

UGANDA / JUDGMENT

Hassan Kagende v Uganda (Criminal Appeal No. 362 of 2017) [2020] UGCA 2097 (15 September 2020)

[2020] UGCA 2097

COURT

Court of Appeal of Uganda

BEFORE

Cheborion, JA, Egonda-Ntende, JA, Kibeedi, JA

CASE / FILE NUMBER

Criminal Appeal No. 362 of 2017

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBALE

CRIMINAL APPEAL NO.362 OF 2017

HASSAN KAGENDE:.....

VERSUS

UGANDA:..... 10

(Appeal from the decision of the High Court of Uganda at Jinja before Patricia Bassaza, J dated 27th September, 2017 in High Court Criminal Session No.097 of 2015)

HON. MR. JUSTICE F. M. S EGONDA-NTENDE, JA CORAM:

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA

JUDGMENT OF COURT

The appellant was convicted by the High Court of aggravated robbery and sentenced to 12 years imprisonment. He appeals to this court against both conviction and sentence.

The prosecution case was that on the 24th day of June, 2013, the victim No.33129 W/ CPL Kangawo Alice was travelling in Motor Vehicle Reg No. UAK 472S Sprinter from Kampala to Namwenda Village Kamuli District to attend a burial together with Katushabe Remmy, Katona Rhoda, Makata Ivan, Babirye \$1|Page\$

- Patience, Bazira Alice and Kabale Joan when at about 10pm along Kamuli Road 5 at Muguluka a few meters after the trading center a man dressed in army uniform emerged from the bush and stopped the vehicle in which they were travelling. He pretended to be inspecting the condition of the said vehicle and shortly thereafter, 3 other men emerged from the bush who also joined him. One of the men was armed with a gun. The victim and other occupants of the vehicle 10 were immediately forced out and ordered to surrender all their belongings which included mobile phones, money and four bags containing clothes.
- The thugs drove off in their sprinter motor vehicle leaving the complainants stranded on the road. In July 2013, the DPC of Buwenge, Madira Samuel received information that one of the suspects in the robbery was seen in Buwenge 15 town. Police investigated the matter and subsequently arrested the accused and upon being searched, Police recovered from him one saving card in the names of Nambatya Judith, eleven Sim Cards registered in different names and different networks, one army green t/shirt, one pair of shorts resembling army uniform, one pair of military shoes (black) and three mobile phones, 2 of Tecno model and 20 another Nokia Model. One of the three mobile phones recovered from the suspect belonged to one of the victims.

On 2nd August, 2013, an identification parade was carried out at Nalufenya Police Station and one of the witnesses managed to clearly identify the accused as one of the persons who participated in the said robbery. The accused was

medically examined and was found to be 24 years old and of sound mind. He $\$ \backslash \mathrm{mathsf{S}} \$$ was indicted, tried, convicted and sentenced to 12 years imprisonment.

Dissatisfied with the decision of the learned trial Judge, the appellant appealed to this Court on grounds that;

- 1. The learned trial Judge erred in law and fact when she convicted the appellant basing on an identification parade that was wrongly conducted after the complainant had seen the accused.
- 2. The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence regarding the contradictions and inconsistencies in the evidence of the prosecution witnesses.
- 3. The learned trial Judge erred in law and fact when she convicted the appellant basing on the identification by PW1 who ran away from the scene of crime.
- 4. The learned trial Judge erred in law and fact when she relied on the prosecution evidence in isolation of the defence case.

- 5. The learned trial Judge erred in law and fact when she ignored the appellant's alibi

At the hearing of the appeal, Ms. Kayango Agnes appeared for the appellant while the respondent was represented by Mr. Oola Sam from the office of the DPP. Counsel prayed that their submissions be adopted and the same was granted by Court.

On ground 1 of the appeal, counsel for the appellant submitted that the 25 identification parade was not properly conducted because the appellant testified that he was shown to the complainant when he was in the cell before the

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5 identification parade. Counsel further submitted that prosecution failed to prove that the appellant had not met the witness before the identification parade was conducted. That from the evidence of PW1, Kangawo Alice, the identifying witness, 8 people participated in the parade and the appellant was not of the same skin complexion like the rest and was also taller than the other 4. She relied on *Sentale V Uganda* (1968) EA 365 which lays down the conditions for 10

proper identification parade.

