

UGANDA / JUDGMENT

Oder v Uganda and Another
(CRIMINAL APPEAL No. 022/2024)
[2025] UGHC 144 (20 March 2025)
[2025] UGHC 144

COURT
High Court of Uganda

BEFORE
Mwaka, J

CASE / FILE NUMBER
CRIMINAL APPEAL No. 022/2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

CRIMINAL APPEAL No. 022/2024

(Formerly HIGH COURT GULU - CRIMINAL APPEAL No. 016/2023)

(ARISING FROM CRIMINAL CASE No. 1215/2021: THE CHIEF MAGISTRATE'S COURT
OF PADER HOLDEN AT PADER).

- 1. ODERA GILBERT
- 2. ACEN CATHERINE
- 3. OKELLO THOMAS
- 4. ONEK JOSEPH
- 5. OTIM ANDREW
- 6. ADIA ROBSON
- 7. OLISEH SUNDAY
- 8. KINYERA RASHID
- 9. ORYEM KIJUMI

- 10. OMONY MOSES
- 11. OTIM RICHARD
- 12. OMONY BOSCO
- 13. LAKER IRENE
- 14. ATIMANGO MONICA
- 15. ABALO SHARA
- 16. ANYWAR RICHARD
- 17. KWOYELO EMMANUEL
- 18. OCAN BEN
- 19. OKELLO RONALD
- 20. No. 1999 PTE KOMAKECH BENSON 21. OPENY MICHAEL 22. OKIDI DENISH 23. ONEKA BRIAN 24. AYAA SHAMIM 25. ACEN IRENE 26. RUBANGAKENE JAMES 27. OPENYTOO DENISH 28. OTTO CHRISTOPHER 29. ABONYO BETTY 30. KOMAKECH GEOFFERY 31. OKELLO JUSTINE LATINGTONG 32. OJARA FRANCIS
- 33. KILAMA FEARLESS WOD ACHOLI

APPELLANTS

Versus

UGANDA RESPONDENT

BEFORE: HON. MR. JUSTICE PHILIP W. MWAKA.

JUDGEMENT.

Introduction and Background.

[1]. This Appeal was instituted *vide* Notice of Appeal filed in this Court on the 12th April, 2023. The Notice of Appeal, in addition to giving notice of the Appellants' intent to Appeal, indicates that the Appellants require the Trial Court's Record in order to formulate their grounds of Appeal. Also on the Record of the Court is a Memorandum of Appeal filed on the 24th July, 2023. The Appeal is in respect of the Judgement of His Worship Ongwee Stanislaus Okello, Magistrate Grade One, Pader, the Chief Magistrate's Court of Pader holden at Pader dated 2nd March, 2023 and delivered on the 9th day of March, 2023 while the sentencing was on the 31st March, 2023. The Appellants had been variously charged, tried, convicted and sentenced by the Lower (Trial) Court for offences including – incitement to violence, unlawful assembly and malicious damage to property contrary to **Sections 83, 65 and 66 and 335 of the Penal Code Act, Cap. 120** respectively –

now cited as **Sections 79, 61 and 62 and 312 of the Penal Code Act, Cap. 128** respectively. This shall be elaborated on further in the considerations and determination of this Appeal. The convicts Appealed their convictions and sentences given by the Lower (Trial) Court in its Judgement and raised three (3) grounds of Appeal. The Appellants seek orders that the Appeal is allowed, the convictions quashed and sentences set aside and for their release. [2]. In as far as a background to the Trial, a review of the Charge Sheet as Amended and of the particulars contained therein indicates that the charges against the respective Appellants arose from incidents alleged to have occurred at Pader Town Council in Pader District on the 7th day of December, 2021 which was apparently during the era of the COVID 19 global pandemic.

