**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT SOROTI**

**HCT-09-CR-CRIMINAL APPEAL NO. 0001/2010**

**(***Arising from Soroti Chief Magistrate’s Court Criminal Case No. 509/2009***)**

**UGANDA...........................................................................APPELLANT**

**VERSUS**

**1.AKERU LEVI**

**2. ABIRO MARGARET ....................................................RESPONDENT**

**BEFORE: HON. JUSTICE MUSOTA STEPHEN.**

**JUDGMENT**

This an appeal from the ruling of the Magistrate Grade 1 Soroti where he acquitted the deceased persons to wit **Akeru Levi** and Abiro Margaret on a no case to answer on charges of malicious damage and causing grievous harm**.**

In the Memorandum of appeal filed by the Director of Public Prosecutions, three grounds of appeal are raised that:-

1. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence before him.
2. The learned trial Magistrate misdirected himself on the law and evidence before him.
3. The learned trial Magistrate misdirected himself in law in failing to put both accused persons on their defence and yet there was a prima facie case against both accused persons on both counts.

At the trial, the state was represented by **Ms Njuki** the Resident State Attorney Soroti while the respondents were represented by **Mr. Isodo.** Both Counsels submitted in support of their respective cases.

According to the state Attorney prosecution evidence proved that A1 intended to cause grievous harm to PW.1. She did not agree with the basis for the learned Magistrate’s finding which was failure by the State to call the evidence of **Ojilong** and **Opedun Martin** who were at the scene and that it was not clear how the Motor cycle and bicycle were burnt yet there was clear evidence to prove this. That the accused persons were seen rolling the motor cycle after hitting it. Further that the contradictions alluded to by the learned Magistrate were minor because witnesses arrived at the scene at different times. That the witnesses not called were unnecessary because the one who testified satisfactorily proved the case.

In reply, Mr. Isodo for the respondents submitted that if he was in the shoes of the learned trial Magistrate he would have reached the same conclusion. That failure by the prosecution to call the witnesses who saw everything left a gap in the case.

That the prosecution lied on witnesses who came after the event. Further that PW.3 was a couched witness. Regarding contradictions learned Counsel submitted that they manifested in the way the damage to the motor cycle was done. Some witnesses said it was damaged using sticks yet others say it was hit using bricks and later burnt but the witnesses did not know who burnt the motor cycle. According to **Mr. Isodo,** the case against his clients is motivated by a land dispute. He urged court to agree with the findings by the learned trial Magistrate.

In his ruling, the learned trial Magistrate held that because of the contradictions and inconsistencies, the prosecution failed to prove a prima facie case against the two accused persons. He acquitted them.

It is trite law that a finding of no case to answer is made at the close of the case for the prosecution. This is made if at the close of the evidence in support of the charge (s) it appears to the court that a case is not made out against the accused sufficiently to require him/her to make his/her defense. Then, court dismisses the charges and acquits the accused.

This implies that court was not satisfied that there exists an arguable case against a suspect. An arguable case is also known as a prima facie case.

A prima facie case means such case on which a reasonable court properly directing its mind to the law and evidence could convict if no explanation is offered by the accused person.

A prima facie case does not mean a case proved beyond reasonable doubt. It is less than that. At this stage court is not required to decide fully whether the evidence is worthy of credit or whether if believed is weighty enough to prove the case conclusively because such final determination can only be made when the defence has been heard.

The main considerations for finding that there is no prima facie case made out are basically two:-

1. When there has been no evidence to prove an essential ingredient in the alleged offence, or
2. When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly un reliable that a reasonable court could safely convict on it.

In his ruling, the learned trial Magistrate made no mention of these two yardsticks for finding a no case to answer.

I will agree with the submission by the learned State Attorney that there was no bias for dismissing the case against the respondents at this stage because the evidence by all the prosecution witnesses showed that prima facie the complainant was attacked from his garden and a motor cycle and bicycle damaged in the process. As to who did it would have been resolved if the accused person were put on defence.

