis and registration no. and the same showed that the motor cycle was still registered in the names of Nish Auto ltd and not the accused's names as reflected in the Log book he gave to Pw2.

To fortify this testimony, prosecution exhibited:-

- a) PEX1 – A sales agreement between the accused and Pw2
- b) PEX2 –A PF28 as filled and certified by URA
- c) PEX3 – A log book in the names of the accused which the accused gave to Pw2
- d) PEX4 - Original number plates of the subject motor cycle

On Cross-examination by counsel for the accused, Pw3 testified further that unidentified person delivered the number plates to Ouma henry and drove off and it is the accused who led them to recovery of the motor cycle and admitted changing the particulars of the motor cycle.

Thereupon, prosecution closed its case and on the 08th 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 he would be subjected to cross examination.
2. Give evidence not on oath whereby he would not be subject to cross examination.
3. Elect to keep silent.

The accused opted to give evidence on oath.

His testimony was taken down as **Dw1**.

While admitting the encounter with Pw1 and Pw2, he confirmed on cross-examination that he agreed with Pw1 to pick the motor cycle from Watu credit Ltd. Court observed a doubtful demeanor in the testimony of Dw1.

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: OBTAINING GOODS BY FALSE PRETENCES

The offence of obtaining goods by false pretenses is created formerly, under, Section 305(a), now, **Section 285** of the penal code Act cap 128.

The prosecution had to prove each of the following essential ingredients beyond reasonable doubt;

1. Obtaining/dispossession / asportation of goods the property of another.
2. Use of false representations or acting dishonestly.
3. Intent to deceive or defraud.
4. Reliance upon the representations by the victim
5. Participation of the accused.

Possession within the meaning of the Penal Code Act generally 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.

In **Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of 1993**, dispossession or asportation is defined as follows:-

“...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:

Obtaining/dispossession / asportation of goods the property of another.

Through Pw1, Prosecution led evidence to show that the subject motor cycle belonged to Watu Credit Ltd, a company that loans out motor cycles to clients who make weekly payments. However, the motor cycle was still registered in the names of Nish Auto ltd as per prosecution exhibit **PEX2**- a police form 28 stipulating the registered owner of the subject motor vehicle.

In **UGANDA VERSUS OMONA FRANK supra**, includes 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.

Pw1 testified that:

“... on the way, the accused convinced me to help acquire a motor cycle in his names since I had paid up my loan. We later, agreed to acquire the motor cycle from Watu Credit Ltd....”

“...That the accused gave me UGX. 500,000/= as initial deposit required by the said Watu credit Ltd. I, together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price...”

By that testimony, court is satisfied that the subject motor cycle was in the full control of Watu Credit Ltd, despite **PEX2** showing that it was registered in the names of Nish Auto Ltd.

Court is also satisfied that the said motor cycle was dispossessed and asported from the said Watu credit Ltd by the accused together with Pw1.

This ingredient was proven by the prosecution beyond reasonable doubts.

Ingredient 2:

Use of false representations or acting dishonestly.

The prosecution had to prove what amounts in law to as a dishonest act. The taking away of the goods/ the motorcycle from possession of the complainant (Watu Credit ltd), without the complainant's consent or such consent obtained through dishonest acts or utterances.

Pw1 told court that:

“...I, together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price...”

“...the default persisted until I later saw the accused in town without the motor cycle...”

“...but the same was now untraceable until the tracker located it in Pacilo East...”

“... when I asked him the whereabouts of the motor cycle, he stated that he had sold it to a one, Karaveli Livingstone, of whom, he also disclosed his telephone contact...”

Pw2 corroborated that testimony when he told court that:

“...I know the accused whom I met when he was selling to me the subject motor cycle at a consideration of UGX.3,000,000/=. The accused told me that the motor cycle was his and also showed me a log book of the said motor cycle....”

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

A dishonest/ fraudulent act includes 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.

the actus reus involves either by "taking" or "converting" the thing.

*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.*

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

Whereas it is evident that the motor cycle was acquired for the full benefit of the accused using Pw1 as a proxy, that arrangement materialized after the accused assured Pw1 that he would continue to make the agreed weekly deposit of *UGX.139,612/= at Watu credit Ltd for a total 12 months to pay up the full purchase price.*

It turned out that those assertions were untrue. The accused did not even make a single deposit.

While the evidence shows that the accused was supposed to first pay up the purchase price, he held himself out to sell the same motor cycle before paying up the purchase price. Moreover, without notifying or seeking consent of Watu Credit ltd or Pw1.

