

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-C0-437-2023**
UGANDA :::::::::::::::::::::::::::::::::: PROSECUTION
VS
BUMBA WILLIAM :::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned vide charge sheet dated 27th November, 2023 and sanctioned 28th November, 2023, and charged with two counts 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.

Count1:

It is the prosecution's assertion that the accused, during the night of 17th November, 2023 at Okoboi Village in Butebo District stole one bull valued at approximately UGX. 1,600,000/= (*Uganda shillings one million six hundred thousand only*), the property of a one, Odongo John Peter.

Count 2:

It is also the prosecution's assertion that the accused and others still at large, during the night of 17th November, 2023 at Okoboi Village in Butebo District stole one bull valued at approximately UGX. 1,800,000/= (*Uganda shillings one million eight hundred thousand only*), the property of a one, Otau Nakelet.

When the charges were read to the Accused, he denied the Charges and a plea of NOT GUILTY was accordingly entered.

It has been settled in a plethora of cases that, by denying the Charges, the accused placed in issue all and every essential ingredient of the offence with which he is being charged.

It is also settled that 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.**

This 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.**

I have reminded myself of the above principles and 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, prosecution called a total of 6 witnesses. Prosecution first called one of the complainants, the said **Otau Nakelet** whose testimony was taken down as **Pw1**.

Pw1 told court that she knows the accused since childhood. That on the night of 17th November, 2023, her brother a one, Odong Peter woke Pw1 up at 1:00 am and told her that someone had stolen their bulls. The Pw1 together with the said Odong Peter got out of the house and realized that 3 bulls were missing, out of the total 6 cows they kept. That they raised alarm and the neighbors joined them in the search which led them about half a kilometer away to Kidogole sub county whereof it is common knowledge that cows are normally uploaded on trucks. That they found hoofmarks and tire marks of which they followed until they found one bull which had been tied all legs together and they brought it back to the kraal at around 4:00am.

That on reporting the matters to police, they were advised to engage services of a police sniffer dog, which now, was engaged in another exercise somewhere else and it was brought later at around 3:00pm but they had condoned off the kraal to keep it from contamination.

Notably for court, Pw1 while under cross-examination by the accused told court that it had rained.

Pw2 Odong John peter re-echoed testimony of Pw1 as regards how he came to know the loss of the bulls and what was subsequently done.

Pw3-Malinga John and **Pw4- Omoding Robert** also told court how they know the accused and re-echoed testimony of Pw1, they having

participated in the search and witnessed the police sniffer dog conduct its exercise.

Pw5- No. 68234 D/C Lwalwa Samuel was the dog handler and told court how he introduced the **dog, no. T/P 213 -Beauty** to the crime scene and how the sniffing exercise was conducted until the dog entered the house and rested on a bed which later turned out to belong to the accused.

Pw6 -No. 61012 D/C Okwere Alfred was the Investigating officer and he exhibited prosecution exhibits **PEX1,2,3,4 & 5**-which were photographs of the different stages of the sniffer dog tracking exercise and **PEX6**- the sketch plan of the scene of crime.

On cross-examination, Pw6 testified that it was the first time the dog tracked down to the accused.

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 prosecution thereupon rested its case.

On the 28th April, 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 testify under oath and his testimony was taken down as **Dw1- Bumba William.**

He denied committing alleged offences and told court that on the said day, he was called by his brother, a one Obwin Francis and asked whether he knew what was transpiring at his home. That he was told about how the police dog had tracked a scent to his house and told about the damage at his home. That on that day, he had gone to Mbale to work as a security guard and while still on duty, he was anxious and the next day, 18th November, 2023, he sought permission to go and attend to the emergency at his home. To prove the assertions, he

exhibited DEX1- a copy of the employer's record book showing attendance, general report of the shift and change of shift amongst others and specifically, that on the said 17th November, 2023, he was on night duty in Mbale, a distance of about 6 hours from the crime scene.

He thereupon rested his defence.

EVALUATION OF EVIDENCE AND LAW:

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.

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.

In the interest of judicial economy, I will address the ingredient of participation in both counts, since, it is alleged the offences were committed simultaneously.

Ingredient 4: participation of accused

Proof of participation is a cause for unease, given the fact that the offences were allegedly committed at night. Prosecution witnesses Pw1,

Pw2 & Pw3 testified that they all came to know about the alleged theft after the bulls had already been taken.

None of the witnesses testified to having seen the accused steal the bulls.

The only evidence linking the accused to the scene of crime is the evidence of the police sniffer dog which allegedly sniffed its way to the accused's house.

As observed in the foregoing, no witness saw the accused commit the alleged offences being attributed to him. The evidence that attempts to place him at the scene of crime through the testimony of all witnesses, Pw1,Pw2,Pw3 & Pw4 is all ***“after the fact.”***

This court took keen judicial notice of two factors:

1. That it had rained and the police sniffer dog evidence is not conclusive
2. That the accused set up a defence of alibi with his **DEX1** and he was not expected to prove it.

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 all prosecution witnesses.

The accused, while testifying as Dw1 set up a defence of alibi and even exhibited documentary evidence to show that he was not within the proximity of the crime scene at the time the offences were allegedly committed.

This evidence was not discredited in cross-examination or with contrary evidence. The only evidence linking the accused to the crime is that of the police dog allegedly entering his house and laying on his bed.

Credibility of police sniffer dog evidence was considered in **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 as much as there is a very strong suspicion and anger against the accused because of the dog evidence that culminated into destruction of his properties by way of mob action, this court is not satisfied that the police dog evidence as a standalone piece of evidence is adequate to prove his participation. It 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.


As this ingredient was not proved by the prosecution, it would be moot to examine the rest of the ingredients.

Accordingly, I find the Accused NOT GUILTY on both counts 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 ____09th ____ day of ____July ____ 2025.



HW KYEMBE KARIM

Magistrate G.I