

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**HCT-03-CR-CN-60-2014**  
**ARISING FROM JIN-00-CR-CO-0220/2013)**

**UGANDA**

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**APPELLANT**

*Vs*

- 1. KASADHA JUMA**
- 2. NGOBI MUHAMED**
- 3. MUSANA CHARLES**

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**RESPONDENTS**

**BEFORE: HON. MR. JUSTICE MICHAEL ELUBU**

**JUDGMENT**

The Appellant, who is the State, filed this appeal against the acquittal of the respondents: **KASADHA JUMA, NGOBI MUHAMED** and **MUSANA CHARLES**. The three respondents had been charged with to Property three counts of Arson c/s 327 (a) of the Penal Code Act, two counts of Malicious Damage to Property C/s335 (1) of the PCA and one Count of Injuring Animals c/s 334(1) of the PCA. The trial Chef Magistrate, HW Komakech Robbs William found the charges had not been proved and as stated entered the acquittals on all charges.

The background to this matter is that on the 16<sup>th</sup> day of June 2012 at Buwebula in Muterere Sub County Bugiri district the home of the complainant, Musa Musana, PW 1 was attacked by a mob. His permanent house was burnt down, animals burnt and hose hold property destroyed. Another semi-permanent house in the same compound, belonging to Constant Okiru, PW 5, was also burnt down. A third house, that belonged to PW 1s father, Juma Silvano was similarly burnt down and house hold property destroyed.

The complainant and others are said to have identified the appellants as part of the mob that committed these crimes. The matter was reported to police and the appellants were arrested and charged.

All three appellants denied the charges and set up alibis.

The trial magistrate found the prosecution evidence contradictory and inconsistent. The alibis of all accused persons were not rebutted and he accordingly acquitted all of them.

The prosecution was aggrieved and filed this appeal with two grounds namely,

1. The learned trial magistrate erred in fact and in law when she failed to properly evaluate the evidence on the court record as a whole and thereby reached a wrong decision.
2. The learned trial magistrate erred in law when he neglected the corroborative evidence adduced by the prosecution and dwelt on trivialities hence reaching an erroneous decision.

The parties in their submissions argued these grounds jointly. Their submissions are on record and will not be reproduced here. This court will adopt the same procedure in its resolution of the grounds.

This is a first appellate Court and as such the law is clear on what its duties are. The Supreme Court held in **Baguma Fred vs Ug SCCA No 7/2004** that,

It is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court

In carrying out these duties the court shall remain mindful that the burden of proof rests throughout on the prosecution who must prove a criminal case to a standard beyond reasonable doubt.

There were four eye witnesses to the event on the 16<sup>th</sup> of June 2012.

The complainant told the court that he was at home alone at 11:00 am when it was attacked by a mob led by the accused persons. He fled to a hill nearby, which was about 100m from the scene, where he was able to observe what happened and recognize the accused persons.

PW 2 was KISOMO CHRISTINE his daughter. She lived a few meters away from her father's home. She states that she saw the attackers destroy and burn property but more importantly said the hill her father is meant to have been watching from is about one kilometre away.

PW 3 was KOTIDA BETTY. She says she was alone at home because all the others had gone to the garden. She also stated that PW1 the complainant was not in the village that day because he was away in Kampala and was notified on phone.

Lastly PW 4 was Mawuki Charles. He also testified that he was an eyewitness but later stated that he made a police statement after two years. Pressed farther he stated that he was not around on the 16<sup>th</sup> of June 2012 the day of attack. Then he states that he left on 27<sup>th</sup> of June 2012.

This is the evidence the lower court had to deal with.

All the appellants on the other hand set up alibis. A1 stated that he was in Izira village where a woman had been killed. He added that it was 4km from there to the scene of crime. He added that he did not go to the scene.

A2 stated that he is a teacher and run a shop. On that day he learnt that Nambulo a village mate was killed. He went to the scene and then returned to his shop as people coming from Nambulos home stopped by to buy eats. It is his evidence that he did not go to the scene.

A3 testified that he was a boda rider and on that day left for Namutumba at 7:00 am only returning at 6:00 pm. He was away the whole day.

Where an accused person raises an alibi he does not there by assume the duty of proving his alibi. The onus rests with the Prosecution to adduce evidence to the required standard placing him at the scene of crime (See **Bogere Moses & Anor vs Uganda S.C.C.A 1/1997**). I am mindful that the burden of proof rests and remains with the prosecution throughout to show to a standard beyond reasonable doubt that the appellants were at the scene.

In this case the question is whether there was such cogent evidence to discharge the burden on the prosecution.

I have outlined the evidence the prosecution relied on here. It is clear that the evidence was riddled with contradictions and inconsistencies and it remains for this court to determine how to handle those contradictions. In **Twehangane vs Uganda COA No. 139 of 2001** it was held that,

With regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution's case. Therefore the court should consider the broad aspect of the case when weighing evidence. Contradictions in the testimony of witnesses on material points should not be overlooked as they seriously affect the value of their evidence.

In this instant case I find that the contradictions are material and grave. There was no cogent explanation given why the witnesses contradicted each other. This court cannot therefore ignore them as in my view they affect the truthfulness of the witnesses. For that reason the prosecution witnesses are deemed unreliable and cannot therefore prove the identification of the appellants, at the scene of crime, to a standard beyond reasonable doubt.

For that reason I find that the alibis raised have not been rebutted and for that reason the appeal fails.

The judgment and acquittal of the lower court is confirmed



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**Michael Elubu**

**Judge**

**25.9.17**