THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA.

CRIMINAL CASE NO. **PAL-00-CR-CO-483-2024**

UGANDA :: PROSECUTION

VS

OKIA FRANCIS :: ACCUSED

BEFORE: H/W KYEMBE KARIM ESQ

MAGISTRATE G.I

JUDGMENT

Introduction

The accused was arraigned before this court vide charge sheet dated 22nd/November /2024 and sanctioned on 25th November, 2024, whereof he was charged with 1(one) count; that is;

> Theft contrary to, formerly, Section 254(1) and 261 of the penal code Act, now, Sections 237 of the penal code Act cap 128, laws of Uganda.

Factual background

It was the prosecution allegation that the accused, on the days through 23rd October, 2024 upto 16th November, 2024 at Konya Matunga Trading Center in Pallisa district stole hardware items all valued at approximately UGX. 4,290,300/= *(Uganda shillings four million two hundred ninety thousand three hundred shillings only),* the property of a one, Titin Irene.

When the charge was read to the accused, he denied the same.

It is settled law that by denying the charges, the accused put in issue all and every essential ingredient of the offence with which he is being charged.

It is also trite that the prosecution bears the onus to prove all the ingredients beyond reasonable doubts as categorically laid out in **MILLER VS MINISTER OF PENSIONS (1947)2 ALLER ER 372.**

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution case;- Not on the weakness of the accused's defense, as held in **SEKITOLEKO VS UGANDA (1967) EA 531.**

Bearing the above principles in mind, I have also cautioned myself that the accused has no obligation to prove his innocence.

In attempt to prove the charges, the prosecution called 5(five) witnesses. To wit;

1. PW1 – Titin Irene (complainant)
2. PW2 – Omoit James
3. PW3 – Kalyebi Innocent
4. PW4 – No. 32782 D/S Kabale Fredbill.
5. PW5 Adiba Stanislaus

On the 06th August, 2025 upon closure of the prosecution case, this court ruled that a prima facie case had been established and the accused according put on defence.

Evidence adduced:

The complainant, **Titin Irene** testified as the prosecution 1st witness and her evidence was taken down as **PW1**.

She told court that the accused was brought to her by a one, Okaiso William upon which, she employed him to sell her hardware items fund at Nyamatunga trading center found, Pallisa district. That she has 3 hardware outlets and the other two are in Kibale town council and Okum town council. That she employed the accused on the 23rd August, 2024 and it was agreed that he(accused) would be paid UGX. 100,000/= monthly, UGX. 2,500/ for daily meals and also given a bicycle to ease his transport. That at the hardware outlet, the accused would sell items then at the end of the day, declares the proceeds and the remaining items in what was called an accounting book. The same was received as prosecution exhibit **PEX1.** That it was on the 15th November, 2024 when the accused failed to turn up for the usual "balancing" routine and when it clocked 8:00pm, Pw1 called him on his phone to inquire his whereabouts, to which he replied that he was very sick and couldn't ride a bicycle, upon which, Pw1 asked him to take a motorcycle instead. That the accused requested time to first get medication and instead come the next day. That when Pw1 called him the next day, he told Pw1 that he he felt better and had sold 3 bags of cement and Pw1's discomfort grew,

which prompted her to go to the hardware outlet whereof, she found the accused sleeping on the iron sheets.

Pw1 further testified that when she checked the cement area, there were only 4 ½ bags, yet, she had restocked with 73 bags on the 5th November, 2024 and upon inquiry, the accused told her that he didn't know where the rest had gone. That the accused admitted he is the one who opens and closes the outlet and that he is responsible for the same Later, on the 16th February, 2024 on conducting a further audit, it was discovered that listed items including wire mesh, iron bars of different sizes, sand paper, brushes and others whose total approximate value was UGX. 4,249,800/= were missing, while some customers paid for some items and they did not receive the same, whereas the proceeds were equally unaccounted for.

Pw2- Omoit James testified to having witnessed the accused enter agreement with Pw1 and also assisted Pw1 in stock taking upon notice of the decline in stocks.

Pw3- Kalyebi Innocent told court that the accused was the hardware outlet attendant and that on the 15th June, 2024, he paid for 30 bags of cement but when he went to collect them, he found the outlet closed and he was told that items had been stolen therefrom.