On ground 2 and 3, counsel submitted that the inconsistencies and contradictions in the prosecution case went to the root of the case for example PW1 testified that there was no money involved in the robbery and that the appellant and others did not take any money from anyone in the vehicle whereas 15 PW2 testified that she saw the assailants take money. Further that PW1, Kangawo Alice testified that she properly identified the appellant at the scene of crime whereas PW2, Nakato Irene said PW1 was in the car and later took off from the scene of crime and yet it was PW1 who identified the appellant during the identification parade. 20

On ground 4, counsel faulted the trial Judge for relying only on the prosecution evidence and failed to consider the defence evidence. Counsel did not cover this point in submissions.

In ground 5 of the appeal, the appellant raised an alibi that he was in Namavundu village, Gayaza in Wakiso district on the fateful day because he had been granted sick leave. According to counsel, the appellant's alibi remained

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intact and plausible as prosecution failed to place the appellant at the scene of \$\mathsf{S}\$ the crime. Counsel prayed that the appeal be allowed and the sentence be set aside.

In reply, counsel for the respondent opposed the appeal and submitted that ground 1 was misconceived as the trial Judge clearly indicated in her judgment that she had rejected the identification parade. She therefore did not consider it in her judgment.

On ground 2, counsel submitted that it is true that there were some contradictions in the evidence of PW1, Kangawo Alice, PW2, Nakato Irene and PW5, Katono Rhoda as to the distance between the scene of crime and the security lights from the nearby mosque because Exhibit P3, the sketch plan of the scene showed that the mosque was across the road. He added that there

was evidence that the appellant ordered the driver of the vehicle to leave the front lights of the vehicle on therefore as to whether or not the lights from the mosque were near the scene of crime was not fatal as there were other sources of light at the scene of crime. As to whether or not money was stolen from the occupants of the vehicle, counsel stated that this did not go to the root of the case.

On ground 3, counsel submitted that the evidence on record shows that PW1 did not run away from the scene immediately the robbers stopped the vehicle. That she took 15 minutes at the scene before she ran away. She added that PW1, Kangawo Alice, PW2, Nakato Irene and PW5, Katono Rhoda testified that they identified the appellant during the commission of the crime with the help of the

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front lights of the vehicle and he was very active in searching the occupants of \$5\$ the vehicle for money and other items. According to counsel, these conditions were favorable enough to properly identify the appellant.

On ground 4, counsel invited Court to look at pages 10 and 13 of the judgment wherein the learned trial Judge took into consideration the defence case but rejected it in preference to the prosecution case for the reasons she stated therein.

On ground 5 of the appeal, counsel submitted that the prosecution has the burden of adducing evidence placing the accused at the scene of the crime. she further stated that the learned trial Judge rejected the appellant's alibi because there was a contradiction between the accused's testimony in Court and Exhibit P4 as to the circumstances of his arrest, secondly the appellant alleged that he was on sick leave yet he had been declared a deserter from UPDF in 2011, thirdly, the conduct of the appellant of running away from PW4 to evade arrest and lastly the appellant's explanation on why he was in possession of very many Sim Cards, phones belonging to other individuals and ATM cards did not add up. Counsel prayed that the appeal be dismissed, the conviction and sentence against the appellant be upheld.

In rejoinder, counsel for the appellant submitted that in as much as the learned trial Judge disregarded the identification parade, she concluded that the appellant had been properly identified and convicted him yet the identification was tainted with falsehoods. She added that prosecution did not prove the

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- doctrine of recent possession beyond reasonable doubt or that the stolen 5 property if any was stolen in the commission of this particular crime against the complainants. Counsel further submitted that Police did not lead any evidence as to whether the appellant's finger prints were found in the alleged stolen car and neither was the appellant found with anything belonging to the complainant apart from the mobile phone which was not proved to belong to the appellant. 10

- Counsel further submitted that the trial Judge was alive to the alibi of the appellant herein and the reasons for rejecting the defence did not suffice. She added that the appellant having been declared absent without official leave from the UPDF or running away from arrest for being in possession of numerous Sim Cards did not mean that his alibi had not been proved.

