



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA

CRIMINAL CASE NO. PAL-00-CR-CO-041-2025

UGANDA :::::::::::::::::::::::::::::::::: PROSECUTION

VERSUS

OMOIT ROBERT :::::::::::::::::::::::::::::::::: ACCUSED

Before: His Worship Kyembe Karim ESQ, Magistrate Grade I

JUDGMENT

Introduction

The accused, **Omoit Robert**, was charged on two counts arising from an alleged break-in and theft of household items from the home of **Angella Berita at Kasabayo** Village, Katule Parish, Kayikara Sub-county, Pallisa District, on the night of 10th–11th February 2025:

Count 1, burglary contrary to Section 275(2) of the Penal Code Act, Cap 128; and Count 2, theft contrary to Sections 237 and 244 of the same Act. He pleaded not guilty to both counts. The prosecution called four witnesses — the complainant, two witnesses to the events surrounding the deployment of a police tracker dog, and the dog's handler — and the accused testified in his own defence, calling no other witness. Having considered the whole of that evidence, this Court finds that, notwithstanding the evidence connecting the accused to the scene through the tracker dog, the prosecution has not proved his participation in the offences to the standard required of a criminal trial, and it acquits him on both counts. The reasons follow.

Background

Omoit Robert was arraigned before this Court vide charge sheet dated 14th February 2025, sanctioned on 18th February 2025. On Count 1, it was the prosecution's assertion that the accused,



in the night of 10th–11th February 2025, broke and entered the dwelling house of Angella Berita with intent to commit a felony therein. On Count 2, it was the prosecution's assertion that on the same night the accused stole one jerrycan, two breakable plates, a black laptop/backpack bag containing clothing, a passport, cups, and other items, together valued at approximately UGX 1,590,000/=. When the charges were read to him the accused denied both counts, and a plea of NOT GUILTY was entered.

It is settled law that by denying the charge the accused put in issue every essential ingredient of the offences with which he is charged, and that the burden of proving those ingredients beyond reasonable doubt rests on the prosecution throughout and does not shift to the accused: **Woolmington v DPP [1935] AC 462; Miller v Minister of Pensions (1947) 2 All ER 372; Sekitoleko v Uganda (1967) EA 531**. An accused is convicted on the strength of the prosecution's case, not on the weakness of his defence, and this Court has borne that principle in mind throughout, together with the presumption of innocence guaranteed by **Article 28(3)(a) of the Constitution and Sections 101(1) and (2) of the Evidence Act, Cap 8**.

Evidence Adduced

PW1 – Angella Berita, hairdresser, resident of Kasabayo Village, testified that she was at her uncle's place attending a burial at Obetetat on 10th February 2025, and returned home the following day. Near the borehole beside their garden, people asked whether she had left her door open; she had not. On reaching her door she found the padlock had been cut but the door closed, and the cloth she used to cover a hole in the door had been removed. On entering, she found missing: a bag of clothes (backpack), other hanging clothes, a jerrycan, a passport, cups, and breakable plates. She went to the area chairperson, who advised her to report to police. Police in turn advised her that a sniffer dog was needed but was unavailable that day, becoming available on 13th February 2025. She testified that the accused has lived in the area for about three years and that this was his first arrest.



On cross-examination, PW1 confirmed that nothing was recovered from the accused, and that it was a police officer, rather than the dog itself, who physically restrained the accused when the dog attempted to bite him.

PW2, the area chairperson, testified that on 11th February 2025 Angella Berita came looking for him; he went with her to her home at about 5:00 p.m. and found the door broken into and the padlock cut. He advised her to report to police, who came with a sniffer dog the following day, 12th–13th February 2025, at which he was present. He testified that when the dog was introduced it was taken to the house from which the items had been stolen, came out, followed the road, passed one home, appeared to turn toward a third home before turning back, passed through a cassava garden, and arrived at a mango tree in the compound of the accused's late father, where it found the accused and his sister. When the sister saw the dog she ran; the dog continued to the accused, who was then arrested. He testified that this compound has three houses and that the dog did not enter any of them, and that this was the first time the accused had been implicated in a theft case to his knowledge. He stated that he had no grudge against either the accused or the complainant.

On cross-examination, PW2 confirmed that this was the only theft matter ever brought against the accused to his knowledge, that he was unaware of any quarrel between the accused and the complainant, that nothing was found in the accused's house, and that he had never found the accused stealing from anyone.

PW3 – Nakirya Jennifer, peasant farmer and the complainant's biological mother, testified that she is the complainant's neighbour, not distant, and knows the accused. She received a call from her daughter on the night in question informing her of the break-in, and on returning the next morning went with the complainant to report to police. She testified that the dog, once brought to the house on 13th February 2025, began tracking, passed a cassava garden, passed a neighbour's home, followed the road to another cassava garden, and arrived at the accused's house, where he was found with his sister, who ran off; the accused himself attempted to leave but was grabbed by the dog and then taken to the police vehicle.



