

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-032-2024**

UGANDA :: PROSECUTION

VS

MODOI JOSEPH :: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT



Introduction.

The accused was arraigned vide charge a sheet dated 12th February, 2024 and Sanctioned on the 15th February, 2024, 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 was the prosecution's allegation that the accused together with others still at large, during the night leading to 9th February, 2024, at around 02:00 hours at Kalyate Cell, Petete sub-county, Butebo District stole 2(two) bulls, both valued at approximately UGX. 3,000,000/= (*Uganda shillings three million only*), the property of a one, Keddi Alamanzani.

When the charge was read to the Accused, he denied the same and a plea of NOT GUILTY was accordingly entered.

It is trite that by denying the Charges, the accused placed in issue all and every essential ingredient of the offence with which is 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 my mind that the accused has no obligation to prove his innocence.

Evidence adduced:

In attempt to prove the charge, the prosecution called a total of 6 witnesses. Prosecution first called the complainant, the said **Keddi Alamanzani** whose testimony was taken down as **Pw1**.

He told court that he knows the accused as a fellow resident of Kalyante village. That it was on the 8th February, 2024 around 4:00am when he went outside, as his usual practice to go and check on his cattle which were 2(two) bulls in an open kraal but he realized that the same were missing, whereupon, he went to report to the GISO of the area and later,

the chairperson at around 6:00am and both advised him to go and report at police. That while at police, he was advised to seek services of a police sniffer dog, which was later introduced at the scene of crime at around 5:00pm and that this whole time, Pw1 had tied a banana fibre around the kraal to preserve the same from contamination.

That when the dog was introduced, it sniffed its way from the kraal and ended up in the accused's house wherein it lay upon the accused's bed. That when the dog entered the accused's house, he tried to run away from the crowd of which he was amongst but the police chased and arrested him.

On cross-examination, Pw1 testified further that nothing was recovered from the accused's house, it was the first time the police dog tracking a scent to his house, that he doesn't know why the accused ran away and it is the police who intercepted him.

Pw2- Yusuf Kedi told court that on that day, he received a call at around 4:00am from Pw1 stating that his cattle were missing and he went and joined the search party for the said cattle but they did not find them, hence prompting Pw1 to go and report to the GISO and LC. The rest of the testimony, he re-echoed testimony of Pw1 as regards the police sniffer dog tracking a scent to the accused's house and the accused's attempt to run away when the dog entered his house.

On cross-examination, Pw2 told court that the accused stays in the same compound with his father, whereof there are 6 houses in the whole court yard, with 5 boys and that the father's court yard has no fence and that he saw the accused constructing the house wherein the police dog

entered even though the police did not recover anything from the said house.

Pw3- Wairagala Mubaraka and **Pw4-Kirya Musa** both re-echoed the testimonies of Pw1 as already aforesaid.

No. 37799 D/C Wodamba Dennis was the dog handler and his testimony was taken down as **Pw6**.

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. He further told court that he took pictures and drew a sketch plan of the crime scene but the same was disallowed owing to none-signature by the drawer and other inconsistencies.

On cross-examination, he told court that there are other houses but the dog entered only the accused's house and he confirmed ownership from the LC1 and other people observing the exercise and when the dog entered the said house, the accused tried to run away but was arrested and that at police, the accused confessed and recorded a statement, although he could not remember whether it was thumb-printed or signed.

The prosecution thereupon rested its case.

On the 9th July, 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- Modoi Joseph.**

He entirely denied having anything to do with the stolen cattle. He told court that on the said 9th February, 2024, it was a Friday in the morning at around 8:00am when a one, Patu came to Dw1's home and told him that that he had woken up at midnight and his cattle were still there but when he woke up again at around 4:00am, the cattle were now missing and he advised him to go and report to the LC1 chairman who also advised him to report at police. That Dw1's wife then asked him to go and harvest some cassava and he returned at around 12:00 midday, upon which he proceeded to the said Patu's place whereof, he found many people gathered in the presence of the area chairman. That they

waited for the police dog to arrive until around 5:00pm and when it arrived, it started at Patu's place sniffing, went upto Saba's home, about 200 meters from Patu's home and then came back.

That Dw1 was following the dog also interested in knowing who had committed the offence, but the dog turned back and went to a one, Seku's house and the owner thereof was at school but the door was open. That the area chairman then asked who were the owners of the house and it was discovered that they were in Pallisa and Kumi.

At this point, on enquiry by court, it was noted that Dw1 was speaking about his parents as the owners of the said house. Judicial notice of the demeanor thereof was taken.

Dw1 further told court that Pw1 together with other people whom he did not know then attacked and injured him, whereupon, he was arrested and taken to police. That he doesn't know about Pw1's cattle.