PW.1 **Eswagu Willy** testified that while in his garden on 11.7.2009, he saw the two accused persons and their family members run towards him including a sister to A2 and her children. A2 was saying ” I want him to kill me today in my shamba” A1 held PW.1 firmly upon which a struggle ensued. That A2 wanted to cut him but he dodged. PW.1 then said:-

*“When I saw the situation was worsening I started struggling with*

 *A1 till I put him down and when A1 realized that I was over*

*powering him he hit me on my upper hip. A2 raised a hoe*

*to cut me but my son Ojulong grabbed the hoe from A2.*

 *A2 then grabbed a stick and started hitting me seriously*

 *on the back...........................I had parked my motor cycle*

 *on the roadside I tried to kick start the motor cycle, A1 was*

 *already there, and hit me with a stick on the back.*

*So I abandoned the motorcycle and ran for about 20 meters*

*leaving the motor cycle behind. I heard A1 saying:-*

 *“that the Motor cycle was not leaving there.............A1 then*

*put the motor cycle on a standing position and started hitting it*

using bricks. Shortly others joined A1 in damaging my motor cycle -------I went with police to the scene and found out that the motor

cycle and bicycle that my sons had used previously to go to the shamba was burnt..................”

PW.2 Ebou Francis testified that:-.

 *“..................I went to the scene and found A1 hitting a motor*

 *cycle using a big stick................ I also saw a bicycle being hit*

 *by the same A1. Both ...................belong to the complainant.........*

 *Both the motor cycle and bicycle were damaged. All the wheels*

 *of both ...........were deflated.”*

 *PW,.3 Edwam Sam testified that.........I saw the shamba of*

 *the complainant which is nearby....when going home*

 *I heard noise............Immediately ran to the scene and found A*

 *1 on top of the complainant and boxing him. I separated them*

 *upon separating A1 and the complainant, A2 came and wanted to*

 *hit using a stick. I jumped a distance and I avoided*

 *the strike........shortly A1 came and hit the head lamp using the*

 *stick once........I saw the complainant after the scuffle and he*

 *had a swollen cheecks.............”*

*PW.4* ***Engolu Charles*** *testified interalia that”*

 *“A1 hit the complainant using a stick on the cheek as*

 *the complainant was trying to kick start the motor cycle.*

 *A2 was chasing one Ojulong who is a son to the complainant.*

 *A2. was having a hoe. A1. started hitting the motor cycle using*

 *a stick. I did not see A2. do anything to the complainant”.*

PW.5 **No 32556 D/C Okwang Julius** visited the scene. A1 had reported that people wanted to lynch him for burning the motor cycle and bicycle of the complainant .......At the scene PW.5 testified;-

 *“We found a motorcycle UDK 425 G red in colour Haojin burnt*

 *in the garden...........belonging to the complainant. There was*

*also a burnt bicycle and put on top of the motor cycle ................”*

Court admitted in evidence the exhibit slip as P1 and photograph of burnt motor cycle and bicycle as Exh P2.

PW.6 Erabu Lambert the Medical Clinical Officer attached to Katakwi Hospital examined PW.1 and found he has a swelling on the face, bruised jaw and on the upper lid. He classified the injuries as bodily harm.This was the evidence by the prosecution.

The above evidence was cogent enough to warrant requiring each of the accused persons to be put on defence to explain themselves. This is because all prosecution witnesses corroborated each other on what transpired on the fateful day. Each witness told what he saw and witnessed. The complainant was assaulted; his motor cycle and bicycle were damaged and burnt. What remained was to establish who the culprits are. There was suspicious against the accused persons. Almost all the witnesses were implicating the accused in the commission of these offences. It would have served the interest of Justice to have required each of the accused persons to explain their respective cases.

After evaluating the entire prosecution evidence, I was satisfied that prosecution evidence, managed to make out a prima facie case against each of the accuse persons.

This would not mean that the accused persons are guilty. Such verdict would be reached after the defence version was heard.

In my view, the learned trial Magistrate did not judiciously evaluate the evidence before him before he reached his conclusions. All the conclusions made were premature after hearing one side of the story in view of the revelations made by the prosecution witnesses. He misdirected himself on the law regarding the finding of a case to answer or not.

A prima facie case was made out in this case.

Consequently, I will allow this appeal and set aside the ruling by the learned trial Magistrate.

I will find that each of the accused persons has a case to answer. Each should be put on defence. I so order.

Musota Stephen,

JUDGE,

31/10 2012.