Pw4- no. 32782 D/S Kabale Fredbill told court that he is attached to the CID and that when he interacted with the accused, he told him that whenever he would come to open, he would find items missing but he did not notify his boss, Pw1. That the accused later changed his story and told Pw4 that he had sold the items and used the money, upon which the accused pleaded with Pw4 to release him on police bond so that he can

negotiate with Pw1 the terms of repayment, a proposal that was rejected by Pw1. Pw4 then drew a sketch plan of the crime scene and the same was admitted as **PEX2.**

Pw5- Adiba Stanislaus told court that he deposited UGX. 50,000/= on purchase of 2 iron sheets remaining with a balance of UGX. 6000/= to the accused and when he went to collect his iron sheets, he was told by Pw1 that the said money had not been received by her and she advised him to record a statement at police. The receipt of the deposit was exhibited as **PEX3.**

Thereupon, prosecution rested its case.

As aforesaid, this court found a prima facie case and placed the accused to his defence.

All the three modes of defence were explained to the accused. That is;

1. Give evidence on oath whereby he would be subjected to cross examination.
2. Give evidence not on oath whereby he is not subject to cross examination.
3. Elect to keep silent.

The accused opted to give evidence on oath.

After taking oath, the accused testified as his own only witness and his testimony was taken down as **DW1**.

DW1-Okia Francis told court explained to court the background how he came to work for Pw1. That initially, the person he was working with was relieved of employment and he remained the only one at the hardware outlet and pw1 would collect the sales money after 3 days until he was transferred to a 2nd outlet of Pw1 whereof he started working on the 27th August, 2024 and he continued taking the money to Pw1 as usual and at one point, Pw1 told Dw1 that her husband does not know about the 2nd outlet, so, she gave him UGX. 15,000/= to keep it a secret and then Pw1 pushed Dw1 on the bed and had intimacy and 2 days later, Pw1 brought him clothes and a few days later, a truck brought some bags of cement and other listed items which were received by Dw1 but short of what Pw1 had communicated on the phone and it was stated that the other items were proceeding to Teso and later, at police, he was made to sign a statement which was admitted as **PEX4**. He thereupon rested his defence.

EVALUATION OF EVIDENCE:

Theft contrary to Section 254(1) and 261 of the penal code Act,

The offence of theft is created under formerly, **Section 254(1) and 261** of the Penal Code Act, Cap 120, and now **Sections 237** and **244** 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.*

To prove the charge the prosecution has to prove beyond reasonable doubts the following ingredients.

i. The accused fraudulently took something,
ii. Anything capable of being stolen.
iii. the property of someone else
iv. Without claim of right.
v. An intention to permanently deprive the owner of the thing.
vi. Accused's participation

Evaluation of Ingredient i, ii, iii & iv

accused fraudulently took something capable of being stolen, the property of someone else without claim of right and with intention to permanently deprive the owner.

The legal position in Uganda, as stated by the Supreme Court in **Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of 1993,** regarding what the crime of theft is, stands as follows:-

"There must be what amounts in law to an asportation (that is carrying away) of the goods of the complainant without his consent… The removal, however short the distance maybe, from one position to another upon the owner's premises is sufficient asportation… "

Property will be regarded as belonging to any other person having possession or control of it. It is the reason why a person may be liable for theft of their own property if it is deemed to be in the possession or control of another.

> *For example in* ***R v. Turner (No 2) [1971] 1 WLR 901,*** *the accused took his car into a service station for repairs. When he went to pick it up he saw that the car was left outside with the key in. He took the car without paying for the repairs. He was found guilty of theft of his own car since the car was regarded as belonging to the service station at the time as they were in possession and control of it.*

The prosecution must also prove an intention to permanently deprive the owner of the thing allegedly stolen. This is sometimes called *mensrea*. In **R VS CUNNINGHAM (1957)2 QB 396**, court stated that:

> *" mensrea is the actual intention to do a particular kind of harm or recklessness as to whether such harm will occur or not."*

In the instant case before me, PW1 told court that:

> *"…I employed the accused on the 23rd August, 2024 and it was agreed that he (accused) would be paid UGX. 100,000/= monthly…"*
>
> *… at the hardware outlet, the accused would sell items then at the end of the day, declares the proceeds and the remaining items in what was called an accounting book…*

> *"… when I checked the cement area, there were only 4 ½ bags, yet, I had restocked with 73 bags on the 5th November, 2024…"*

It is common sense and judicially noticeable that the above listed items are capable of being asported and indeed, they were asported from Pw1's hardware store/outlet.

