



THE REPUBLIC OF UGANDA  
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA  
CRIMINAL CASE NO. **PAL-00-CR-CO-013-2024**  
UGANDA :::::::::::::::::::::::::::::::::::::::::::::::::::::: PROSECUTION  
VS

A1. NGAYO DAVID ::::::::::::::::::::::::::::::::::::::::::::::

A2. MOIT AMBROSE :::::::::::::::::::::::::::::::::::::::::::::: ACCUSED

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**Before: His Worship Kyembe Karim ESQ**  
Learned Magistrate G.I

**JUDGMENT**

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**Introduction.**

A1- NGAYO DAVID together with A2- MOIT AMBROSE hereinafter referred as “the accused” were arraigned in court on the 25<sup>th</sup> January, 2024 vide charge sheet dated 14<sup>th</sup>/January/2024 and sanctioned on the same day of arraignment. They were both jointly charged with the following counts:

1. Count 1: Stealing from a Motor Vehicle Contrary to, formerly **Sections 261 and 267(c),(Old law)** of the penal code Act cap 128, laws of Uganda, 2023 edition.



2. Count 2: Giving false information to a person employed in a public service contrary to, formerly, **Section 115, (old law)** of the Penal Code Act cap 128, Laws of Uganda, 2023 edition.

### **Factual background**

Count 1: It was the prosecution's allegation that A1 together with others still at large on the 5<sup>th</sup> day of January, 2024 at Nalid "B" village in Butebo district stole the behind light, fuel tank, kick starter, 2 tyres plus their reams, speedometer, shock absorber, exhaust pipe, side indicators, engine and other parts, all valued at UGX. 3,700,000/= (*Uganda shillings three million seven hundred thousand only*), the property of a one, Namajja Laker.

When the charges were read to the Accused, they denied the same and a plea of NOT GUILTY was accordingly entered on each count.

It is trite that by denying the charges, both Accused put in issue all and every essential ingredient of the offences with which they are being charged.

It is also settled law that the prosecution bears the onus to prove 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.**

This court is alive to the above principles and I have also cautioned myself that both accused have no obligation to prove their innocence.

### **Evidence adduced:**

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

1. Pw1-Namajja Laker
2. Pw2- Kauta David
3. Pw3-Omagor Difasi
4. Pw4-No.61012 DET Cprl Okwerede Alfred
5. Pw5-No. 37799 D/C Wadamba James

### **Prosecution case:**

Prosecution testimony in a nut shell is that the accused had stolen spare parts from one motor cycle registration no. **(UFX068A)** -property of **Pw1** who had acquired the motor cycle through loan arrangements with a company trading as Watu and the same had been installed on the other motorcycle registration no. **(UEV341U)** property of **A1** and that **A2**, in whose custody, motor cycle registration no. **(UEV341U)**- was, had lied to the police in the course of the inquiries, hence, the second count. Prosecution exhibited **PEX1**- a motor vehicle registration book of motorcycle registration no. **(UFX068A)** to prove particulars of the complainant's motor cycle and how the same had been allegedly altered



and **PEX2-** statement made at police by A2 to prove alleged false information.

On the 20<sup>th</sup> January, 2026, upon hearing the prosecution evidence, this court ruled that a prima facie case had been established and the accused placed to their defence.

This court reminded itself of the principle laid down in **Wibiro Alias Musa -VS- Republic (1960) EA 184** Whereof it was stated 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 to prove the case beyond reasonable doubts. That conclusion can only be made after the defence case is heard.”*

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

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

The accused opted to give evidence on oath.

### **Defence case:**

The accused in their defence testified as their own 2 witnesses that is;

1. Dw1- Ngayo David



## 2. Dw2 Moiti Ambrose

The accused in a nutshell denied the allegations of theft and instead stated that all the spares installed on A1's motorcycle (**UEV341U**) were purchased from a garage in Mbale. Dw1 exhibited **DEX1**- the motor vehicle registration book of his said (**UEV341U**) and receipts of purchase of the said spare parts were exhibited as **DEX2**.

### **THE LAW AND EVALUATION OF EVIDENCE**

In the interest of convenience, I will first set out the law creating each offence with which the accused are being charged and the respective ingredients.

Count 1: Stealing from a Motor Vehicle Contrary to, formerly Sections 261 and 267(c), of the penal code Act cap 128, laws of Uganda, 2023 edition.

#### **Stealing from the person; stealing goods in transit, etc.**

If a theft is committed in any of the following circumstances—

- a) if the thing is stolen from the person of another;
- b) if the thing is stolen in a dwelling house, and its value exceeds one hundred shillings, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling house;
- c) if the thing is stolen from any kind of vessel or vehicle or place of deposit;**
- d) if the thing stolen is attached to or forms part of a railway;



- e) if the thing is stolen from a public office in which it is deposited or kept;
- f) if the offender, in order to commit the offence, opens any locked room, box or other receptacle by means of a key or other instrument, the offender is liable to imprisonment for seven years.

