

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-416-2023**

UGANDA:..... PROSECUTION

VS

MADUDU JOHN:..... ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned vide charge sheet dated 13th November, 2023 and Sanctioned on the 15th November, 2023, and 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 facts.

It is the prosecution's assertion that the accused, during the night of 3rd November, 2023, at Otamirio cell, Kibale Town Council in Pallisa District stole 2(two) bulls and 1(one) co, all valued at approximately UGX. 5,100,000/= (*Uganda shillings five million one hundred thousand only*), the property of a one, Olemunyang Clement.

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 placed in issue all and every essential ingredient of the offence with which they are 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 also aware and I have cautioned myself that the accused has no obligation to prove his innocence.

Evidence adduced:

In attempt to prove the charges, the prosecution first called the complainant, the said **Olemunyang Clement** whose testimony was taken down as **Pw1.**

He told court that he realized at 6:00am of the morning of 3rd November, 2023 that his 3 heads of cattle had been stolen. He testified that altogether, he had 10 heads of cattle of which he had tied on to pegs on the sisal plant. That the said cattle were his, having purchased them and grazed them. That on realizing that they had been stolen, he followed the

hoof marks, because it had rained previously and the same led him to the junction, where, now, there were many hoof marks and the area had been over trodden. That his home is located near the road and he followed the road towards Omuruka to Otamirio and Akipanyi but he did not find the cattle, upon which, he decided to go and report the matters to the village chair person, who, also advised him to report at police.

He testified further that at police, he sought assistance of the sniffer dog services but the same was only brought to the scene of crime 3 days later, on the 6th November, 2023 and after the dog handler introducing the same to the scene, the dog picked a scent and also followed the same road where the hoof marks had earlier been seen, reached the junction and later proceeded to the accused's house, whereof it found the accused's wife, of whom it did not respond to but entered the house and lay upon the accused's bed. That the dog had on a separate occasion previously ended up at the accused's home

On cross-examination by the accused, Pw1 told court that at the junction where the hoof marks were most concentrated, they found nothing connecting the accused to the cattle, neither did they find any rope or peg in the accused's house and that he had been coming to court but was only interviewed by the state attorney that day.

Pw2- Obwetum Charles was the chairperson of the area. He testified that the accused's home is close to that of the complainant and on the said day at around 7:00am when Pw1 came to his house to report the loss of his cattle, he(Pw2) went with Pw2 to his open kraal where the cattle had been tied on pegs and that upon reaching there, they found only 7 heads of cattle yet Pw1 originally had 10 heads. That since it had

rained the previous night, they followed the hoof steps and the same led them to the main road whereof, they also found tire marks and at that point, they decided to report the matters to Kibale police station whereof they sought for the services of a police sniffer dog. That the sniffer dog was brought 3 days later and when it was introduced to the scene, it followed a scent to the main road and later branched off to the accused's compound whereof, they found the accused's wife, of whom it did not react to, but proceeded to sleep on the accused's mattress which was on the floor.

On cross-examination by the accused, Pw2 testified further that nothing was recovered from the accused's house, that the accused doesn't own a car, that he doesn't know where the cattle are and that the dog had previously led investigations towards the accused's home and this was the second time.

Pw3- Qosua Solomon is the biological son of Pw1 whose testimony re-echoed Pw1's testimony.

No. 682344 P/C Iwalwa Samuel Grace was the dog handler and his testimony was taken down as Pw4.

After laying down his qualifications and those of the police sniffer dog, he gave testimony re-echoing that of Pw1 and Pw2 as regards how the police sniffer dog ended up at the accused's house.

On cross-examination, he told court that the dog tracks only human scent and where the scent is most concentrated and that no cattle were found at the accused's home.

The prosecution thereupon rested its case.

On the 5th June, 2025 after considering all evidence on the record, this court ruled that a prima facie case had been established which required the accused to be placed to his defence.

In **WIBIRO ALIAS MUSA VS REPUBLIC (1960) EA 184** it was

held:

“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, 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 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.

