

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO. **PAL-00-CR-C0-154-2024**
UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTION
VS
KULEGEYA DALAUSI :::::::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

By change sheet dated 25th/June/2024 and sanctioned on 27th June, 2024, the Accused was charged with one count of common THEFT Contrary to then, Section 254(1) and 265, cap 120, now, Sections 237 and 248(a) of the penal code Act cap 128, laws of Uganda.

Brief background

It was the prosecution's allegation that the accused on the 19th day of June, 2024 at around 10.00hours at Pallisa Court in Pallisa District stole a Jupiter black bicycle valued at 400,000/= (*four hundred thousand shillings only*), the property of a one, Opolot John Micheal.

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 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 has no obligation to prove his innocence.

In attempt to prove the charge, the prosecution called 5 (five) witnesses.

Prosecution first called a one, **Omoine Erika**, and his testimony was taken down as **Pw1.**

He told court that on the 18th June, 2024, while he had gone to attend court, he came riding on a bicycle, Jupiter type of size 24, black in colour and that the handles were white, belonging to his Uncle, a one, Opolot John Micheal. That upon arrival, he parked it under a jack fruit tree because there was a police officer and he entered court to attend. That upon return, around 2:00pm, he found when the bicycle was now missing. He first went home because he was hungry and the next day, he received a phone call from a police officer stating that the bicycle had been recovered. That he went to the police station whereof he found it now dismantled and in pieces, but he managed to identify the parts since

his said uncle, Opolot had spent a number of years riding the same bicycle.

Pw2 opolot John Micheal told court that he identified parts of the bicycle to belong to him based on the welded portions of the seat. Pictures of the said dismantled bicycle were exhibited as **PEX1**.

No. 31866 Coporal Nakisiita testified as Pw3 telling court that he was first approached by Pw1 stating that his bicycle had been stolen of which he assured him that they would give him a call if they happened to trace the said bicycle.

No. 27743 Detective sergeant Apimo Christine testified as the Investigating officer and her testimony taken down as **Pw4**. She testified that a crime preventer called Okunya Charles found the accused with the parts of the bicycle in a polythene bag of which he suspected to be stolen and thereby led him to the police station whereupon the accused was detained and the bicycle exhibited. Photographs and the exhibit slip were collectively admitted as **PEX1**

On the 11th March, 2025, upon hearing the prosecution evidence, this court ruled that a prima facie case had been established and the accused placed to his 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 is not subject to cross examination.
3. Elect to keep silent.

The accused opted to give evidence on oath.

His testimony was taken down as **Dw1- Kulegeya Dalausi.**

He denied the charge. He told court that he was taken to Pallisa police station whereof he was beaten and he did not thumbprint the statement on his volition.

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.

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, and PW3, Prosecution exhibited pictures of the remains of the allegedly stolen bicycle and the exhibit slip as **PEX1**.

In his testimony in chief, Pw1 testified that:

“...while I had gone to attend court. I came riding on a bicycle, Jupiter type of size 24, black in colour and that the handles were

white, belonging to my Uncle, a one, Opolot John Micheal. Upon arrival, I parked it under a jack fruit tree because there was a police officer and I entered court to attend. Upon return, around 2:00pm, I found when the bicycle was now missing.

“...the next day, I received a phone call from a police officer stating that the bicycle had been recovered. I went to the police station whereof I found it now dismantled and in pieces, but I managed to identify the parts since my said uncle, Opolot had spent a number of years riding the same bicycle.”

I did not find evidence contradicting the above and neither was it discredited in cross examination. On the strength of that evidence, I am satisfied that the alleged stolen bicycle was in the possession of Pw1- the complainant had been in possession of the same at all material time before its theft.

This ingredient was proven by the prosecution beyond reasonable doubts.

Ingredient 2:

whether the bicycle 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 (pw1), 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 254 (1) of The Penal Code Act**, defines theft as “fraudulently and without claim of right [taking]

Clearly, who ever took the bicycle has never returned the same. As to the exhibits in PEX1 depicting a dismantled bicycle, I will address that issue later.

I am satisfied with the prosecution evidence, especially of Pw1 to the effect that whoever took the said bicycle haboured a motive to permanently deprive the owner of the same.

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." Theft involves an unauthorised 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 evidence before me shows that the subject matter was a bicycle. No doubt, a bicycle is asportable and cable of being stolen. And as it has never been recovered, this court is safe to presume that it indeed was stolen. Prosecution proved this ingredient to the satisfaction of court.

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 **Section 254 (2) of The Penal Code Act.**

As I have already resolved in ingredients above, I am satisfied that the allegedly stolen bicycle was in the possession of Pw1.

For those reasons, I also satisfied that that the allegedly stolen bicycle was capable of being stolen and this ingredient was proved beyond reasonable doubts by the prosecution.

Ingredient 4:

With the intention to permanently deprive the owner of the motor vehicle.

The evidence before this court, that is, testimony of PW1, PW2 and PW3 shows that the parts of a bicycle was handed to Pw1 and Pw2 upon recovery. I am satisfied that the prosecution discharged the burden of proof on this ingredient as well.

Whereas an 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 15** of the PCA, amongst others, the accused in this case raised the defence of general denial. I am not satisfied that the prosecution has dislodged this defence.

In **UGANDA V WANYAMA STEVEN CRIMINAL SESSION CASE NO 0405/2015**, court held that 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 same **UGANDA VS WANYAMA STEVEN** *supra*, 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 **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.**”*

I listened to the evidence of both prosecution and the defence. The prosecution evidence is that the accused was found with bicycle parts in a polythene bag by a crime preventer.

Pw4 testified that:

“... a crime preventer called Okunya Charles found the accused with the parts of the bicycle in a polythene bag of which he suspected to be stolen and thereby led him to the police station whereupon the accused was detained and the bicycle exhibited...”

The bicycle was later identified to belong to Opolot John Micheal and handed over back to him. This ingredient was also proved beyond reasonable doubt.

Accordingly, I find the Accused GUILTY of the offence of stealing a vehicle as charged and I accordingly CONVICT him.

I will proceed to go ahead and hear the state on aggravating factors and the convict on allocutus.

I so order.

Dated at PALLISA this ____11th____ day of ____JUNE____
2025.



HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1