

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-271-2024**
UGANDA :::::::::::::::::::::::::::::::::: PROSECUTION
VS
OGWANG SAKALI :::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned in this hon. Court vide charge sheet dated 11th November, 2024, sanctioned on the 19th November, 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 is the prosecution's allegation that the accused and others still at large, between the 2nd and 3rd day of November, 2024, at Nsambya village, Kasodo Parish, Kasodo sub county in Pallisa District stole 1(one) white hybrid pig valued at approximately UGX. 600,000/= (*Uganda shillings six hundred thousand only*), the property of a one, Kisa Posiano.

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 Charge, the accused placed 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 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 myself that the accused has no obligation to prove his innocence.

Evidence adduced:

In attempt to prove the charge, the prosecution first called the complainant, the said **Kisa Posiano** whose testimony was taken down as **Pw1.**

He told court that the accused is his neighbor and on the 2nd November, 2024 he woke up in the morning at around 8:00am only to discover that he was left with only 2(two) out of the 3(three) pigs he was rearing, having bought them when they were still piglets. That he searched for the one missing pig in vain and later, he reported to the LC and police, who,

later, the next day, 3rd November, 2024 in the afternoon brought a police sniffer dog to the crime scene. That they prevented the people from accessing the crime scene and police also tied a strip around. That when the dog was introduced, it moved via cassava garden of a one, Bageya, crossed the road and went to the home of the accused which was found without a padlock and police opened the door and the dog entered thereupon. That Pw1 did not see what transpired in the house but it is the LC and the police who entered and they told Pw1 that the dog sat on the accused's bed although, there was nothing recovered from the accused's house. That a search was then mounted for the owner of the house and that's when the accused together with his wife were found packing their items planning to flee.

No. 682344 P/C Iwalwa Samuel Grace was the dog handler and his testimony was taken down as **Pw2**.

After laying down his qualifications and those of the police sniffer dog, he gave testimony that upon receiving instructions from the OC-Kasodo police, he picked the dog and went to the crime scene which he found preserved. That it was an open space and a string had been tied around together with tree branches about 30 meters away from the crime scene. That he then inquired from the on-looking public whether anyone had tampered with the scene and the answer was in the negative, whereupon, he introduced the dog and it picked up a scent and followed a path, through the cassava garden, then through the bush until it reached a papyrus thatched house which was open and the dog entered there-into and jumped onto the bed therein. That the house later came to be known to belong to the accused. That in the course of tracking, the point where

the dog rotated several times is likely to be the place where the pig was handed over to whoever took it. He concluded telling court that he does not know how the accused was arrested and that he has no grudge against the accused.

Pw3- No. 58478 D/C Emetai Simon Peter re-echoed the testimony of Pw1 & Pw2 but notably added that later, on the 4th November, 2024, they got a call from the LC chairperson notifying them that the accused had returned and that's when they went and arrested him and through him, prosecution exhibited **PEX1-** a sketch plan of the crime scene, **PEX2-** Pictures of the police sniffer dog conducting exercise, and **PEX3-**the witness statement of the accused made while at police.

The prosecution thereupon rested its case.

On the 9th September, 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.

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- Ogwang Sakali**.

He entirely denied having anything to do with the stolen pig insisting that if he is the one who stole the pig, he wouldn't have voluntarily returned and even upon arrest, he refused to make a statement because he was very annoyed by the accusations. On cross-examination, he told court that he is a turn man/turn boy, doesn't know how to drive, doesn't know what transpired.

CONSIDERATION BY COURT:

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.

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 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 a pig, the property of Pw1 having purchased the same while they were still piglets and grazed them to adulthood. The testimony of witnesses, Pw1 and Pw2 shows that indeed, the complainant indeed grazes pigs of which he keeps in an open space.

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

Pw1 testified that:

“...I woke up in the morning at around 8:00am only to discover that I was left with only 2(two) out of the 3(three) pigs I was rearing, having bought them when they were still piglets...”

As regards asportation of the said pig, the evidence before this court establishes that the allegedly stolen pig was herded towards the point the police dog rotated several times and it is believed that is where it was handed over to whoever took it further. This evidence was not discounted in cross-examination and I have not found any reason to believe otherwise.

Pw2 testified that:

“...in the course of tracking, the point where the dog rotated several times is likely to be the place where the pig was handed over to whoever took it ...”

From that evidence, the prosecution proved this ingredient beyond reasonable doubts that the pig was asported from the open place whereof Pw1 kept them and it was subsequently exchanged at the point where the dog rotated several times and taken to a place unknown to date.

Ingredient 2: The property belonging to another.

All prosecution witnesses, Pw1, Pw2 and Pw3 shows that indeed, the complainant was rearing pigs. PEX1 also confirms the testimony.

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 pig.