His testimony was taken down as **Dw1- Madudu John.**

He entirely denied having anything to do with the stolen cattle. On cross-examination, he told court that it's his children who told him about the theft of the cows and never went to the complainant's home since he was in the garden and that he could not explain why his scent was picked by the sniffer dog, that maybe it's because he stays near the road.

CONSIDERATION BY COURT:

Under **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.

Under **Section 101** of the Evidence Act the burden to prove a case in a criminal trial rests entirely upon the prosecution.

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.

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.

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/ 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 cow and bulls, the property of Pw1 having purchased the same and grazed them. The testimony of all witnesses, Pw1, Pw2 and even Dw1 shows that indeed, the complainant indeed grazes cattle.

By that evidence, I am satisfied with the existence of the allegedly stolen cow and 2 bulls, the property of someone else (Pw1).

As regards asportation of the said cow and 2 bulls, the evidence before this court establishes that the allegedly stolen cattle were herded towards the junction whereof motor vehicle tire marks were also seen. This evidence was not discounted in cross-examination and I have not found any reason to believe otherwise.

Pw1. He testified that:

“...I had tied the cattle on to pegs on the sisal plant. The cattle were mine, having purchased them and grazed them. On realizing that they had been stolen, I followed the hoof marks, because it had rained previously and the same led me to the junction, where, now, there were many hoof marks and the area had been over trodden...”

From that evidence, the prosecution proved this ingredient beyond reasonable doubts that the cattle were asported from the open kraal of Pw1, towards the junction, whereof, they were subsequently loaded on to a motor vehicle and taken to a place unknown to date.

Ingredient 2: *The property belonging to another.*

All prosecution witnesses, Pw1, Pw2 and even Dw1 shows that indeed, the complainant was rearing the cattle.

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 cattle.

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 allegedly stolen cattle were herded towards the junction, whereof they were later uploaded onto a motor vehicle and taken to a place unknown to date. In the absence of any lawful or reasonable explanation as to why the cattle were herded, without consent of the owner thereof (Pw1), moreover at night, left this court with no doubt but to conclude that the said acts were done with a fraudulent intent.

Pw1 testified that:

“...I realized at 6:00am of the morning of 3rd November, 2023 that my 3 heads of cattle had been stolen...”

The motive behind untying the cattle and herding them without consent of the owner, Pw1, whose house was nearby the open kraal, moreover, during the night, leaves no doubt in this court’s mind that whoever herded the said cattle harbored the intention to permanently deprive the owner of the same.

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

Ingredient 4: Accused’s participation.

It seems to this court that the only evidence linking the accused to the said cattle is only the evidence gathered through the aid of the police sniffer dog.

On this ingredient, this court is under duty to approach it with sober mind, especially as regards identification. Evidence of identification is a cause for unease, given that the offence was allegedly committed at night.

Pw1 testified that:

“...I realized at 6:00am of the morning of 3rd November, 2023 that my 3 heads of cattle had been stolen...”

The rules were laid down in **Roria vs. Republic [1967] E.A. 583.**

The reason for this is that there is greater danger of convicting an innocent person on such evidence, than is the case with other forms of evidence.

While even the evidence of a single identifying witness can suffice to found a conviction, it is less safe to do so than is the case with multiple identification witnesses; and therefore, the Court is under duty to satisfy itself that in all the circumstances of the case, it is safe to act on such evidence of identification.

These principles were followed by the Supreme Court of Uganda in **Bogere Moses & Anor. vs. Uganda – S.C. Crim. Appeal No. 1 of 1997;** which cited with approval, the case of **Nabulere vs. Uganda – Crim. Appeal No. 9 of 1978; [1979] H.C.B. 77,** in which the Court had clarified that;-

“...the need for the exercise of care arises both in situations where the correctness of disputed identification depends wholly or substantially on the testimony of a single or multiple identification witnesses; and that the Court must warn itself and the assessors of the special need for caution before arriving at a conviction founded on such evidence...”

The Court further stated that:

“...The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, and that even a number of such witnesses can all be mistaken. The Judge should then

examine closely the circumstances in which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with the accused.”