- [3]. In his Judgment dated the 2nd March, 2023 delivered on the 9th March, 2023 and at the sentencing on the 20th March, 2023 and 31st March, 2023; On the first count of incitement to violence contrary to **Section 83 of the Penal Code Act (now S. 79 of Cap. 128)** the Learned Trial Magistrate found A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A19, A20, A21, A22, A23, A24, A25, A26, A27, A28, A29, A30, A31, A32 and A33 guilty and convicted and sentenced them to twelve (12) months imprisonment; On the second count of taking part in an unlawful assembly contrary to **Section 65 and 66 of the Penal Code Act (now Ss. 61 and 62 of Cap. 128)** the Learned Trial Magistrate found A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A19, A20, A21, A22, A23, A24, A25, A26, A27, A28, A29, A30, A31, A32 and A33 guilty and convicted and sentenced them to six (6) months imprisonment; and, On the third count of causing malicious damage to property contrary to **Section 335 of the Penal Code Act (now S. 312 of Cap. 128)** the Learned Trial Magistrate found A1, A2, A24, A25 and A32 guilty and convicted and sentenced them to three and a half (3 ½) months imprisonment.
- [4]. It is these convictions and sentences that were Appealed. The Appellants raised three (3) grounds of Appeal in their Memorandum of Appeal
 - i. The Learned Trial Magistrate erred in Law and in fact when he convicted the Appellants without following the proper procedure in plea-taking thereby leading to a miscarriage of Justice.
 - ii. The Learned Trial Magistrate erred in Law and in fact when he relied on weak, unsatisfactory and circumstantial evidence to convict A1, A10, A11, A12, A14, A16, A17, A18, A19, A20, A22, A23, A27 and A28 hence occasioning a miscarriage of Justice.
 - iii. The Learned Trial Magistrate erred in Law when he failed to evaluate and scrutinize the evidence on Record thereby coming to a wrong conclusion in convicting the Appellants.
- [5]. The certified Judgment and Proceedings of the Lower (Trial) Court were duly provided together with the original file and the entire Trial Record.

Points of Law and Preliminaries at the Commencement of the Appeal.

[6]. Firstly, at the various proceedings before this Court which were on the 13th March, 2024, 5th June, 2024, 14th November, 2024, 29th November, 2024, 11th December, 2024, 16th January, 2025, 30th January, 2025 and the 19th February, 2025 the Court observed that initially, besides the 1st and 2nd Appellants appearing before the Court once on the 29th November, 2024, none of the other Appellants were in attendance. This was also highlighted by Counsel for the Respondent. Later, only the 33rd Appellant was produced before the Court by the Prisons Officials. It transpired that nineteen (19) of the thirty-three (33) Appellants whom had been convicted and sentenced by the Trial Court for the various offences cited had absconded and had in so doing jumped bail on or before the date of the Judgment by failing to make an appearance on the 9th March, 2023 and upon learning of their conviction and sentence were apparently in hiding from the Authorities who were seeking them out to serve their sentences as given by the Trial Court. Curiously, they appeared to pursue this Appeal whilst in hiding from the Authorities. Counsel for the Appellants was at a loss to explain the whereabouts of his clients. Consequently, it was also not clear how Counsel for the Appellants had obtained his instructions to institute and prosecute the Appeal. The Court found this state of affairs untenable and not consistent with observation of the Rule of Law and thus required Counsel for the Appellants to address the Court on the propriety of the proceedings.

[7]. At the proceedings of the 11th December, 2024, Counsel for the Appellants informed the Court that the 5th Appellant – Otim Andrew was deceased in respect of which his Appeal abated under **Section 43 of the Criminal Procedure Code Act, Cap. 122** which the Court duly recorded. He also informed the Court that thirteen (13) Appellants who had finished serving their sentences intended to withdraw from being parties to the Appeal - in effect abandoning the Appeal. These included the 1st Appellant - Odera Gilbert, the 2nd Appellant - Acen Catherine, the 3rd Appellant - Okello Thomas, the 8th Appellant - Kinyera Rashid, the 10th Appellant - Omony Moses, the 15th Appellant - Abalo Shara, the 19th Appellant - Okello Ronald, the 23rd Appellant - Oneka Brian, the 24th Appellant - Ayaa Shamin, the 25th Appellant - Acen Irene, the 26th Appellant - Rubangakene James, the 29th Appellant - Abonyo Betty and the 31st Appellant - Okello Justine Latingtong. The Court accordingly recorded their withdrawal from the Appeal which therefore is effectively abandoned and thereby stands dismissed.

See: Section 31(3) of the Criminal Procedure Code Act, Cap. 122.

[8]. The remaining nineteen (19) Appellants still party to the Appeal were: the 4th Appellant - Onek Joseph, the 6th Appellant - Adia Robson, the 7th Appellant - Oliseh Sunday, the 9th Appellant - Oryem Kijumi, the 11th Appellant - Otim Richard, the 12th Appellant - Omony Bosco, the 13th Appellant - Laker Irene, the 14th Appellant - Atimango Monica, the 16th Appellant - Anywar Richard, the 17th Appellant - Kwoyelo Emmanuel, the 18th Appellant - Ocan Ben, the 20th Appellant - No. 1999 Pte Komakech Benson, the 21st Appellant - Openy Michael, the 22nd Appellant - Okidi Denish, the 27th Appellant - Openytoo Denish, the 28th Appellant - Otto Christopher, the 30th Appellant - Komakech Geoffrey, the 32nd Appellant - Ojara Francis and the

33rd Appellant - Kilama Fearless Wod Acholi.

