THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA

CRIMINAL CASE *NO.* ***PAL-00-CR-CO-0378-2023***

UGANDA :: PROSECUTION

VS

OTAI SIMON :: ACCUSED

Before: His Worship Kyembe Karim ESQ

Magistrate G.I

RULING ON PRIMA FACIE CASE

Introduction.

Otai Simon herein referred as the accused was arraigned in this court vide charge sheet dated 27th September, 2023 and Sanctioned on the 28th September, 2023 and charged with two counts. That is;

Count 1: Criminal trespass contrary to then, then, **Section 302** of the Penal Code Act Cap 120, NOW Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023**.

Count 2: Malicious damage to property contrary to then, then, **Section 355** of the Penal Code Act Cap 120, and now Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023**.

Factual background.

On count 1, It was the prosecution's assertion that the accused and another still at large on the 25th day of August, 2023 at Akisim Central village in pallisa district unlawfully entered into a piece of land in the possession of a one, Oppo Thomas with intent to annoy the said Oppo Thomas.

On count 2, it was the prosecution's allegation that the accused together with another still at large on the 25th day of august, 2023 at Akisim Central village in Pallisa district willfully and unlawfully damaged a tree, the property of a one, Okonye Joseph.

When the charges were read to him, he denied the same and a plea of NOT GUILTY was accordingly entered on both counts.

It is important to note that by denying the charge, the accused put in issue all and every essential ingredient of the offences 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 Okonye Joseph-Pw1, Thomas Oppo, - Pw2, Odeke steven-Pw3, Odelle John Patrick-Pw4.

Prosecution evidence in a nutshell is that it was August, 25th, 2023 at around 10:00am when Pw1 received a call from three of his cousins informed him that a tree called *"ebobore tree"* on the land that his father had given him had been cut down. That he was informed that a one, Sam Olyadda cut down the tree on the instructions of a one, Opoloto Daniel and it is the accused who sold off the said tree. That Pw1 reported the matters to police but they also came to the scene of crime almost a week later. Pw1 on cross-examination admitted not going to the scene of crime until later, on the 2nd September, 2023 at 9:00 am.

Pw2 on the other hand also told court that:

> *"..I gave my land to a one, Okonye to cultivate and later, Okonye informed me that they had cut the ebobore tree and Okonye informed me that it is the accused who had cut the tree…"*

Pw3- Odeke Stephen told court that:

> *"…I did not see the accused sell off the tree. We only saw a person cutting a tree…"*

Pw4- Odeke Stephen told court that:

> *"…I am the district forest officer of Pallisa District local government and the subject tree was Ebokore (Cyrus comore tree) which was 100 years old and costs approximately UGX. 4,472,000/= (Uganda shillings four million four hundred seventy two thousand only)*

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.

On the 17th February, 2026 when the matter came up for hearing, the learned state attorney applied and was granted leave to close the prosecution case. This is therefore a ruling on whether the prosecution has established a prima facie case as to require the accused to defend himself.

The law and analysis.

I will first lay out the principles relating to each charge.

Count 1: -Criminal Trespass

For the accused to be convicted of Criminal Trespass, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. Intentional entry onto property in possession of another.
2. The entry was unlawful or without authorization.
3. The entry was for an unlawful purpose.
4. That each of the accused entered onto the premises in those circumstances.

The offence requires that; (i) there must be an actual entry by the person accused. Constructive entry by a servant, for instance, acting on the orders of his master is not an entry, within the meaning of the section.

i. The section covers both movable and immovable property, for instance there can be a criminal trespass to a motor car as well as to land and proof of the use of force is not necessary;

ii. the possession is clearly intended to be possession at the time of entry and it does not imply that the person in possession must be present at the actual time of the entry;

iii. the entry onto the property must be unlawful. The section does not protect a trespasser in possession as against a party lawfully entitled to possession. It is worthy of note that the party lawfully entitled to possession has a right to private defence of his property embedded in the defence of bona fide claim of right under **Section 7 of *The Penal Code Act***;

iv. the intent to annoy and intimidate must be not with respect to any and every person connected with the property but with respect to any person in actual possession of such property. A person in constructive possession is not contemplated by the section. The word "annoy" as used in the section should be taken to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual; and

v. the existence of a bona fide claim of right under **Section 7 of *The Penal Code Act***, ordinarily excludes the criminal intention.