To do as the accused did by failing or blatant refusal to make the weekly deposits as had been assured to Pw1, in addition to conduct after the fact, whereof he demonstrated indifference towards Pw1 and the said Watu Credit Ltd when contacted about the default in making weekly deposits leaves this court with no option but to agree with the prosecution that the said motor cycle was acquired through dishonest conduct, lies, 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:

Intent to deceive or defraud

The evidence before me shows that the subject motor cycle was acquired for the full benefit of the accused using Pw1 as a proxy. That arrangement materialized after the accused assured Pw1 that he would continue to make the agreed weekly deposit of *UGX.139,612/= at Watu credit Ltd for a total 12 months to pay up the full purchase price.*

It turned out that those assertions were untrue. The accused did not even make a single deposit. If he did not intend to deceive, atleast, he would have made a single deposit and explain away the default with a plea of shortage of funds or sickness etc. In this case, no such explanation was forth coming.

Pw2 told court that:

“...I know the accused whom I met when he was selling to me the subject motor cycle at a consideration of UGX.3,000,000/=. The accused told me that the motor cycle was his and also showed me a log book of the said motor cycle...”

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. Clearly, this is not conduct of an honest man.

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

Ingredient 4:

Reliance upon the representations by the victim

Pw1 told court that:

“...I, together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price...”

“...the default persisted until I later saw the accused in town without the motor cycle...”

“...but the same was now untraceable until the tracker located it in Pacilo East...”

“... when I asked him the whereabouts of the motor cycle, he stated that he had sold it to a one, Karaveli Livingstone, of whom, he also disclosed his telephone contact...”

Pw2 corroborated that testimony when he told court that:

“...I know the accused whom I met when he was selling to me the subject motor cycle at a consideration of UGX.3,000,000/=. The accused told me that the motor cycle was his and also showed me a log book of the said motor cycle...”

That testimony is summarized that both Pw1 and Watu credit Ltd relied upon those representations and ended up parting with possession of the subject motor cycle.

I have not seen any evidence to the contrary.

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

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

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.**”*

Pw1 told court that:

“...I, together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price...”

“...the default persisted until I later saw the accused in town without the motor cycle...”

“...but the same was now untraceable until the tracker located it in Pacilo East...”

“... when I asked him the whereabouts of the motor cycle, he stated that he had sold it to a one, Karaveli Livingstone, of whom, he also disclosed his telephone contact...”

Pw2 corroborated that testimony when he told court that:

“...I know the accused whom I met when he was selling to me the subject motor cycle at a consideration of UGX.3,000,000/=. The accused told me that the motor cycle was his and also showed me a log book of the said motor cycle....”

The accused, in his own testimony as Dw1 confirmed the encounter with Pw1 and the dealings on the subject motor cycle.

In conclusion therefore, the evidence before me as a whole does establish beyond reasonable doubts that prosecution also proved participation of the accused beyond reasonable doubts.

As the basic ingredients have all been proven by prosecution, I accordingly, find the accused GUILTY and CONVICT him of the offence of OBTAINING GOODS BY FALSE PRETENSES contrary to, then Section 305(a), now, **Section 285** of the penal code Act cap 128.

Count II:

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.”

The ingredients are:-

1. A false document
2. Knowingly offering it to a person
3. Intention to deceive
4. Participation of the accused.

Evaluation of ingredient 1,2,3&4

In the instant case, Pw1 told court that:

“...I, together with the accused were given the motor cycle together with a payment plan of a weekly UGX.139,612/= deposit at Watu credit Ltd for a total 12 months to pay up the full purchase price...”

“...the default persisted until I later saw the accused in town without the motor cycle...”

“...but the same was now untraceable until the tracker located it in Pacilo East...”

“... when I asked him the whereabouts of the motor cycle, he stated that he had sold it to a one, Karaveli Livingstone, of whom, he also disclosed his telephone contact...”

Pw2 corroborated that testimony when he told court that:

“...I know the accused whom I met when he was selling to me the subject motor cycle at a consideration of UGX.3,000,000/=. The accused told me that the motor cycle was his and also showed me a log book of the said motor cycle...”

The false document alleged to have been uttered is the one purporting to be the log book of the subject motor cycle registration no. PEX4

To prove the falsity of the said document, prosecution exhibited **PEX2** – a police form 28 showing that the proper log book is still registered in the names of “Nish Auto Ltd” as opposed to “Ojara Sunday William.”

From that evidence, it is the finding of this court that the said purported log book in the names of “Ojara Sunday William.” was a false document. It is also the finding of this court that the said false document was uttered by the accused to Pw2 in execution of the sale of the subject motor cycle.

As to whether the said uttering was done “*knowingly*,” this court finds that the accused uttered the document “*knowingly*” since he was aware of the real log book to be in the custody of Watu Credit Ltd.

The accused is found guilty of the offence and accordingly convicted.

In conclusion, I make the following orders:

1. The accused is found guilty and convicted of both count 1 & count 2.
2. The accused shall remain on remand until hearing on *allocutus*.
3. An order of restitution hereby issues against the accused for UGX. 3,500,000/= the same should be given to Pw2.(Kalaveri Livingstone)

I so order.

Dated at ATIAK this _____17th____ day of ____DECEMBER____ 2024.



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HIS WORSHIP KYEMBE KARIM

MAGISTRATE G.1