All these factors go to the quality of the identification evidence. If the quality is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger.

When the quality is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused before, a Court can safely convict even though there is no other evidence to support the identification evidence, provided the Court adequately warns itself of the special need for caution.”

In **George William Kalyesubula vs. Uganda – S.C. Crim. Appeal No. 16 of 1997**, the Supreme Court of Uganda further upheld this position, citing with approval the **Roria case (supra)**, and **Abdulla bin Wendo & Another v. R (1953) 20 E.A.C.A 166**; reiterating the need for testing, with the greatest care, identification evidence; especially when such identification was made under difficult and unfavorable conditions. The Court then advised that:

“In such circumstances what is needed is other evidence pointing to guilt from which it can reasonably be concluded that the evidence of identification can safely be accepted as free from the possibility of error.”

In **Moses Kasana vs. Uganda – C.A. Crim. Appeal No. 12 of 1981; [1992-93] H.C.B. 47**, a decision which was cited with approval in the

Bogere case (supra), the Court emphasized that where conditions favoring correct identification are poor, there is need to look for other evidence, direct or circumstantial to allay any doubt in the mind of the trial Court of any case of mistaken identity.

In **Yowana Sserunkuma vs. Uganda, S.C. Cr. Appeal No. 8 of 1989**, the Court further explained that it is trite law that the evidence of a single identifying witness at night may be accepted, but only after the most careful scrutiny;

In **Abdullah bin Wendo vs. R. (1953) 20 E.A.C.A. 166 at 168**; and in **Roria vs. R. [1967] E.A. 583**). Court stated that a careful scrutiny is not the same thing as an elaborate justification accepting dubious evidence.

In the instant case before me, the only evidence identifying the accused was that of the police canine sniffer dog.

Generally, evidence of sniffer dogs is not fully developed within our criminal justice system. Reliance on evidence of sniffer dogs should be taken with caution. In the cases of **Abdallah Bin Wendo and Anor v R [1953] 20EACA165** and **Omondi And Anor v R 1967 EA 802** it was held that the evidence of sniffer dogs should be admitted with caution and great care.

“...There should have been evidence of the experience of the dog handler in training and handling of the dog. And secondly the experience of the dog itself. There should be evidence to show the number of arrests and degree of accuracy effected by the dog ending up

in successful prosecution. There should be evidence about the conduct of the accused before and during arrest when confronted by the dog...”

The Court of Appeal for Eastern Africa in the case of **Abdallah bin Wendo and anor v R**^[supra] observed at page 167,

“...We are fully conscious of the assistance which can be rendered by trained police dogs in the tracking down and pursuit of fugitives, but this is the first time we have come across an attempt to use the actions of a dog to supply corroboration of an identification of a suspect by a homo sapiens.

We do not wish it to be thought that we rule out absolutely evidence of this character as improper in all circumstances but we certainly think that it should be accompanied by the evidence of the person who has trained the dog and who can describe accurately the nature of the test employed...”

Sniffer dog evidence was also considered in the Kenyan case of **Omondi and Anor v R [1967] E A 802, supra** where the High Court observed as follows at page 807,

‘But we think it proper to sound a note of warning about what, without undue levity, we may call the evidence of dogs. It is evidence which we think should be admitted with

caution, and if admitted should be treated with great care. Before the evidence is admitted the court should, we think ask for evidence as to how the dog has been trained and for evidence as to the dog's reliability.

To say that a dog has a thousand arrests to its credit is clearly, by itself, quite unconvincing.

Clear evidence that the dog had repeatedly and faultlessly followed a scent over difficult country would be required, we think, to render this kind of evidence admissible. But having received the evidence that the dog was, if we might so describe it, a reasonably reliable tracking machine, the court must never forget that even a pack of hounds can change foxes and that this kind of evidence is quite obviously fallible.”

