



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA

CRIMINAL CASE NO. **PAL-00-CR-CO-300-2023**

UGANDA PROSECUTION

VS

OJONO JOHN ACCUSED

Before: His Worship Kyembe Karim ESQ

Magistrate G.I

RULING ON PRIMA FACIE CASE

Introduction.

Ojono John herein referred as the accused was arraigned in this court vide charge sheet dated 5TH May, 2023 and Sanctioned the same day and charged with one count of Malicious damage contrary to then, **Section 335(1) of the penal code Act, cap 120, now, cap 128 Laws of Uganda, 7th edition 2023.**

Factual background.

It was the prosecution's assertion that the accused together with others still at large, on the 7th day of April, 2023, at Obugai village in the Pallisa district willfully and unlawfully destroyed maize, cassava and green pea crops, the property of a one, Ojwar Laurent.

When the charge was read to him, he denied the same and a plea of NOT GUILTY was accordingly entered.



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

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

This 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 and any ambiguity in evidence must always be resolved in favour of the accused.

Evidence adduced:

Prosecution called 3 witnesses including the said Ojwar Laurent-Pw1 Amunawun John-Pw2, Omnio Emmanuel- Pw2, Okurut Patrick-Pw3.

Prosecution evidence in a nutshell is that the accused was found by Pw1 holding a hoe digging in Pw1's garden. That the police took photographs and when the accused was invited to the police station, he (accused) admitted to destroying the cassava and banana plantations, the property of Pw1. On cross-examination by the accused, Pw1 admitted on oath that ***"I have never seen you on that land"***.



Pw2 told court that the accused and complainant are related. That he received a call from the accused's uncle on 7th April, 2023 at 5am and later at 10:00am the same day, whereupon, he went and met the complainant at his garden whereupon the complainant told him that the accused was destroying his crops. That ***"I did not find the accused at the scene"***. That testimony was re-echoed by Pw3.

Upon that testimony, the prosecution closed its case and this ruling is on whether or not the prosecution adduced enough evidence as to require the accused to be placed upon his defence.

The law and analysis.

At the time the accused was charged, it was provided under **Section 335(1) of the Penal Code Act**, that the offence of malicious damage to property is committed by any person who willfully and unlawfully destroys or damages any property belonging to another.

In the instant case, the burden was upon the prosecution to prove that tangible property belonging to the complainant was damaged by the accused and with malice.

This therefore required proof of three essential ingredients;

- a) tangible property belonging to the complainant was damaged or destroyed,
- b) the said property was damaged or destroyed through willful and unlawful actions



c) the property in issue was damaged or destroyed by the accused.

According to Section 2(d) 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.

Article 28(3) a) of the Constitution of the Republic of Uganda 1995

as amended provides that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

Section 101(1) of the Evidence Act, Cap 8 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts which he or she asserts must prove that those facts exist.

Section 101 (2) of the Evidence Act Cap 6 is to the effect that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Therefore, the prosecution has a duty to adduce evidence to prove every ingredient of the offence beyond reasonable doubt so as to secure a conviction against the accused person.

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According to the case of **Woolmington v DPP [1935] AC 462**, the burden of proof in criminal cases lies on the prosecution.

In the interest of saving judicial resources, mostly, time, this court finds it imperative to evaluate the ingredient of the accused's alleged participation first.

On cross-examination by the accused, Pw1 admitted on oath that ***"I have never seen you on that land"***.

Pw2 told court on oath ***"I did not find the accused at the scene"***. That testimony was also re-echoed by Pw3.

I note that while Pw1 told court that the police took photographs of the alleged crime scene, none was exhibited, which live this court in great doubt whether or not any destruction took place in the first place.

At this point of the trial, it was stated In **WIBIRO ALIAS MUSA VS REPUBLIC (1960) EA 184** that:

"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".

In **UGANDA VS TWEYANKE (1975) HCB 143**, it was stated that where the prosecution fails to establish a prima facie case, the accused must be acquitted.



From the foregoing analysis, I conclude by saying that I am not satisfied that the prosecution has established a prima facie case. No basic evidence of participation was adduced and neither is court satisfied of the alleged destruction of the cassava and banana plantation in the first place. It also follows that the accused should not even be placed to his defence. Unfortunately, the accused has religiously appeared in court for more than 2 years now whereas the prosecution did not adduce the slightest modicum of evidence to incriminate him. This court sympathizes with him.

In the circumstances, I hereby find the prosecution has failed to establish a prima facie case and accordingly, I hereby find the Accused NOT GUILTY and ACQUIT him of the offence of Malicious damage contrary to then, **Section 335(1) of the Penal Code Act cap 120**, Laws of Uganda and I order as follows;

1. The accused stands ACQUITTED of the charge leveled against him and he should be set free henceforth unless if he is being held on other lawful charges.

I so order.

Date this _____25th____ day of _____FEB____2026 at PALLISA

H/W KYEMBE KARIM ESQ

Magistrate G.I

A handwritten signature in black ink, appearing to be 'H/W Kyembe Karim Esq', written over a horizontal line.