Count 2:- Malicious damage to property

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.

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

After having listened to the evidence and considered the laws applicable, it is apparent that the alleged offences were committed concurrently and it is my humble view that 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 in both counts.

In **Abdalla Bin Wendo & Anor Vs R (1953) EACA AT 166** and **Roria V Republic (1967) EA AT 583** and also, in **Bogere Moses & Anor V Uganda SC** cr **Appeal no.1 of 1997** court stated that:

> *"where prosecution does not produce credible identifying witnesses, the court must exercise the greatest care so as to satisfy itself that it is free from the danger of mistaken identity"*

While the prosecution evidence shows that the alleged offences were committed during day, none of them could identify the person that cut the tree or who trespassed.

I note that Pw1 and Pw2 attempted to place the accused at the crime scene but none of them was present at the time the said tree was cut.

They both admit, the information regarding who cut the tree was only furnished to them by 3rd parties, who were not called to testify in court.

This is the classic definition of **hearsay evidence.** Needless to say, it is inadmissible in this hon. Court.

Pw1 told court that:

> *"…I received a call from three of my cousins who informed me that a tree called "ebobore tree" on the land that my father had given me had been cut down…."*
>
> *"… I was informed that a one, Sam Olyadda cut down the tree on the instructions of a one, Opoloto Daniel and it is the accused who sold off the said tree…."*
>
> *"… I reported the matters to police but they also came to the scene of crime almost a week later…."*
>
> **On cross-examination**: *"…I did not go to the scene of crime until later, on the 2nd September, 2023 at 9:00 am…"*

Pw2 on the other hand also told court that:

> *"...I gave my land to a one, Okonye to cultivate and later, Okonye informed me that they had cut the ebobore tree and Okonye informed me that it is the accused who had cut the tree.."*

Pw3- Odeke Stephen told court that:

"…I did not see the accused sell off the tree. We only saw a person cutting a tree…"

Pw4- Odeke Stephen told court that:

"…I am the district forest officer of Pallisa District local government and the subject tree was Ebokore (cyrus comore tree) which was 100 years old and costs approximately UGX. 4,472,000/= (Uganda shillings four million four hundred seventy two thousand only)

In **George William Kalyesubula vs. Uganda – S.C. Crim. Appeal No. 16 of 1997,** the Supreme Court of Uganda further upheld the settled 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,** while discussing the evidence of a single identifying witness, 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 the instant case, the offences were allegedly committed at 10:00am and so far, no legally acceptable evidence was presented by prosecution placing the accused at the crime scene.

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 this instant case, the charge required proof that whoever trespassed and destroyed the said tree, did so willfully and unlawfully and that he was properly identified.

Before convicting solely on strength of identification evidence, this Court is enjoined to warn itself of the need for caution, because a mistaken eye witness can be convincing, and so can several such eye witnesses. This point was stressed in ***Abudala Nabulere and another v. Uganda Court of Appeal Criminal Appeal No. 9 of 1978*** in the following passage in the judgment:

"Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications.
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 accused was under observation, 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 a mistaken identity is reduced but the poorer the quality, the greater the danger.

In our judgment, when the quality of identification 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 well 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."

Like I mentioned in the foregoing, in the instant case, none of the witnesses could identify the accused as having been at the crime scene. The only evidence attempting to link him to the scene of crime is hearsay and inadmissible.

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 ***mensrea*** or ***actus reus*** was adduced. 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 on both counts, namely; **Count 1:** Criminal trespass contrary to then, then, **Section 302** of the Penal Code Act Cap 120, and now Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023** and **Count 2:** Malicious damage to property contrary to then **Section 355** of the Penal Code Act Cap 120, and now Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023** and I hereby order as follows;

1. The accused stands ACQUITTED of both charges leveled against him and he should be set free henceforth unless if he is being held on other lawful charges.
2. Bail money, if any paid should be refunded to him.

I so order.

Date this ____15th______day of _____APRIL__2026 at PALLISA

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H/W KYEMBE KARIM ESQ

Magistrate G.I