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 pig was herded towards the point where the police dog rotated several times and that's where it was exchanged and taken to a place unknown to date. In the absence of any lawful or reasonable explanation as to why the pig was 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:

“...I woke up in the morning at around 8:00am only to discover that I was left with only 2(two) out of the 3(three) pigs I was rearing, having bought them when they were still piglets...”

The motive behind herding the pig without consent of the owner, Pw1, whose house was nearby the open place/sty, moreover, during the night, leaves no doubt in this court's mind that whoever herded the said pig 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 pig 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 the fact that the offence was allegedly committed at night.

Pw1 testified that:

“...I woke up in the morning at around 8:00am only to discover that I was left with only 2(two) out of the 3(three) pigs I was rearing, having bought them when they were still piglets...”

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.

When the quality is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused before, a Court can safely convict even though there is no other evidence to support the identification evidence,

provided the Court adequately warns itself of the special need for caution.”

In **George William Kalyesubula vs. Uganda – S.C. Crim. Appeal No. 16 of 1997**, the Supreme Court of Uganda further upheld this position, citing with approval the **Roria case (supra)**, and **Abdulla bin Wendo & Another v. R (1953) 20 E.A.C.A 166**; reiterating the need for testing, with the greatest care, identification evidence; especially when such identification was made under difficult and unfavorable conditions. The Court then advised that:

“In such circumstances what is needed is other evidence pointing to guilt from which it can reasonably be concluded that the evidence of identification can safely be accepted as free from the possibility of error.”

In **Moses Kasana vs. Uganda – C.A. Crim. Appeal No. 12 of 1981; [1992-93] H.C.B. 47**, a decision which was cited with approval in the **Bogere case (supra)**, the Court emphasized that where conditions favoring correct identification are poor, there is need to look for other evidence, direct or circumstantial to allay any doubt in the mind of the trial Court of any case of mistaken identity.

In **Yowana Sserunkuma vs. Uganda, S.C. Cr. Appeal No. 8 of 1989**, the Court further explained that it is trite law that the evidence of a single identifying witness at night may be accepted, but only after the most careful scrutiny;

In **Abdullah bin Wendo vs. R. (1953) 20 E.A.C.A. 166 at 168**; and in **Roria vs. R. [1967] E.A. 583**). Court stated that a careful scrutiny is not the same thing as an elaborate justification accepting dubious evidence.

In the instant case before me, the only evidence identifying the accused was that of the police canine sniffer dog.

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...”

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 behavior 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:

"...the police sniffer dog came a day later...."

Dw1 testified in his defence that:

"...I wouldn't have voluntarily returned if I was the one who stole the pig..."

Pw2 told court that:

"... I found the scene preserved with a string and branches..."

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 cows 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 both prosecution and defence evidence.

I note that Pw1 testified that:

“...police, who, later, the next day, 3rd November, 2024 in the afternoon brought a police sniffer dog to the crime scene. We prevented the people from accessing the crime scene and police also tied a strip around...” [underlining for emphasis]

While on the other hand, Pw2 testified that:

“...it was an open space and a string had been tied around together with tree branches about 30 meters away from the crime scene. I then inquired from the on-looking public whether anyone had tampered with the scene and the answer was in the negative...”

The testimony of Pw1 and Pw2 is riddled with contradiction in as far as who tied the string at the crime scene and at what point in time. That being the case, this also leaves this court in doubt whether the said string was ever altogether tied there at all. The integrity of the crime scene was not established to this court's satisfaction.

Coupled with other contradictions like when Pw1 testified that

“...the accused was arrested packing his items and planning to flee...”

Pw3 on the other hand told court that:

“...we received a call from the chairman that the accused had returned and that's when we went and arrested him...”

I am not satisfied as to the truthfulness of the material testimonies of the prosecution witnesses.

While I acknowledge and have examined the exhibits shown to court as to how the police sniffer dog conducted its sniffing, it has been stated in a plethora of cases that at every step of the dog act must be documented. Recently, video evidence has proven to be better exhibit in respect to the canine investigation. All these, purposely, to ensure that the dog was

neither influenced by the handler or 3rd party distractions like other dogs which might prompt the natural animal instinct to the detriment of an investigation.

Pw1 told court that himself did not witness what transpired in the house, save for what he was told by Pw2 and the chairman, which, needless to say, is hearsay and inadmissible.

It is trite that Pw2 as the dog handler has capacity to instruct his dog to sit on the bed. That being the case, what was so secretive that even the complainant could not witness what transpired in the house of the accused?

This canine evidence was not corroborated by other evidence as required by law and is tainted with doubt as to why it was conducted secretly.

This is not an indictment on the integrity or credibility of the dog handler but the act/omission prompted doubt in this court's mind and it is trite that every doubt in a criminal case must be resolved in favour of the accused.

Save for the dog leading to his house, nothing was found to link the accused to the crime scene.

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 __OCTOBER__2025.



HW KYEMBE KARIM

Magistrate G.I