

UGANDA / JUDGMENT

Henry Kayondo v Uganda (Criminal Appeal No. 35/92) [1993] UGSC 53 (27 May 1993) [1993] UGSC 53

COURT

Supreme Court of Uganda

BEFORE

Wambuzi, CJ, Odoki, JSC, Platt, JSC

CASE / FILE NUMBER

Criminal Appeal No. 35/92

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THE REPUBLIC OF UGANDA**IN THE SUPREME COURT OF UGANDA****AT MENDO****(COR. M: WAMBUZI, C. J., ODOKI, J. S. C., PLATE, J. S. C.)****CRIMINAL APPEAL NO. 35/92****BETWEEN****HENRY KAYONDO ::::::::::::::: \$AND\$****UGANDA :::::::::::::::**

> (Appeal from the decision of the
High Court at Kampala (Hon.
Rajanatha Rajasingham) given at
Kampala on the 23rd day of
November, 1992 where petition for
Revision was dismissed in Criminal
Case No. 464/92 and Criminal
Revi Revision No. \$57/92\$)

JUDGMENT OF THE COURT

The Appellant was charged before a Magistrate's court in two counts with unlawfully and prejudicially retaining an official document contrary to Section 3 (4) (a) of the Official Secrets Act. The subject matter of the charges were in count one, a letter written to the Administrative Secretary, National Resistance Movement Secretariat and in count two, a letter to the Director of Research and Political Affairs, Office of the President,

The Appellant was charged in the alternative count with retaining stolen property (the two documents in counts one and two) contrary to Section 298 (1) of the Penal Code.

At the hearing of the charges the defence raised three preliminary objections. Firstly, that the particulars of the offence did not disclose an offence in counts one and two as

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set, out under Section ³ (4) (a) Official Secrets Act* was argued that the two letters were not official documents defined in Section 15 (1) of the Official Secrets Act.

document. Secondly, it was argued that the National Resistance Movement Secretariat is not a Government department and therefore any document to or from the Secretariat is not a government

Thirdly, it was argued that the alternative charge of retaining, stolen property was wrongly added as it would embarrass the accused in his defence.

9 the three preliminary letters are official The trial Chief Magistrate overruled objections holding that whether or not the documents is a triable issue which must be proved by the prosecution The learned trial Chief Magistrate also held that the Secretariat is an office of Government and lastly that there was no embarrassment to the accused in the alternative count.

The Appellant petitioned the High Court to revise the ruling of the trial Chief Magistrate and uphold the objections. The High Court in effect upheld the decision of the Chief Magistrate and ruled that all three counts in the charge sheet were not bad in law*

The Appellant has now appealed to this Court on three, grounds ^y namely,

1. that the learned Judge erred in law and in fact in his interpretation of what an "official document" means in terms of the Official Secrets Act (Cap,311) Laws of Uganda*
- *a* o
- \$2.\$ that the learned Judge erred in law when he failed to consider the effect and import of Section 124 of the Evidence Act as far as these criminal proceedings against the Appellant are concerned.
- \$3.\$ that the learned Judge erred in law and in fact when he held that the alternative charge in the charge sheet was proper.

> "The definition of official document should be understood to mean that all documents which fall within the ordinary meaning of the term are official documents as well as documents such as passports, passes, certificates and licences and documents of a similar character which may or may not otherwise be regarded as official documents".

In so far as is relevant, Section 15 of the Official Secrets Act provides as follows,

\$15\$ (1) In this .ct, unless the co otherwise requires \$\cdots \cdots\$ "official document" includes a pissport, any naval, army, air force, police or official pass,
permit certificate, licence or other document of \$\hat{d}\$ similar character":

Here below are some extracts on interpretation from Craies on Statute Law, 7th Edition from page 212 onwards,