On cross-examination, Dw1 testified further that he did not try to flee and instead, he was tortured and that the house wherein the dog entered belongs to a one, Kasule Augustine.

The Law, evidence & Analysis:

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.

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 bulls, the property of Pw1. The testimony of all witnesses, Pw1, Pw2, Pw3, Pw4, Pw5 & Pw6 shows that indeed, the complainant indeed grazed cattle which he was keeping in an open air kraal with pegs whereof the cattle used to be tethered and that is whereof the police dog commenced its sniffing exercise as per the testimony of all prosecution witnesses.

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

As regards asportation of the said 2 bulls, the evidence before this court establishes that the allegedly stolen cattle were herded from Pw1's home whereof the police sniffer dog commenced and the said cattle have never been recovered, to-date. This evidence was not discounted in cross-examination and I have not found any reason to believe otherwise.

Pw1. He testified that:

"...I went outside, as my usual practice, and I went to check on my cattle which were 2(two) bulls in an open kraal. But I realized that

the same were missing, whereupon, I went to report to the GISO of the area and later, the chairperson at around 6:00am and both advised me to go and report at police. That while at police, I was advised to seek services of a police sniffer dog, which was later introduced at the scene of crime at around 5:00pm and this whole time, I had tied a banana fibre around the kraal to preserve the same from contamination...”

From that evidence, the prosecution proved this ingredient beyond reasonable doubts that the cattle were asported from the open kraal of Pw1 and taken to a place unknown to date.

Ingredient 2: The property belonging to another.

All prosecution witnesses, especially, Pw1 & Pw2 shows that indeed, the complainant(Pw1) was rearing the bulls/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 from Pw1's place 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:

"...around 4:00am when I went outside and as my usual practice, I went to check on my cattle which were 2(two) bulls in an open kraal but I realized that the same were missing..."

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:

“...around 4:00am when I went outside and as my usual practice, I went to check on my cattle which were 2(two) bulls in an open kraal but I realized that the same were missing...”

The rules laid down in **Roria vs. Republic [1967] E.A. 583** regarding identification at night require this court to be extra cautious.

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.

In the instant case before me, all evidence led at trial was after the fact. No witness testified to having seen the accused steal the cattle. The only evidence identifying the accused was that of the police canine sniffer dog.

While, admittedly, that evidence of sniffer dogs is not fully developed within our criminal justice system, the same has on many occasions

proved to be extra reliable. 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.

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:

“...I was advised to seek services of a police sniffer dog, which was later introduced at the scene of crime at around 5:00pm and that this whole time, I had tied a banana fibre around the kraal to preserve the same from contamination...”

“...when the dog was introduced, it sniffed its way from the kraal and ended up in the accused’s house wherein it lay upon the accused’s bed...”

On cross-examination, Pw2 told court that

“...the accused stays in the same compound with his father, whereof there are 6 houses in the whole court yard, with 5 boys and the father’s court yard has no fence and I saw the accused constructing the house wherein the police dog entered even though the police did not recover anything from the said house...”

On cross-examination, **No. 37799 D/C Wodamba Dennis** the dog handler told court that:

“...there are other houses but the dog entered only the accused’s house and I confirmed ownership from the LC1 and other people observing the exercise and when the dog entered the said house, the accused tried to run away but was arrested...”

In his defence, the accused testifying as Dw1 told court that:

*“...I proceeded to the said Patu’s place whereof, I found many people gathered in the presence of the area chairman. We waited for the police dog to arrive until around 5:00pm and when it arrived, it started at Patu’s place sniffing, went upto Saba’s home, about 200 meters from Patu’s home and then came back. I was following the dog also interested in knowing who had committed the offence, but the dog turned back and went to a one, **Seku’s house...**”*

Court noted that Dw1 was speaking about his parents as the owners of the said house. Judicial notice of the demeanor thereof was taken.

As said earlier, 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 cattle being stolen. What court has is circumstantial evidence of, especially, Pw6 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. While the prosecution says the accused attempted to flee, the accused testified that he was tortured. It appears to me that the torturing if any was prompted when the dog entered the accused's house and indeed he attempted to flee. The prosecution evidence is believable beyond reasonable doubts.

It is trite that innocent people do not flee the crime scene. That conduct is usually prompted by a guilty conscience. I find that the conduct of the accused attempting to flee sufficiently corroborates the police canine evidence led through all witnesses, but mostly, Pw6.

For those reasons, I am satisfied that the prosecution proved this ingredient beyond reasonable doubts.

As all the ingredients have been satisfactorily proven by the prosecution, I accordingly find the Accused GUILTY and CONVICT 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 will be held on remand until hearing on allocutus and subsequent sentencing.

I so order.

Dated at PALLISA this ___20th___ day of ___AUGUST___2025.



HW KYEMBE KARIM

Magistrate G.I