

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-165-2024**
UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTION
VS
OTIM JOHN PETER :::::::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned vide charge sheet dated 2ND July, 2024 and Sanctioned the same day, 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 24th June, 2024 at Akisimi Central Village in Pallisa district stole two sheep valued at approximately UGX. 500,000/= (*Uganda shillings five hundred thousand only*), the property of a one, Omudu Andrew.

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 they are 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, the prosecution first called the complainant, the said **Omudu Andrew** whose testimony was taken down as **Pw1.**

He told court that the accused is well known to him, having been neighbors for over 10 years. That on the said day, he went to sleep and at around midnight, he heard his sheep bleating prompting him to wake up, together with his wife and they went outside, whereof, with aid of their solar security light, they noticed that the sheep shade was open and they at first, suspected that the sheep had only strayed outside the

shade. That having failed to trace the sheep, Pw1 together with his wife first reported the matters to the local council officials and before proceeding to report at police, they noticed hoofmarks which led them to the road from Kibaale to Akisim and at the said road, there were also tire marks of a motor cycle.

Pw1 further told court that the previous night, while searching for the sheep, he saw the accused at the same road of Kibaale to Akisim. The rest of the testimony is as to how the police sniffer dog conducted its exercise when it was introduced at the scene of crime.

Pw2-Opolot Kodson told court that he is a pastor and the complainant (Pw1) is a brother to his (Pw2) father. He re-echoed what he witnessed in the course of the police sniffer dog conduct its exercise.

Pw3 - No.31319 -Okwen Abraham was the investigating officer and he gave evidence how he was approached by the complainant and implored to seek the services of a sniffer dog, of which, he secured and also drew a sketch plan of the crime scene which was admitted as **prosecution exhibit PEX1**.

Pw4 - No. 68234- D/C Iwalwa Samuel Grace was the dog handler who told court how the sniffer dog was introduced to the scene of crime and it picked the scent and sniffed its way.

Conspicuously, court noted his testimony when he testified that the dog rotated at a certain murram road for about 10-15 seconds implying a concentration of the scent at that point and then later bypassed several

houses, through the bushes and found the accused's house open and entered and lay on the bed.

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 2nd March, 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 **REMAIN SILENT**.

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 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 sheep, the property of Pw1 having been grazing the same and keeping them in an outside temporal shelter.

Pw1 told court that

“...on the said day, I went to sleep and at around midnight, I heard my sheep bleating prompting me to wake up, together with my wife and we went outside, whereof, with aid of our

solar security light, we noticed that the sheep shade was open and we at first, suspected that the sheep had only strayed outside the shade...”

That testimony was not discounted in cross-examination and I have not seen any evidence to the contrary. By that evidence, I am satisfied with the existence of the allegedly stolen sheep, 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 sheep were removed from their temporal shelter.

Pw1 testified that:

“...we noticed that the sheep shade was open and we at first, suspected that the sheep had only strayed outside the shade. That having failed to trace the sheep, I together with my wife first reported the matters to the local council officials and before proceeding to report at police, we noticed hoofmarks which led us to the road from Kibaale to Akisim and at the said road, there were also tire marks of a motor cycle...”

By that evidence, this court is satisfied that the allegedly stolen sheep were herded, leaving behind hoofmarks towards the road from Kibaale to Akisim, at which road there were also tire marks of a motor cycle. This evidence was also not discounted in cross-examination and I have not found any reason to believe otherwise.

Pw1. He testified that:

“...we noticed hoofmarks which led us to the road from Kibaale to Akisim and at the said road, there were also tire marks of a motor cycle...”

From that evidence, the prosecution proved this ingredient beyond reasonable doubts that the allegedly stolen sheep were asported from their known temporal shelter and taken towards the road from Kibaale to Akisim, whereof, they must have been uploaded on a motor cycle 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 sheep.

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 sheep.

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 & 2, this court has already found that the allegedly stolen sheep were asported from their known temporal shelter and taken towards the road from Kibaale to Akisim, whereof, they must have been uploaded on a motor cycle and taken to a place unknown to date.

In the absence of any lawful or reasonable explanation as to why the sheep 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:

“...on the said day, I went to sleep and at around midnight, I heard my sheep bleating prompting me to wake up, together with my wife and we went outside, whereof, with aid of our solar security light, we noticed that the sheep shade was open and we at first, suspected that the sheep had only strayed outside the shade...”

The motive behind herding the sheep without consent of the owner, Pw1, whose house was nearby the out door temporal shelter, moreover, during the night, leaves no doubt in this court's mind that whoever herded the said sheep 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:

“...at around midnight, I heard my sheep bleating prompting me to wake up...”

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.

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 an 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, **Pw4 - No. 68234- D/C Iwalwa Samuel Grace** was the dog handler who told court that:

“...the sniffer dog was introduced to the scene of crime and it picked the scent and sniffed its way through different paths

*and bushes until it reached and **rotated at a certain murram road for about 10-15 seconds** implying a concentration of the scent at that point and then later bypassed several houses, through the bushes and found the accused's house open and entered and lay on the bed..."*

This court notes that Pw1 had earlier testified that:

"...the previous night, while searching for the sheep, I saw the accused at the same road of Kibaale to Akisiri ..."

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 sheep 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 all prosecution witnesses.

Pw1 told court that nothing incriminating was found at the accused's place.

Pw4, besides telling court that the rotation of the dog for about 15 seconds was indicative of concentration of the scent did not explain why the dog did not lead straight away to the accused's house.

This court is left wondering whether the accused innocently contaminated the said area, hence Pw1's testimony that he had seen the accused at the said road.

Of course, the accused could have shed more light as to why his scent was found at the said road. But like I said from the onset, he is not duty bound to prove his innocence.

This court is the expert of all experts. It's the duty of this court to discern the evidence of all witnesses and come to an independent decision. On those premises, this court is unsatisfied as to Pw4's explanation of the conduct of the sniffer dog rotating at the road for about 15 seconds.

It seems to me to have been the end of the trail of the scent hence the 15 seconds rotation. Confused by the end of the trail, the dog instead picked up a new scent from there and onward marched Pw4 to the accused's house.

The duty was upon the prosecution to rule out that possibility but they did not.

As the prosecution did not dispel that possibility, shadows of doubt linger in this court's mind as to whether the accused actually participated in the stealing of the sheep, or he was a victim of circumstances by virtue of him standing where the sheep were uploaded on to the motorcycle *(as testified by Pw1)*.

Additionally, this court also wonders why the accused would not run away and hide when Pw1 and wife came looking for the now, stolen sheep. It is uncommon that a guilty person would remain at a scene likely to link him to a crime.

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 ___15TH___ day of _____JULY_____ 2025.



HW KYEMBE KARIM

Magistrate G.I