- [9]. Upon establishing the remaining nineteen (19) Appellants, the Court observed that it would be most unprofessional for Counsel to front for persons evading the Authorities which called in question his instructions and therefore in order to avert an abuse of Court process directed that the Appellants attend the Court in person and the Appeal would only proceed with the Appellants in attendance.
- [10]. The Appellants were allowed time to present themselves before the Court on the 16th January, 2025 where none of the remaining nineteen (19) Appellants appeared before the Court and at the fixture on the 30th January, 2025 which was also set to enable the remaining nineteen (19) Appellants appear before the Court none of the Appellants appeared, save for the 33rd Appellant - Kilama Fearless Wod Acholi who was produced before the Court by Prisons Authorities. The Court stood over the matter to enable Counsel confirm whom amongst his other clients was in the Court premises. Upon the Court resuming, Counsel for the Appellants informed the Court that none of the other eighteen (18) Appellants had appeared and he did not know their whereabouts. In the circumstances, the other remaining eighteen (18) Appellants - including the 4th, 6th, 7th, 9th, 11th, 12th, 13th, 14th, 16th, 17th, 18th, 20th, 21st, 22nd, 27th, 28th, 30th and 32nd Appellants were struck out from the Appeal as parties for their failure to comply with the orders of the Court to appear in Court in person. The Appeal, therefore, proceeded with only the 33rd Appellant - Kilama Fearless Wod Acholi as the sole Appellant. **See: Section 44(1)(a) of the Criminal Procedure Code Act, Cap. 122 and Section 14 of the Judicature Act, Cap. 16.**
- [11]. Secondly, the Respondent raised a preliminary objection on a point of Law to the effect that the Appeal was filed out of the prescribed time for filing such an Appeal. It was their observation that the Judgement was delivered on the 9th March, 2023 and the Memorandum of Appeal was filed on 24th July, 2023 with the Notice of Appeal having been filed on 12th April, 2023.
- [12]. The Respondent's Counsel submitted that the Notice of Appeal and the Memorandum of Appeal indicated different dates as being the date of the Judgement including the 31st March, 2023 and the 2nd March, 2023 respectively and in any case the Appellant had not sought leave of the Court to file the Appeal out of time rendering the Appeal incompetent and prayed that it is struck out.
- [13]. The Appellant in response contended that the Judgement was signed on the 2nd March, 2023 and after some adjournments in the course of the proceedings the sentencing was completed on the 31st March, 2023 - which is the date from which time ought to be computed. It is his case that in compliance with **Section 28 of the Criminal Procedure Code Act, Cap. 122** the Appeal was filed within fourteen (14) days on the 12th April, 2023 - instituted by way of the Notice of Appeal filed on the Record of the Court.

- [14]. In resolution of the preliminary objection on the point of Law in respect of the timeliness of filing the Appeal, this Court has duly considered the submissions of both Counsel on the timeliness of the Appeal and the Law Applicable. In so doing, this Court has observed from the official Record of Proceedings of the Lower (Trial) Court that the Judgement while dated 2nd March, 2023 was delivered on the 9th March, 2023 and the sentencing while scheduled for the 20th March, 2023 was in fact concluded on the 31st March, 2023. Accordingly, this Court finds that the Notice of Appeal instituting the Appeal filed on the 12th April, 2023 was filed within the fourteen (14) days stipulated by **Section 28 of the Criminal Procedure Code Act, Cap. 122**. The Court accepts that the time between the filing of the Notice of Appeal on the 12th April, 2023 and the filing of the Memorandum of Appeal on the 24th July, 2023 was taken by the preparation of and in obtaining the Record of Appeal from the Lower (Trial) Court. The preliminary point of objection is therefore overruled and the Court shall proceed to consider the respective Submissions and merits of the Appeal.

The Appellant's Case and Submissions.

[15]. The Appellant filed Written Submissions on the 18th April, 2024. This Court will consider the entirety of the Submissions bearing in mind and with particular focus as far as it relates to the 33rd Appellant - as the sole remaining Appellant.

Ground 1 - The Learned Trial Magistrate erred in Law and in fact when he convicted the Appellant without following the proper procedure in plea-taking thereby leading to a miscarriage of Justice.