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sometimes the definition contains the words "mean and Include" which innvitably raises adoubt as to. interpretation..... An interpretation clause which extends the meaning of a word does not take away its ordinary meaning. In discussing the meaning of the term "street" as used in section 157 of
the Public Ma 3.1 age 1675 and interpreted in section 4, Lord Selborne said in <u>Robinson</u> v. <u>Barton Eccles</u>
Local <u>Board</u>: "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary,
popular, and natural sense whenever that
would be properly applicable, but to enable the word as used in the act, when there is nothing in the context or the subject - matter to the contrary, to be applied to some things to which

it would not ordinarily be applicable. I look upon this portion of the interpretation clause as meaning neither more or less than this, that the provis-
ions contained in the act as to streets, whether new streets or old streets shall, unless there be somthing in the subjectmatter or the context to the contrary, be read as applicable to these different things. It is perfectly consistent with that, that they should be read as applicable, and should be applied, to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in¹¹.....

In Ex.p. Ferguson a question arose as to
the meaning of the enactment in section 2 of the Merchant Shipping met 1854 that
the word "ship" shall include every description of vessel used in navigation not propelled by cars. It was consequently contended that a fishing - boat 24 feet long, partially decked over and fitted with two masts and a rudder but also with four cars, was not a ship within the
meaning of the Act, because it was propelled
by cars. In deciding against this argument, Blackburn J. said:

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"The argument against the proposition that this is a ship is one which I have heard very frequently, viz that,
when an act says that certain words shall include certain things, the words must apply exclusively to that
which they are to include. That is which they are to include. not so; the definition given of a ship
is in order that the word 'ship' may have a more extensive meaning, and the
words 'not propelled by cars' are not
intended to exclude all vessels that are ever propelled by oars".

In the Kenya case of <u>Samuels versus Republic 1968</u> E. A. 1 the Appellant was convicted of uttering a false official document. On appeal, the predecessor to this Court had this to say at page 4.

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"It is first said that even if this document was a false document it was not an official document. The argument here was based upon the assertion that though a passport is an official document so long as it is valid as a passport it ceases to be an official document when it ceases to be an effective passport. The learned magistrate met this argument head-on by saying;

"The argument that a passport once cancelled ceases to be an official document is not one to which I can subscribe. It may no longer be
current but I cannot see that it ceases to be an official document"

We think that the learned magistrate was right there, but in truth neither the
argument nor counter argument were very relevant. The appellant was not charged with uttering a forged passport. He was charged, in effect, with uttering P.30 of this expired passport. Page 30 when Mr. Singh had finished with it was a record by an official for officials.
The validity of that entry never expired.
and never could expire. It purported to
be the record of a fact and it was an
official record of a fact. We make no doubt whatever that when Mr. Singh had finished with it, it was an official document, and when the appellant had

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caused the false entries to be made it was a false official document".

example of looking at the ' expression licences etc. Such may be the ordinary meaning of the expression which is extended in that Act to include certificates. in its ordinary and natural meaning which may be relevant in interpreting the expression "official document" in the Official Secrets Act. "official document" passports, passes, permits, In our view this is one

On their face the letters in counts one and two are records made by officials for other officials and whether or not the letters are official documents within the meaning of the Official Secrets Act and whether or not their retention was for a purpose must surely be questions of evidence. 1970 merely requires that the charge should contain "such particulars as may be necessary for giving reasonable information as to the nature of the charge". We accordingly agree with the learned Judge of the court below that, the charges in counts one and two give reasonable therefore, not bad in law. Magistrates' Courts act, prejudicial to the safety or interests of Uganda etc. within the provisions of Section ³ (4) (a) of the Official Secrets Act, Section 83 of the information as to their nature and disclose offences and are,

Similarly, we hold that whether or not the National Resistance Movement Secretariat is a department of Government is also a question of evidence which can be determined only if the relevant evidence has been led.

We find no merit in the last ground of appeal. - With the substantive charge as submitted before us. respect to learned Counsel for the appellant we do not find that the alternative charge must be a minor and cognate offence to

We do not think the provisions of Section 143 of the Magistrate Courts Act are relevant to this case. On the other hand the charge are in conformity with the provisions of Section 84 of Magistrates. Courts Act since they are founded on the same facts, the two letters.