Even the accused, testifying as Dw1 told court that:

> *"…few days later, a truck brought some bags of cement and other listed items which were received by me but short of what Pw1 had communicated on the phone…"*

According to **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 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.

In this case, I have not seen any evidence led in defence or under cross-examination to show that the testimony of Pw1 and Pw2 was untruthful as regards the ownership or possession of the aforesaid hardware items.

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…"*

In absence of evidence to the contrary, I am satisfied that whoever took the hardware items did not have any claim of right to the same.

Throughout the whole trial for more than a year, the said hardware items had not been returned to the rightful owner, Pw1. I am equally satisfied that whoever took them had an intention to permanently deprive the owner of the same.

In **R VS CUNNINGHAM (1957)2 QB 396**, court stated that *mensrea* is the actual intention to do a particular kind of harm or recklessness as to whether such harm will occur or not.

It is my finding that the said ingredients have been proven to the satisfaction of court beyond reasonable doubts.

I find that the prosecution successfully proved ingredients i,ii,iii & iv ingredient beyond reasonable doubts.

Ingredient v: participation of the accused

I listened carefully to the testimony of the accused in his defence. While he doesn't dispute that he had access to the said items, his plea is that the items allegedly stolen were never delivered, in the first place.

Dw1 testified that:

> *"…few days later, a truck brought some bags of cement and other listed items which were received by me but short of what Pw1 had communicated on the phone…"*

I have read the accused's statement made at police **PEX4** and he did not mention the alleged under delivery. It appears to me that testimony was crafted in his defence after hearing prosecution evidence.

Pw4- told court that:

> *"…I interacted with the accused and he told me that whenever he would come to open, he would find items missing but he did not notify his boss, Pw1…"*

Pw4 also told court that:

> *"…the accused later changed his story and told me that he had sold the items and used the money, upon which, he (the accused) pleaded with me to release him on police bond so that he can negotiate with Pw1 the terms of repayment…"*

What this court discerns from the above evidence is that the accused who had full custody of the lost items could not explain their disappearance. His explanation was tainted with contradiction and uncertainty.

I am aware that the accused has a right against self-incrimination. But when he elects to testify, his testimony shall also be relied upon by this court as per the provisions of **Section 2** of the Evidence Act. Having

failed to notify Pw1 of the alleged under delivery of items, telling Pw4 that he would find the items missing in the morning when he opens and still failed to notify Pw1 of the same, then telling Pw4 that he used the money and wanted to repay Pw1 leaves this court unsatisfied with the defence raised in court. It was tainted with contradictions and is hereby rejected.

In sum total, I am satisfied that this ingredient was also proven beyond reasonable doubts by the prosecution.

As all ingredients have been proven beyond reasonable doubts by prosecution, I, accordingly hereby find the accused GUILTY and CONVICT him of the offence of theft as created under formerly, **Section 254(1) and 261** of the Penal Code Act, Cap 120, and now **Sections 237** and **244** Cap 128 Laws of Uganda, 2023 revised edition.

Final orders:

In conclusion, I make the following orders.

1. The accused is hereby convicted as charged of theft contrary to, formerly, Section 254(1) and 261 of the penal code Act, now, Sections 237 of the penal code Act cap 128, laws of Uganda.

2. The accused, now convict is ordered to pay to Pw1 to total amount of UGX. 4,290,300/= *(Uganda shillings four million two hundred ninety thousand three hundred shillings only)* in restitution of the items stolen.

3. The accused, now convict shall be held on remand until hearing on allocutus and subsequent sentencing.

I so order.

Dated at PALLISA this …… 06th….day of ……OCTOBER……..2025

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HIS WORSHIP KYEMBE KARIM

LEARNED MAGISTRATE

GRADE 1