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The duty of this Court, being a first appellate is to subject the evidence on record to a fresh review and scrutiny and come to its own conclusions bearing in mind, however, that it did not see the witnesses testify See Rule 30 of the Rules of this Court and *Kifamunte Henry V Uganda*, SCCA No.10 of 1997.

On ground 1 of the appeal, the learned trial Judge is faulted for convicting the 20 appellant basing on an identification parade that was wrongly conducted after the complainant had seen the accused. It was submitted for the appellant that the identification parade was not properly conducted because the appellant testified that he was shown to the complainant when he was in the cell before the identification parade was conducted. In reply, counsel for the respondent 25 submitted that this ground of appeal was misconceived as the trial Judge clearly \$5\$ indicated in her judgment that she had rejected the identification parade.

While dealing with the 4th ingredient of the offence of aggravated robbery, the learned trial Judge stated as follows;

"I however rejected the identification parade evidence. I found that the method of

- identification was irregular in the following respects; it was contrary to the rules 10 for identification parades laid down in *Ssentale V Uganda* (1968) E. A 365-369.
- (a) PW3, who conducted the parade, told Court that before the parade he told the witness (PW1) that

'Before you, are eight (8) people, seven of whom are participants and one is a suspect who is among the people who attacked you at Muguluka Trading

Centre on 24/06/2013, you will critically look at them and as a show of confirmation that you have identified the suspect you will point at him.'

The rules of for identification parades as laid out in the *Ssentale* case (supra) require that the witness should never be influenced in any way. The witness should be told that in the group of people paraded, the group may or may not contain the suspected person.

In the present case, what PW3 told the witness was a violation of this rule

- (b) The persons paraded were not of similar height and color contrary to the requirements. PW1 stated that some of the other seven men paraded were tall and some were of the size of the accused, but they were darker than him.

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The rules require that the accused is placed among at least 8 persons, as far as possible of similar age, height, general appearance and class of life as himself."

Reading the above excerpt indicates that the learned trial Judge indeed rejected the identification parade evidence. We therefore agree with counsel for the respondent that this ground of appeal was misconceived as the trial Judge clearly indicated in her judgment that she had rejected the identification parade.

We are however mindful of the fact that a witness though honest can easily be mistaken that the person in the dock is the one that he saw in connection with the crime. See *Alexander V The Queen* (1981)145 CLR 395.

15 Ground 1 of the appeal fails.

> On ground 2 and 3 of the appeal, the learned trial Judge is faulted for failing to properly evaluate the evidence regarding the contradictions and inconsistencies in the evidence of the prosecution witness and for convicting the appellant basing on the identification by PW1 who ran away from the scene of crime.

The law on contradictions and inconsistencies was well settled in *Alfred Tajar 20 V Uganda, E. A. C. A Criminal Appeal No.167 of 1969* (unreported) in which the Court stated that in assessing the evidence of a witness, his consistency and inconsistency unless satisfactorily explained will usually, but not necessarily, result in the evidence being rejected. Minor inconsistencies will not usually have the same effect unless the trial Judge thinks they point to deliberate 25

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untruthfulness.

- We shall subject the evidence of PW1, Kangawo Alice and PW2, Nakato Irene to \$5\$ fresh scrutiny to establish whether there were any major inconsistencies in their testimonies. PW1, Kangawo Alice testified that on the 23rd of June, 2013 while travelling from Kampala to Kamuli for burial with Katushabe Remmy, Babirye Patience, Nakato Irene, Kabale Jonathan, Katono Rose and Bazira Frida met a road block at Muguluka Trading Centre at around 1am and four men stopped 10 the vehicle, a sprinter number plate UAK 472S, Maroon in color in which they were travelling in.
- The four men dressed in army uniform plain green in color and army jackets stopped the occupants of the vehicle and one of the 4 men was armed. They ordered the driver of the motor vehicle to get out and the car keys were taken 15 away from him. He was ordered to remove his shoes and put everything down. The rest of the occupants in the vehicle were also ordered to come out but PW1, Kangawo Alice remained in the vehicle searching for her warrant card (Police Identity Card). One of the 4 men asked PW1 why she had stayed in the vehicle and she informed him that she was looking for her Warrant Card (Police Identity 20 Card) since she was one of their own. She was told to get out of the car and since she was