Learned Counsel for the appellant prayed in aid the provisions of section 124 of the Evidence Act which gives absolute privilege to professional communications. But the proviso to the section is to the effect that nothing in the section shall protect from disclosure any such communication made in furtherance of an illegal purpose. Since the alternative charge is retention of stolen property, prima facie an illegal purpose is implied. In any case the fact that the accused has a lawful defence, does not render the charge bad in law.

In our view the objections to the charges in this case were premature and therefore unsustainable. Indeed, we wonder under what authority the preliminary objections in this case were taken.

The Magistrates' Court Act, 1970, deals with a charge laid before a court by a police officer or public prosecutor in Section 41 (1) (a) & (b) of that Act. Section 41 (2) declares that the validity of such proceedings shall not be affected by any defect in the charge or complaint inter alia. Then in Section 41 (3) the case of a private prosecutor is dealt with and in accordance with subsection \$(1_k)\$ the Magistrate may in that instance be required to consider whether a prima facie commission of an offence has been disclosed which is not frivolous or vexatious. The Magistrate, if satisfied, shall draw up a charge. But he has no such discretion if the charge is laid by a prosecutor or police officer.

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It deals with the joinder We pass on then to Part XIII hearing and determination of criminal cases. of the parties; the withdrawal from prosecution in trials before Magistrates Courts; and adjournments; the stage is reached where the accused is called upon to plead. In Section 130 provision is made for the amendment of charges and deals with the case where the charge is defective in a material particular. At any the court may make such order for the alteration of the charge by way of its amendment or by the or addition of a new charge, as it thinks necessary, to meet the circumstances of the case, and on terms whereby the court may be satisfied that there would be no injustice to the accused. There is no provision for dealing with the case where the charge is so defective that the Magistrate may strike it out. of the Act, which deals with the provision relating to the After the appearance The *£1 provides in Part IX, the contents of in relation to charges, what such charges shall be. of counts in Section 34 (where be tried substitution, stage of the trial, charge shall not be open to objection in respect of its form or content. the court may order that a person separately for any one or more offences charged). Section 35 deals with joinder of persons and Section 36 provides for the rules for framing charges. If the rules, are followed, Section 36 provides that a

Presumably the prosecutor must be called upon to substantiate the charge, and if he cannot do so the accused must be acquitted.

Part III, We may compare the provisions in the Magistrates*Courts Act tv the pr.jvieliunsThe . Trial On Indictments Decree 1971 relating to trials before the High Court. There are, once again, in

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provisions with regard to the form of indictments, the joinder of counts, and of persons, and then in Part VII, Sections 48-56 deal with the preliminary decisions to be taken before a trial commences. Objections to an indictment for any formal defect on the face of it, shall be taken immediately after the indictment has been read over to the accused person and not later. But, if at any stage of the trial upon indictment, an indictment is defective or requires amendment, or substitution, or an additional count, the court may make such amendments as provided by Section 48. There is then provision in Section 50 for separate trials and in Section 51 the power to postpone proceedings. Section 56 then provides,

> "56 (1) If any indictment does not state, and cannot by any alteration authorised by Section 48 of this Decree be made to state any offence of which the accused had had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

> > (2) A written statement of every such motion shall be delivered to the Chief Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record'.

It is clear that the power to quash an indictment in the High Court is not provided in the Magistrates' Court. It would seem therefore that the preliminary objections taken in this case were not authorised by the Magistrates' Courts Act. But as the not. matter has/been argued fully before us, we leave the final decision upon the matter to a later date, when all the provisions can be considered by Counsel.

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The appeal is accordingly dismissed.

Dated at Mengo this 27th day of May, 1993.

S. W. W. WAMBUZI CHIEF JUSTICE

J. B. ODOKI JUSTICE OF THE SUPREME COURT

$\text{H}_{\bullet}\text{G}_{\bullet}$ PLATT JUSTICE OF THE SUPREME COURT

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B. F. B. BABIGUMIRA

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