On cross-examination, PW3 confirmed she had never previously seen the dog track anyone, had no grudge against the accused, had never heard he was a thief until the incident, and that while some of the stolen items (the passport and certain plates) belonged to her, the dog led directly to the accused's place without recovering any of the stolen items there.

PW4 – No. 70761 PC Nabafu Sarah, attached to Pallisa CPS Canine Department, a certified dog handler since 2020, testified using police dog No. 103 ("**Beauty**"), also separately certified in tracking. She explained that a tracker dog picks up a scent at a scene and follows it, and that weather and the passage of time can affect a track's reliability. She testified that she did not know either the complainant or the accused before this case, that she introduced Beauty into the still-preserved scene on 13th February 2025, and that the dog picked a scent and tracked through a cassava plantation onto a path, turning right for roughly 300 metres to a neighbouring home, and then on to the accused, who was found in a banana plantation roughly 300 metres beyond the scene. She testified that the dog did not enter or search any of the three huts in the neighbouring compound before reaching the accused, and that she was unaware of any grudge between the parties.

"...it led me through the cassava garden, connecting to the path, then to the home of late Orone Joseph where the accused was and it continued following him until the accused took off towards the police vehicles and that's when he was arrested..."

On cross-examination, PW4 confirmed she could not recall the identity of the area chairperson present that day, that only one item — the complainant's — had been reported stolen from a single hut, that the door had been closed with no suggestion anyone else had entered, that the accused was not found with any exhibits, that the dog was deployed the day after the alleged offence, that this was her first time tracking the accused specifically, that the dog was following a human scent, and that police officers restrained the dog from biting the accused. On re-examination she confirmed nothing was recovered from the accused's home.

"...the accused was not found with any exhibits..."



On 7th January 2026 prosecution closed its case, and this Court found a prima facie case established, mindful of the principle in **Wibiro alias Musa v Republic (1960) EA 184** that at that stage the Court need not assess whether the evidence is ultimately weighty enough to sustain a conviction, and of **University of Ceylon v Fernando (1960) WLR 233** on the fundamental nature of the right to cross-examine, an opportunity both parties fully exploited in this case.

Defence Case

All three modes of defence were explained to the accused, who elected to give evidence on oath and testified as his own sole witness, DW1. He testified that he is a casual labourer who digs cassava and rice gardens for a fee, and that on the day in question he worked as usual and returned from the swamp at about 10:30 a.m. to rest and attend to pigs he was keeping. As he was cutting cassava to feed the pigs he saw a dog approach; it sniffed around the pig enclosure, went out, and moved toward the latrine, still with the dog handler. A police officer who had accompanied the handler then held his hand and led him to a police vehicle, and later to his father's home, before he was taken to Pallisa Central Police Station. He denied knowledge of the theft or of who might have committed it, denied being found with any exhibit, and stated that he refused to sign a police statement, which the recording officer accordingly signed himself. A suspect statement he gave to police (admitted for identification and marked PEX1) is materially consistent with his testimony: in it, he denies breaking into the complainant's house, states that the dog did not enter his house but approached him directly while he was preparing food for the piglets, and states that this was his second time at a police station, the first concerning an unrelated matter involving a third party in which he was not himself detained.

On cross-examination, the accused maintained that he is the sole occupant of his home since his parents' death, that his stepsister visits periodically and was in the area the week before the incident, that he is a neighbour of the complainant but has never entered her home nor asked anything of her beyond an occasional greeting at the shared borehole, that he has no history of arrest connected to the accused's associate Ogaryampo Peter, and that the dog did not enter his house but only the pig enclosure before he was restrained by the accompanying police officer.



The Law and Analysis

For proper context, the ingredients of each count are set out before the evidence is evaluated.

Count 1: Burglary

The offence of housebreaking, and its aggravated night-time form of burglary, is created under Section 275 of the Penal Code Act, Cap 128, and requires proof that: (i) a building used as a human dwelling was involved; (ii) there was a breaking and entering (or breaking out); (iii) with intent to commit a felony therein; (iv) committed at night for the offence to be burglary rather than housebreaking; and (v) that it was the accused who so participated.

Count 2: Theft

Theft is defined under Section 237 of the Penal Code Act, Cap 128: 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 its owner anything capable of being stolen, is said to steal that thing; Section 244 provides the aggravated penalty applicable where the theft is committed in a dwelling house. To sustain a conviction, the prosecution must prove beyond reasonable doubt that: (i) the accused fraudulently took something; (ii) that thing was capable of being stolen; (iii) it was the property of another; (iv) the taking was without claim of right; (v) there was an intention to permanently deprive the owner of it; and (vi) it was the accused who participated in the taking.

Evaluation of the Evidence

Before evaluating participation, it must be recorded that the evidence as to the precise time of the alleged entry is not sufficiently precise to found a safe distinction between housebreaking and burglary. That question does not, however, need to be finally resolved, because — as will be seen — the case fails at an earlier and more fundamental point common to both counts: proof of the accused's participation.