one of their own she was ordered to stand there and watch while her other colleagues were being searched, squeezing their breasts and searching for money.

- She further testified that one of her sisters by the names of Bazira Fridah ran 25 away. They took the phone belonging to katonu Ronah, money, laptop bag for
- Katushabe Rehema and some shoes for Katushabe Remmy. As they were \$5\$ searching for PW1's gun, she ran away. She added that she was able to identify the four men because there were lights in the trading centre and the vehicle in which they were travelling had its lights on. PW1 stated that it was the appellant searching them and he had a big stick. She added that when she ran away, her daughter who was also an occupant in the car followed her and one of the 4 men 10 ordered them to be shot at but the other refused saying that when somebody takes off then you leave them. She added that the robbery took around 30 minutes.
- PW2, Nakato Irene testified that on the 23rd of June, 2013, they left Kampala for Kamuli district at around 10pm in the night for burial in Motor Vehicle No. UAK 15 742S Sprinter, maroon in color. On reaching Muguluka, they met 4 men who stopped them. One of them approached the driver, told him to stop the vehicle and move out. He also told him to leave the car lights on and ordered the other occupants of the car to move out. The man who approached the driver was putting on an army uniform, an army green t-shirt and a jacket. She added that 20 the occupants of the vehicle were 7 in number and when they were ordered to get out and they got out. They were then ordered to put their bags and phones down and they started searching their bags and breasts. One of the 4 men was asking the driver for money and although they did not have money, their attackers collected whatever was in their bags and they took them, the phones 25 and everything they had left in the vehicle.
- She added that one of the 4 men had a gun and he was standing at a distance \$5\$ of approximately 5 metres. PW2 stated that she had both her phone and her sister's. She threw her sister's phone down which had a broken screen and black in color. Further that PW1, Kangawo Alice and Bazira Farida ran away. PW2 managed to see the four men using the car head lights that were on and the security lights plus they were near a mosque which had lights. She added that 10 the four men entered into the vehicle and left. That the said robbery took around 30 minutes.
- Counsel for the appellant submitted that the inconsistencies and contradictions in the prosecution case went to the root of the matter for example PW1, Kangawo
- Alice testified that there was no money involved in the robbery and that the 15 appellant and others did not take any money from anyone in the vehicle whereas PW2 testified that she saw the assailants take money. Further that PW1, Kangawo Alice testified that she properly identified the appellant at the scene of crime whereas PW2, Nakato Irene testified that PW1 was in the car and later

took off from the scene of crime 20

> Counsel for the respondent submitted that it was true there were some contradictions in the prosecution evidence but the appellant was properly identified.

We have carefully looked at the evidence of PW1, Kangawo Alice and PW2, Nakato Irene and find that PW1 stated that the robbers took the phone belonging to 25 katono Ronah, money, laptop bag for Katushabe Rehema and some shoes for

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Katushabe Remmy whereas PW2 stated that One of the 4 men was asking the \$5\$ driver for money and although they did not have money, their attackers collected whatever was in their bags and they took them, the phones and everything they had left in the vehicle.

We find that the inconsistency as to whether money was taken or not minor and it did not go to the root of the case because PW2 could not have known who of 10 them had money or not since there was no evidence that he had inquired about it earlier. Further the evidence of PW5, Katono Roda corroborated PW1's evidence when she stated that the appellant searched them and took their money and phones. Besides, the learned trial Judge considered other pieces of evidence for example she stated that prosecution evidence was corroborated by the accused's 15 own admission that at the time of his arrest, he was wearing a UPDF army green T-shirt inside a track suit. This dressing matched the description of what the robbers wore as stated by the prosecution witnesses.