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

To prove count 1, the prosecution has to prove beyond reasonable doubts an additional ingredient, that is:



- vii. **The thing so stolen was from any kind of vessel or vehicle or place of deposit.**

A motor vehicle is a self-propelled vehicle that runs on land surface and not on rails. It is a mechanically propelled vehicle made, intended or adapted for use on roads. **SECTION 2 (1) (OO) OF THE TRAFFIC AND ROAD SAFETY ACT, CAP 361**, defines “motor vehicle” as any self-propelled vehicle intended or adapted for use on the roads.

Possession within the meaning of this section refers to effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession.

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...”*

Count 2: Giving false information to a person employed in a public service contrary to formerly, **Section 115**, of the Penal Code Act cap 128, Laws of Uganda, 2023 edition.



Whoever gives to any person employed in the public service any information which he or she knows or believes to be false, intending thereby to cause, or knowing it to be likely that he or she will thereby cause, any person employed in the public service—

- a) to do or omit anything which the person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him or her;
- b) to use the lawful power of the person employed in the public service to the injury or annoyance of any person; or
- c) to devote his or her time and services to the investigation of such information, commits a misdemeanour.

**Ingredients:**

- i. giving information
- ii. to a public officer
- iii. knowledge of the same to be false
- iv. accused's participation.

I will evaluate the ingredient of participation in both counts concurrently.

Having heard the evidence of the prosecution and the defence, this court moved itself to examine the motor cycles physically and found out that some of the allegedly stolen items from the complainant's motor cycle registration no. **(UFX068A)** were different from those found on A1's motor cycle registration no. **(UEV341U)**.



For example, while the prosecution states that the engine of **UFX068A** engine number **DUXWPK17090** as per the registration book- **PEX1** was installed on **UEV341U**, this court on examination found engine no. **DUZWJ978540** on the said **UEV341U**.

The other items allegedly stolen from **UFX068A** were neither numbered or labeled and this court was not satisfied that they were parts found on **UFX068A**. I note that Pw1 attempted to link his motor cycle parts to those found on A1's motor cycle but he could not tell court how he identified and differentiated them yet, they are quite identical. Neither did he testify to having seen the accused uninstall the said spare parts from his motor cycle.

The prosecution testimony shows that the items were wholly stripped from **UFX068A** at once and installed on **UEV341U**. The question in this courts' mind, therefore is, if the engine allegedly installed on **UEV341U** was found not to be the one allegedly taken from **UFX068A**, how likely is it that any other item allegedly stolen from **UFX068A** was that which was found on **UEV341U**? This raises great doubt in the mind of court.

If the accused did not steal the engine of **UFX068A**, it is highly possible that they did not steal the rest of the parts allegedly stolen.

From the outset, I mentioned it is the prosecution to satisfy the burden of proving its allegations. It is not the accused to prove their innocence. I note that in this case, the accused actually proved their innocence when they exhibited DEX1- the logbook of A1's motorcycle **UEV341U** and



DEX2- the receipt upon which A1 purchased the spare parts on his motor cycle, which also turned out, not to belong to Pw1's motorcycle **UFX068A**.

The prosecution also did not satisfy this court as regards identification of the person who allegedly dismantled Pw1's motor cycle. The rules regarding identification 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. 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.”*

In the instant case as observed in the foregoing, no witness saw the accused commit the alleged offence being attributed to them. The evidence that attempts to place them at the scene of crime through the testimony of Pw1, Pw2 & Pw3 is all **“after the fact.”** and tainted with **hearsay**, which, needless to say, is inadmissible in this court.

For those reasons, I am not satisfied that the prosecution proved the ingredient of participation beyond reasonable doubts in both counts with which the accused are being prosecuted.



As prosecution has failed to prove this ingredient, it would be moot to evaluate the rest of the ingredients of the counts with which the accused are being charged.

Accordingly, I make the following orders.

1. I find both Accused NOT GUILTY and ACQUIT them on count 1: of the offence of stealing from a Motor Vehicle Contrary to, formerly **Sections 261 and 267(c)**, of the penal code Act cap 128, laws of Uganda, 2023 edition.
3. I find both Accused NOT GUILTY and ACQUIT them on Count 2: of the offence of Giving false information to a person employed in a public service contrary to, formerly, **Section 115,** of the Penal Code Act cap 128, Laws of Uganda, 2023 edition.
2. Both accused are hereby DISCHARGED AND SET FREE unless they are being held for any other lawful cause.
3. Bail money, if any paid is hereby ordered to be refunded.
4. The sureties if any, are accordingly discharged.

I so order.

Dated at PALLISA this \_\_\_15th\_\_\_day of \_\_\_APRIL\_\_\_ 2026.

A handwritten signature in black ink, appearing to be "HW Kyembe Karim", written over a horizontal line.

**HW KYEMBE KARIM**

Magistrate G.I