[16]. In respect of the first ground of Appeal, regarding the manner in which the Court conducted the plea-taking, the Appellant submits that **Article 28(3) of the Constitution** requires that a person charged with a criminal offence should be informed of the charge in a language the person understands. The Appellant also made reference to **Section 124 of the Magistrates Court's Act, Cap. 19** and **Adan Vs. Republic [1973] EA 445** in respect of the procedures for plea-taking. It is his averment that on the 9th December, 2021 at page 99 and 100 of the Record of Appeal the Prosecution was allowed to amend the charge sheet to join other Accused persons - including A33. The Appellant cites **Section 132 of the Magistrates Court's Act** and submits that on the 22nd December, 2021 all the Accused attempted to take plea on the amended charge sheet - and specifically on Count 1 in regards to incitement of violence contrary to **Section 79 of the Penal Code Act A33** took plea stating that - "It is not true" whereupon a plea of "Not guilty" was recorded. The Appellant contends that the Learned Trial Magistrate did not indicate anywhere on the Record of Proceedings of the Trial Court that the ingredients of the offences were explained to the Accused (A33) in either English or his Local language before taking plea and moreso considering that a number of the Accused were illiterate. This he further contends contravened the provisions of the Constitution and Laws cited above and on which basis alone he prays that the Appeal is allowed.

[17]. As a matter of diligence, this Court scrutinized the Trial Court's original Record in long hand and shall in its consideration and determination of the ground conclusively resolve the issue raised in regard to the plea taking.

Ground 2 - The Learned Trial Magistrate erred in Law and in fact when he relied on weak, unsatisfactory and circumstantial evidence to convict A1, A10, A11, A12, A14, A16, A17, A18, A19, A20, A22, A23, A27 and A28 hence occasioning a miscarriage of Justice.

[18]. This ground of the Appeal was not raised in respect of the 33rd Appellant and therefore will not be considered. Nonetheless, it is substantially similar to and could have been subsumed under the third ground of the Appeal.

Ground 3 - The Learned Trial Magistrate erred in Law and in fact when he failed to evaluate and scrutinize the evidence on Record and thereby came to a wrong conclusion in convicting the Appellants.

- [19]. The Court observes that this ground is framed widely and encompasses the 33rd Appellant. The Court shall therefore consider the evidence in its totality.
- [20]. The incidents subject of the charges allegedly occurred on the 7th December, 2021 at Pader Town Council. The testimony and evidence of both Prosecution and Defence Witnesses before the Trial Court indicates that the effects of restrictions, limitations and prohibitions imposed during the COVID 19 global pandemic "**lockdown**" especially on trade and the curfew are said to have caused frustrations amongst the business and general community in Pader Town Council leading them to demand an emergency meeting in so doing implemented what is described as a mobilization intended to discuss their hardships with Public Officials and Leaders of Pader District including the District Chairperson (LC5), the Resident District Commissioner (RDC), the District Police Commander (DPC) as well as *inter alia* District Councillors intended to be convened at the Pader Town Council Grounds being the Mayor's Gardens.
- [21]. In respect to the third ground of Appeal, the Appellant citing **Woolmington Vs. DPP [1935] AC 462** submitted that the burden of proof in criminal cases rests on the Prosecution to prove the offence alleged against a person Accused beyond reasonable doubt and citing **Miller Vs. Minister of Pensions [1947] 2 All ER 372** submitted that proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt and the standard is satisfied once all evidence suggesting the innocence of the Accused at its best becomes a mere fanciful possibility but not any probability that the Accused is innocent.
- [22]. Regarding the first offence, the Appellant submits that the ingredients of the offence of incitement to violence were not established against him, including - (1). There must be violence. (2). There must be intent to commit violence or words spoken. (3). There must be participation of the person Accused.

