

UGANDA / JUDGMENT

Mahoro & Ors v Uganda

(HCT-05-CR-CN-0013-2004) [2004]

UGHCCRD 11 (14 September 2004)

[2004] UGHCCRD 11

COURT

HC: Criminal Division (Uganda)

BEFORE

Mugamba, J

CASE / FILE NUMBER

HCT-05-CR-CN-0013-2004

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-CN-0013-2004

(Arising From Cr. Case No. 131-2004 CRB 346-2004 of Kisoro)

1. MAHORO PASCAZIA
2. ACILLO CHRISTINE
3. DUDU AFISA
4. NAMUGERWA ROSE..... APPELLANTS

VS

UGANDA..... PROSECUTOR

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This is an appeal against convict and the subsequent sentences by the Grade 1 Magistrate Kisoro on 29th June 2004. All the four appellants had pleaded guilty to a charge of being in possession of immature fish, contrary to sections 29 (b) and 33 (1) of the Fish Act. After their plea to the facts were read to them which they proceeded to admit before they were each sentenced to 8 months' imprisonment.

In so far as is relevant the charge read:

‘STATEMENT OF OFFENCE

POSSESSION OF IMMATURE FISH C/SS 27(b) and 33 (1) OF FISH ACT, CAP 197.

PARTICULARS OF OFFENCE

MAHORO PASKASIA, ACIRO CHRISTINE, DUDDU AFISA AND NAMUGERWA ROSE ON THE 23RD JUNE 2004 AT KISORO DISTRICT WERE FOUND IN POSSESSION OF IMMATURE FISH.’

Section 7 of the Fish Act states that ‘immature’ in relation to a species of fish means that it is of a length than such as many from time to time be notified by the Chief Fisheries Officer by statutory instrument, either generally or in respect of any specified area.

It does not appear from the charge what species of fish the appellants were found in possession of. In the statement of facts the fish was said to be tilapia. Under the Act not only the species of fish must be stated but also the specifications of what comprises immature fish in the species. In that case, to my mind, there is need to show what the length of the species found in possession of the accused was before an offence can properly be said to have been committed. In the instant case this was awfully missing. In a case where an accused was charged with being in possession of articles used in witchcraft this court held that the articles used should have been set out and that the omission to do so left the charge vague. See *Uganda vs Fenekasi Oyuko*, Criminal Revision No. 407 of 1972 reported in [1973] 1 ULR 35. Article 28 (3) (b) of the Constitution itself provides that every person who is charged with a criminal offence shall be informed immediately, in a language that the person understands of the nature of the offence. Clause (12) of the Article provides that except unless the offence is defined. Respectfully I do not find that in the instant case the offence was well defined before the accused persons were made to plead to it preparatory to their conviction and sentence.

This appeal succeeds.

In the result I quash the convictions of the appellants set aside the sentences.

14th September 2004

Appellants in court

Mr. Magoba for appellants

Ms. Ampeirwe court clerk/interpreter

Court:

Judgment read in open court.

P. K. Mugamba

Judge

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