The High Court in Uganda has followed, and correctly in my view, the principles set out in the foregoing cases in dealing with reception of dog evidence. One of the most recent such cases is **Uganda v Muheirwe and Anor HCT-05-CR-CN-0011 of 2012 at Mbarara High Court District Registry**. After a review of comparative jurisprudence from around the world and from Uganda too, **Gaswaga, J.**, proposed the following principles to guide trial courts with regard to admissibility and reliance on dog evidence. He opined;

“...Therefore, from the above discourse, the following

propositions are made as principles that may govern the considerations for the exclusion or admissibility of and weight to be attached to tracker (sniffer) dog evidence:”

- a) The evidence must be treated with utmost care (caution) by court and given the fullest sort of explanation by the prosecution.
- b) There must be material before the court establishing the experience and qualifications of the dog handler.
- c) The reputation, skill and training of the tracker dog [is] require[d] to be proved before the court (of course by the handler/ trainer who is familiar with the characteristics of the dog).
- d) The circumstances relating to the actual trailing must be demonstrated. Preservation of the scene is crucial. And the trail must not have become stale.
- e) The human handler must not try to explore the inner workings of the animals mind in relation to the conduct of the trailing. This reservation apart, he is free to describe the behaviour of the dog and give an expert opinion as to the inferences which might

properly be drawn from a particular action by the dog.

- f) The court should direct its attention to the conclusion which it is minded to reach on the basis of the tracker evidence and the perils in too quickly coming to that conclusion from material not subject to the truth-eliciting process of cross-examination.
- g) It should be borne in the mind of the trial judge that according to the circumstances otherwise deposed to in evidence, the canine evidence might be at the forefront of the prosecution case or a lesser link in the chain of evidence.'

In the instant case before this court, Pw1 testified that:

"...the police sniffer dog came 3 days later...."

Dw1 testified in his defence that:

"...the dog could have picked my scent because my house is close to the road..."

Pw2 told court that:

"... we preserved the crime scene with thorny branches..."

This court notes in this case that the evidence of all witnesses is after the fact. To say, none of the witnesses ever saw the cows being stolen. What

court has is circumstantial evidence of, especially, Pw4 and the outcome of the sniffer dog.

It is trite that evidence from sniffer dogs must be corroborated by other evidence to be admissible. And courts must exercise caution as held in **Abdallah Bin Wendo and Anor Vs R (1953) 20 EACA at 165.**

Prosecution must provide affirmative answers to questions regarding reliability of handling the police dog before that evidence can be admitted.

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.

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.

This court listened to both prosecution and defence evidence. I am not satisfied as to why no exhibits of the scene of crime were shown to court to corroborate oral testimony of Pw1 and Pw2 to the effect that the scene had been preserved.

Similarly, no exhibits were shown to court as to how the police sniffer dog conducted its sniffing. It has been stated in a plethora of cases that at every step of the dog act must be documented. Recently, video evidence has proven to be better exhibit in respect to the canine investigation. All these, purposely, to ensure that the dog was neither influenced by the handler or 3rd party distractions like other dogs which might prompt the natural animal instinct to the detriment of an investigation.

Pw2 told court that the sniffer dog had earlier tracked the accused to his home in a separate investigation.

Is it possible that the sniffer dog may along the way drop the current scent and seek out the previous scent? Prosecution did not satisfy court about this possibility.

This canine evidence was not corroborated by other evidence as required by law. Save for the dog leading to his house, nothing was found to link the accused to the crime scene.

In as much as there is a very strong suspicion against the accused, the evidence adduced to prove his participation falls short of the minimum threshold required in a criminal prosecution.

For those reasons, I am not satisfied that the prosecution proved this ingredient beyond reasonable doubts.

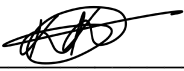
Accordingly, I find the Accused NOT GUILTY and ACQUIT him of the offence of stealing cattle Contrary to formerly, **Section 254** and **264** of

the Penal Code Act, Cap 120, and now **sections 237** and **247** Cap 128 Laws of Uganda, 2023 revised edition.

He is accordingly discharged and set free unless being held for any other lawful cause.

I so order.

Dated at PALLISA this ____24th____ day of ____MAY____ 2025.



HW KYEMBE KARIM

Magistrate G.I