Regarding the issue of identification, counsel for the appellant submitted that the learned trial Judge convicted the appellant basing on the identification by PW1, Kangawo Alice who ran away from the scene of crime.

The Supreme Court in *Bogere Moses and another V Uganda*, Criminal Appeal No.1 of 1997 listed the following guidelines on the approach to be taken when dealing with evidence of identification by eye witnesses in criminal cases;

"The starting point is that a Court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to have

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been made were or were not difficult, and warn itself of the possibility of mistaken identity. The Court should then proceed to evaluate the evidence cautiously so that it does not convict or uphold a conviction, unless it is satisfied that mistaken identity is ruled out. In so doing the Court must consider the evidence as a whole, namely the evidence if any of factors favouring correct identification together with those rendering it difficult."

In *Abdullah Nabulere & Anor V Uganda*, Criminal Appeal No.9 of 1978; Court laid down the following conditions for proper identification:-

- 1. Whether the accused was known to the witness at the time of the offence
- The conditions of lighting
- 3. The distance between the accused and the witness at the time of identification and
- 4. The length of time the witness took to observe the accused.

As to whether the appellant was known to the witnesses at the time of the offence. We find that none of the witnesses knew the appellant at the time of the offence.

On whether the conditions of lighting were favorable, PW1 testified that they were in the trading centre and security lights were on and also the vehicle lights were on so she was able to identify the robbers. Further, PW2 testified that on being stopped, one of the robbers approached the driver, started checking the car and ordered him to leave the lights on. She added that they were near a mosque which had lights and security lights were also on. This evidence was corroborated

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by the evidence of PW5, Katono Rhoda who testified that there was light and the 5 head lamps of the vehicle were on.

We find that there was sufficient light for the witnesses to identify the appellant.

Regarding the proximity between the appellant and the witnesses at the time of identification, PW1, Kangawo Alice and PW2, Nakato Irene testified that the said incident took approximately 30 minutes. This evidence was corroborated the evidence of PW5, Katono Rhoda who also testified that the incident took around 30 minutes. We find that this was enough time for the appellant to be identified because it was the appellant himself searching the complainants while holding a big stick as stated by PW1, Kangawo Alice in her evidence. This evidence was corroborated by PW5, Katono Rhoda who stated that the appellant searched them and took their property.

Having found that the contradictions were minor and that the appellant was properly identified, grounds 2 and 3 of the appeal fail.

On ground 4 of the appeal, the learned trial Judge is faulted for relying on the prosecution evidence in isolation of the defence case. We note that this ground 20 of appeal was never argued by counsel for the appellant but for completeness, we shall proceed to resolve it.

When evaluating the evidence, the learned trial Judge stated thus;

"I accepted the prosecution evidence that the accused was found with recently stolen property. PW4 told Court that upon arresting the accused,

exhibits were recovered from him at the Police Station. These are listed in EXB P2 and include; a bank savings book of Pride Micro Finance belonging to a one Nambatya Judith, three mobile phones (two of Techno and one of Nokia type), 11 sim cards of different lines belonging to different people, a military T-shirt, a pair of shorts similar to army uniform and a pair of military shoes.

Among the many sim cards and phones, PW1 identified a black phone with a broken screen that belonged to her sister Katono Rose. PW5, Katono Rose also described her phone that was stolen, as a maroon colored Techno phone with a broken screen. She was shown a phone in Court, which was among the items listed in the slip (EXB P2), which she identified as her own phone.

This evidence was corroborated by the accused's own admission that at the time of his arrest, he was wearing a UPDF army green T-shirt inside a track suit and army shoes. This army uniform he wore matched the description of what the robbers wore as stated by the prosecution witness."

While handling the defence evidence, she stated;

"I rejected the accused's evidence that he was on sick leave, is still a serving Army Officer. He claimed that he received treatment from the general military hospital, Bombo from 18th March, 2013 to 12th July, 2013 and was admitted. I found the treatment exercise book (EXB D1) that he produced in Court of no evidential value. The accused's explanation in an attempt to

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account for his possession of so many sim cards and other people's phones and Bank ATM Cards simply did not make any logical sense."