No witness in this case saw the accused break the padlock, enter the house, or take any of the missing items. PW1's evidence establishes that a break-in occurred and items went missing; it does



not, on its own, place the accused at the scene. The evidence said to connect him to the offences is entirely that of the police tracker dog and those who observed its work: PW2, PW3, and PW4.

Unlike the position sometimes seen in such cases, this is not a matter resting on the word of the dog handler alone against that of the accused. PW2 and PW3 both gave first-hand, largely consistent accounts of watching the dog track, without apparent interruption, from the scene of the break-in through cassava gardens and along a shared path to the compound where the accused was found, and of the accused attempting to move off before being restrained. Their accounts corroborate PW4's evidence on the mechanics of the trailing exercise, and neither PW2 nor PW3 was shown to bear any grudge against the accused — a point PW2 confirmed without challenge. To that extent, the defence submission that the dog evidence stands wholly uncorroborated cannot be accepted, and this Court does not accept it.

That corroboration goes to how the dog behaved and where it went. It does not, without more, prove that the accused committed the offences charged. Uganda's courts have repeatedly cautioned that evidence of this kind — *one animal's response, however faithfully observed by human witnesses — is not the equivalent of direct human identification and must be approached with particular care*: **Abdallah Bin Wendo and Anor v R [1953] 20 EACA 165**; **Omondi and Anor v R [1967] EA 802**; **Uganda v Muheirwe and Anor, HCT-05-CR-CN-0011 of 2012 (Gaswaga J)**. The propositions distilled in Muheirwe require, among other things, that the trail not have become stale and that the circumstances of the actual trailing be closely scrutinised before a conviction is safely founded on it.

Several features of this trailing give this Court pause. First, the dog was deployed a full two days after the alleged offence, over ground that included a communal path and cassava gardens used, on the unchallenged evidence, by neighbouring households — including, on PW2's account, a home the dog appeared briefly to approach before turning away. A trail of that age, over shared ground, is inherently more fragile than one followed fresh from a preserved scene with no competing human traffic. Second, and critically, nothing connecting the accused to the stolen property was ever found — not at his home, not on his person, and not anywhere along the trail;



this was confirmed independently by PW1, PW2, and PW4 (on re-examination) and was not disputed by the prosecution. Third, the accused's own account of his conduct at the moment of the dog's arrival — that he was occupied feeding pigs near his home, a legitimate and unremarkable activity for a man who the evidence shows had lived in that immediate vicinity for some years — was not shaken in cross-examination and is not inherently inconsistent with a trail terminating at his homestead for reasons unconnected to the offence.

A dog that reliably retraces a scent to a particular homestead proves, at most, that the scent originated there or passed through there; it does not, without independent confirmation — a recovered exhibit, an admission, or a witness who saw the accused in physical possession of the stolen property or in the act of breaking in — exclude the reasonable possibility that the trail reflects ordinary proximity rather than participation in the offence. That is precisely the corroboration the authorities cited above contemplate, and it is precisely what is missing here. **The caution applicable to human identification evidence at night, discussed in *Roria v Republic* [1967] EA 583 and adopted by the Supreme Court in *Bogere Moses & Anor v Uganda*, S.C. Crim. Appeal No. 1 of 1997 (citing *Nabulere v Uganda*, Crim. Appeal No. 9 of 1978, [1979] HCB 77), applies** with no less force where, as here, animal tracking evidence is being asked to do the work ordinarily done by a human eyewitness: the risk of a mistaken, if genuinely observed, connection remains real.

This Court has weighed the accused's evidence and demeanour, which it found consistent and unshaken on the central facts, against the corroborated but ultimately circumstantial character of the dog evidence, and against the complete absence of any recovered property or independent eyewitness to the actual break-in or taking. On the whole of the evidence, this Court is left with a genuine and reasonable doubt as to the accused's participation in the offences charged — a doubt which, on settled principle, must be resolved in his favour.

As the ingredient of participation is common to both counts and has not been proved to the required standard, it is unnecessary to evaluate the remaining ingredients of either offence further.



Conclusion and Orders

1. On Count 1 (Burglary contrary to Section 275(2) of the Penal Code Act), the accused, Omoit Robert, is found **NOT GUILTY** and is accordingly **ACQUITTED**.
2. On Count 2 (Theft contrary to Sections 237 and 244 of the Penal Code Act), the accused, Omoit Robert, is found **NOT GUILTY** and is accordingly **ACQUITTED**.
3. The accused is discharged and shall be set free forthwith, unless he is being held on any other lawful charge.

I so order.

Dated at Pallisa this 15th..... day ofJULY..... 2026

A handwritten signature in black ink, appearing to be 'K. Karim', is written over a horizontal line.

HIS WORSHIP KYEMBE KARIM

MAGISTRATE

CHIEF MAGISTRATE'S COURT OF PALLISA