

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-033-2024**

UGANDA :::::::::::::::::::::::::::::::::::::::::::::: PROSECUTION

VS

MODOI JOSEPH :::::::::::::::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

Preliminary observations:

Before I delve into the merits of this charge, I note that this is a second file wherein the accused is being 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

The accused was also arraigned in this hon. Court vide **PAL-00-CR-CO-033-2024** vide charge a sheet also 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. The same are the charges contained in the instant charge sheet and the material dates are similar.

This court observes that, whereas the alleged crime scenes were different and with different complainants, the alleged offences were committed in the same night, within the same territorial jurisdiction, cases investigated and charges preferred by the same police officer, amongst others.

Joinder of counts would have saved this court's time handling both charges enumerated as counts in one charge sheet while affording court to examine potential contradictions. It also protects an accused from being embarrassed and overwhelmed in his defence efforts while, the prosecution may also curtail their own back log. That be as it may, this court has cautioned itself not to be influenced by the outcome of the parallel file and will painstakingly evaluate evidence adduced in this charge independently.

Brief facts of the instant case.

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 01(one) cow, valued at approximately UGX. 2,000,000/= (*Uganda shillings two million only*), the property of a one, Mayobe Patu.

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 **Mayobe Patu** 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 5:00am when he found his cow was no longer where he had tethered it. That he first conformed himself thinking it had only strayed in the neighbourhoods but it later became clear that it had been stolen and that's when he approached the area chair person who then 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 placed poles and also tied a

cloth around the peg, cum 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, the police dog was tracking the accused's scent to his house, that the accused ran away and it is the police who intercepted him.

Pw2- Mukole Yusuf told court that the accused and the complainant are both his subjects. That on the said day, the complainant came to his home reporting the loss of his cow, after being woken up at around 4:00am by a one, Ramathan Kedi who also reported the loss of his 2 bulls. That they first searched for the cows in vain and they later called the area GISO and chairperson and that's when they advised the complainants to go and report the loss at police. He thereupon re-echoed the testimony of Pw2 regarding the appearance of the police sniffer dog and how the exercise transpired and how the accused came to be arrested.

On cross-examination, Pw2 testified further that he doesn't know the accused's house but the house the accused ran out of is the same house the dog entered.

No. 68234 –D/C Lwalwa 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. 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 the crowd is always 100 meters away during the exercise, the complainant is not a dog handler, he didn't remember how many houses but the people present identified the house wherein the dog entered to belong to the accused.

The prosecution thereupon rested its case.

On the 10th 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- Modoi Joseph.**

He entirely denied having anything to do with the stolen cattle. He told court that on the said 9th February, 2024, he had been bathing when a one Patu came and informed him that he couldn't find his cow. That he went to the garden and when he came back, he asked his wife why there were many people and around 2pm, the area chair person called a meeting wherein he implored whoever had stolen the cows to come clean but no one came forth. That he had just come back on the 8th February, 2024 and the cows were stolen the next day on 9th February, 2024. That when the dog came, it went to the boys quarters which had no padlock and the chairperson asked who the owner of the house, but the owners were absent and it is Dw1 who was present and that's how he was arrested and taken to police, whereof he refused to make a statement maintaining that he didn't know why he was being arrested and he has never seen the cows.

On cross-examination, he told court that he did not even go to Mayobe's home, the place whereof the dog entered belongs to his father although he also has his own house about 100 meters away in a different compound

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, 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 a cow, the property of Pw1. The testimony of all witnesses, especially. Pw1 & Pw2, shows that, the complainant indeed grazed cattle which he was keeping in an open air kraal with a peg

whereof the cow used to be tethered and that is whereof the police dog commenced its sniffing exercise as per the testimony of all prosecution witnesses, especially, the dog handler, Pw3.

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

As regards asportation of the said cow, the evidence before this court establishes that the allegedly stolen cow was herded from Pw1's home whereof the police sniffer dog commenced and the said cow has 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:

“...it was on the 8th February, 2024 around 5:00am when I found my cow was no-longer where I had tethered it. I first comforted myself thinking it had only strayed in the neighborhoods but it later became clear that it had been stolen and that's when I approached the area chair person who then advised me to go and report at police....”

From that evidence, the prosecution proved this ingredient beyond reasonable doubts that the cow was 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 a cow.

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 cow.

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 cow was 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 cow was herded, without consent of the owner thereof (Pw1), moreover at night, left this court with no doubt but to conclude that the said act was done with a fraudulent intent.

Pw1 testified that:

“...around 5:00am when I found my cow was no longer where I had tethered it. I first comforted myself thinking it had only strayed in the neighbourhoods but it later became clear that it had been stolen....”

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

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

Ingredient 4: Accused's participation.

The only evidence linking the accused to the said cow and scene of crime is the evidence gathered through the aid of the police sniffer dog.

The offence was allegedly committed at night.

Pw1. He testified that:

"...it was on the 8th February, 2024 around 5:00am when I found my cow was no-longer where I had tethered it. I first comforted myself thinking it had only strayed in the neighborhoods but it later became clear that it had been stolen and that's when I approached the area chair person who then advised me to go and report at police...."

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 Pw1's cow. The only evidence identifying and linking the accused was that of the police canine sniffer dog.

It is settled that 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...”

In the instant case before this court, Pw5 testified that:

*“...the police dog **TP 213 Beauty** is 4 years old, with a certificate of tracking and with a rank of sergeant...”*

Pw1 told court 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 placed poles and also tied a cloth around the peg, cum kraal to preserve the same from contamination...”

On cross-examination, Pw1 testified further that:

“...the police dog was tracking the accused’s scent to his house, the accused ran away and it is the police who intercepted him...”

Pw2 also testified that:

“...when the dog was introduced, it sniffed its way from the peg/kraal of Pw1 and ended up in the accused’s house wherein it lay upon the accused’s bed...”

Both Pw1 and Pw2 told court that:

“...when the dog entered the accused’s house, he tried to run away from the crowd but the police chased and arrested him...”

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

“...the next day on 9th February, 2024, when the dog came, it went to the boys quarters which had no padlock and the chairperson asked who the owner of the house was, but the owners were absent and it is I who was present and that’s how I was arrested and taken to police, whereof I refused to make a statement maintaining that I didn’t know why I was being arrested and I have never seen the cows....”

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 Pw1’s cow being stolen. What court has is circumstantial evidence of, especially, Pw5 and the outcome of the police 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.

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, Pw5.

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 _____3rd___ day of ___September___2025.



HW KYEMBE KARIM

Magistrate G.I