It is clear that the trial Judge evaluated both the prosecution and defence evidence in reaching the decision she did.

PW1, Kangawo Alice testified that upon searching them, the robbers took a phone belonging to Katono Ronah, money, laptop bag for Katushabe Rehema and 10 some shoes for Katushabe Remmy. PW2, Nakato Irene stated that the robbers told them to put their bags and phones down and they started searching their bags and breasts. One of the 4 men was asking the driver for money and although they did not have money, their attackers collected whatever was in their bags and they took them, the phones and everything they had left in the vehicle. 15 PW5, Katono Rhoda stated that the appellant searched them and took their property.

On the issue of recent possession, PW4, SP Samuel Madira, District Police Commander, Buikwe District testified that upon the arrest of the appellant, he was searched and found with a bank Savings Card of Pride Micro Finance belonging to Nambatya Judith, three mobile phones, two of Techno and one of Nokia type, 11 sim cards of different lines belonging to different persons.

The learned trial Judge stated that PW1 identified a black phone with a broken screen that belonged to her sister Katono Rose. PW5, Katono Rose also described her phone that was stolen, as a maroon colored Techno phone with a broken

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screen. She was shown a phone in Court, which was among the items listed in \$5\$ the slip (EXB P2), which she identified as her own phone.

When asked how many phones had been taken from the him, DW1, the appellant, stated that three phones had been taken from him; the first techno T501 which belonged to him, the second Tecno which belonged to his wife and the third Nokia which belonged to his friend Madam Gift.

DW2, Namuganza Joweli, the appellant's sister testified that all the three phones belonged to the appellant. She went to the appellant's home after 3 days of his arrest and brought the receipts showing ownership of the said phones. She added that the said receipts were handed over to Madira Samuel of Buwenge Police who never returned them.

We find that no evidence was brought to ascertain that the said phones belonged to the appellant. DW2, Namuganza Joweli intended to mislead Court because the appellant stated that one of phones belonged to his friend Madam Gift and the reason he had it was because they were moving together with gift therefore it is our considered view that the appellant could not have had the receipt of 20 Nokia phone belonging to Madam Gift at his home as DW2, Namuganza Joweli wanted Court to believe. Further, DW2, Namuganza Joweli stated that she handed over the said receipts to Madira Samuel of Buwenge Police who never returned them. However, in his evidence, PW4, SP Samuel Madira, District Police Commander, Buikwe District made no mention of such receipts. 25

- The law relating to the doctrine of recent possession states that a Court may 5 presume that a man in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession. See R V Jassani S/o Mohammed (1948) 15 EACA 121 and Kantilal Jivraj & Another V R (1961) E. A 6.
- Further, in R V Abramovitch (1914-15) All ER 2004, court stated that when a 10 person charged with handling stolen goods is found in possession of or dealing with goods that have been stolen, a jury may infer that he is guilty if he offers no explanation of his possession or they do not believe the given explanation.

We therefore find that the appellant failed give a satisfactory explanation on how

- he came to be in possession a bank savings book of Pride Micro Finance 15 belonging to a one Nambatya Judith, three mobile phones (two of techno and one of Nokia type), 11 sim cards of different lines belonging to different people and more so a Techno phone with a broken screen belonging to PW5, Katono Rose.
- Ground 4 of the appeal fails. 20

On ground 5 of the appeal, the learned trial Judge is faulted for ignoring the appellant's alibi. According to counsel for the appellant, the appellant raised an alibi that he was in Namavundu village, Gayaza in Wakiso district on that fateful day as he had been granted sick leave. She added that the appellant's alibi remained intact and plausible as prosecution failed to place him at the scene of crime.

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- The learned trial Judge gave reasons for rejecting the appellant's alibi and other \$5\$ evidence (DW1 & DW2). She stated that the appellant's testimony in Court was full of contradictions and falsehoods, secondly PW7 showed that the appellant was a deserter from the UPDF army and was declared on the army computer system as AWOL (Absent Without Official Leave) and was struck off the payroll in 2011, thirdly, the conduct of the appellant on 19th July, 2013 at Butagaya in 10
- Lubanyi Secondary School of taking cover from the arresting officer (PW4) and his team when he hid among the students and lastly, the appellant's explanation in an attempt to account for his possession of so many sim cards and other people's phones and bank ATM Cards, simply did not make any logical sense.
- It is trite that when an accused person raises a defence of alibi, it is not his duty 15 to prove it. It is up to the prosecution to destroy it by putting the accused person at the scene of crime and thereby proving that he is the one who committed the crime. See *Sekitoleko V Uganda*, (1968) EA 531.

In his testimony, DW1, the appellant testified that he was arrested on 19th July, 2013, at Lubanyi near the secondary school on the way to Kamuli for burial of 20 his maternal grandmother. And in his Charge and Caution Statement he stated that he had gone to Lubanyi secondary school to watch a football match.

The appellant further testified that he belonged to 59th Batallion under Kyangwali and had been granted sick leave as he had a mental problem but later testified that he was not sick but his sick leave was still running. The appellant also testified that he was processing his study leave at the Chief of Staff General

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Headquarters Bombo to study from Kampala University. These contradictions \$5\$ and inconstancies went to the root of the case.

The above evidence was discredited by PW7, Corporal Ongua Lameck, a Corporal in the UPDF Army who testified that he knew the appellant by his army No. Ra 212885 and was deployed under 59 Battalion by then. He added that the appellant was declared AWOL around May 2010 and in 2011, he was arrested by RRU (Rapid Response Unit) Operatives Special Investigations branch, handed over to the army and detained at Gadafi Barracks Jinja where he escaped from the quarter guard cells in 2011.

The appellant relied on Exh. D1, a book showing that he was on sick leave and had been receiving treatment from General Military Hospital from 18th March, 15 2013 to 12th July, 2013. However, the learned trial Judge rejected the evidence on grounds that the book neither showed that the appellant was officially on sick leave as he alleged nor was there anything about it to satisfy Court that it authentically originated from the General Military Hospital at Bombo. The learned trial Judge added that the book would have been of some assistance to the appellant's case if the person who allegedly examined him and authored what appeared as clinical notes was called as a witness and this was not done. We cannot fault the learned trial Judge for her finding.

PW4, SP Samuel Madira, District Police Commander, Buikwe District testified that on 19th July, 2013, he got a call from Dison, the Chairman of boda bodas and his colleagues that the person they had been looking for was sited at the

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stage in Buwenge. They came to the boda boda stage to see who this person was $\$ \setminus \mathrm{mathsf{S}} \$$ and when the appellant saw PW4, he jumped on a boda boda and took off heading to Butagaya. Police followed him upto Butagaya in Lubanyi Secondary School where he was hiding among students who were having a football match on 19th July at 4pm. When the appellant saw the Police he tried running away and Police with the help of school children run after him until he was arrested. 10 This was not conduct of an innocent person. In *Rex V Tubere S/o Ochan* (1945) 12 EACA 63 cited with approval in *Ngobya Aloysious V Uganda*, Court of Appeal Criminal Appeal No.265 of 2011, Court held that the conduct of an accused person before or after the offence in question might sometimes give an insight into whether he participated in the crime. 15

Having re-evaluated the evidence above, we have no reason to fault the trial Judge for her finding. The appellant was placed at the scene of the crime and we agree with the learned trial Judge's findings that the appellant participated in the committing of the offence.

Ground 5 of the appeal fails. 20

In conclusion, we find no merit in the Appeal and dismiss it. We uphold the conviction and sentence of the lower Court.

We so order

day of September 2020 Dated at Mbale this..... $\$ 15 \setminus \mathrm{cancel}{5} \$$

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HON. MR. JUSTICE F. M. S EGONDA-NTENDE JUSTICE OF APPEAL

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HON. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

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HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF APPEAL

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