- [23]. Regarding the second offence, the Appellant submits that the ingredients of the offence of taking part in an unlawful assembly were not established against him, including - (1). There must be an assembly. (2). The assembly must be unlawful. (3). The Accused must have participated.
- [24]. The 33rd Appellant was not charged with causing malicious damage to property.
- [25]. Concerning the conditions for identification, citing **Criminal Appeal (CA) No. 09/1978: Abdallah Nabulere and 2 Others Vs. Uganda [1979] HCB 77** and **Criminal Appeal (CA) No. 128/2018: Agupiyo Simon and 4 Others Vs. Uganda**, the Appellant concedes that the time at which the offences were committed would have made it easy to identify the culprits within the standards and parameters of the cases cited. However, since the scuffles by account of the witnesses are alleged to have involved one hundred (100) to two hundred (200) people the Appellant questions how the six (6) witnesses who do not understand the Acholi dialect clearly heard any utterance made by the Appellant.
- [26]. It is the Appellant's case that firstly, PW1 a Police Officer attached to Pader Police Station heard utterances and shouts in Luo from people in a rowdy crowd heading to Pader District Headquarters but he did not know what they said and it is therefore not clear from him that there was incitement to violence and also doubts that he could have identified him from the crowd. Secondly, PW3 the LC5 District Chairperson Mr. Obwoya Fearless Oyat testified that the previous night he had tried to calm down a crowd and advised those who were burning tyres and were violent to disperse. He also advised those in a crowd who went to Pader District Headquarters and later returned to the Mayor's Gardens to disperse with no damage in Pader Town Council. Thirdly, PW5, Oyet Geoffrey testified that the people who attended the meeting were different from the people who caused the destruction. Fourthly, citing inconsistencies in the Prosecution witness testimony he prays that the Court disregards the testimony of PW5 as utter lies and find that PW5 failed to identify him. Fifthly, all the Prosecution witnesses PW1 - PW6 failed to properly identify him.
- [27]. Regarding Defence witnesses, the Appellant submits that their testimony was that they were at the Mayor's Gardens at the invitation of the LC5 Chairperson and the RDC Pader District and returned to their business places in the early afternoon after the meeting. It is his case that the meeting at the Mayor's Gardens was lawfully called by the LC5 Chairperson, the RDC and other local leaders who had announced a meeting with the business community with the venue being the Mayor's Gardens. The LC5 Chairperson was at the meeting but the RDC and DPC did not show up. At about 12 Noon the LC5 Chairperson informed the public that the RDC would not attend. The Appellant admits he attended the meeting as one of the Leaders. Later, soldiers carried out arrests.
- [28]. In conclusion, it is the Appellant's prayer that the Appeal is allowed and the convictions by the Lower (Trial) Court are overturned.

The Respondent's Case and Submissions.

- [29]. The Respondent filed its Submissions on Court Record on the 15th August, 2024.
- [30]. In respect of the first ground of Appeal, the Respondent submits that **Article 28(3) of the Constitution** cited by the Appellant is inapplicable and that **Section 124 of the Magistrate's Court's Act** read together with **Adan Vs. Republic [1973] EA 445** provides for the substance of charging and taking plea of a person Accused. It is their case that the Learned Trial Magistrate complied with the provisions and the substance of the Law and the charge was read out to the Accused in a language he speaks and understands. The Respondent highlights pages 100 –102 of the Record of Appeal and invites Court to take Judicial Notice that the Court Clerk and Interpreter on Record understands the English, Acholi and Langi languages and did the interpretation in the plea taking including in regard to the Amended Charge Sheet which the Court duly recorded as a plea of not guilty or "PNG" in respect of the Accused. Here, the Court observes to the contrary that **Article 28(3) of the Constitution** is in fact fundamentally important and highlights **Article 28(3)(b) of the Constitution** requiring that persons charged are informed of the offence in a language they understand.
- [31]. In respect of the third ground of Appeal, the Respondent highlights Prosecution testimony and evidence including - PW1, a Police Officer's that the Appellant (A33) who was a public figure led the group including other Accused from the Mayor's Gardens to Pader District Headquarters and back to the Town Grounds *via* the Police Station and the group embarked on a crime spree; PW3 the LC5 District Chairperson's that the Appellant as Chairperson Pader Urban Town Council, together with other Accused, declared that he did not want the RDC in Pader and he also left with other Accused for the District Headquarters. Further, PW3 denied inviting people to the Mayor's Gardens stating that he went there as a leader because there had been destruction of property the previous day.
- [32]. In addition, PW4, Police Officer D/C Okot Patrick's who understands the Luo language testified that the Appellant carried a megaphone denouncing the COVID 19 curfew Regulations and demanded that the RDC and DPC be transferred out of Pader as he stood in front of the Pader Police Station's gate with the crowd while some individuals were burning tyres and jerry cans at the Police Station gate and others throwing stones and hurling insults at the Police Officers. PW5, Oyet Geoffrey's who attended the meeting at the Mayor's Gardens that the Appellant followed other Accused to the District Headquarters to collect the RDC and DPC at which point the meeting became chaotic as the procession moved to the District Headquarters and some in the crowd carried pangas, sticks and stones. PW6, IP Kilama's who took photographs of the destruction in the aftermath of the events of the 7th December, 2021 which were tendered in evidence and exhibited including of PW2's restaurant's hut which was burnt down, food poured out and property in the restaurant destroyed.
- [33]. The Respondent submits that their evidence was direct and not circumstantial.

- [34]. In regard to identification, citing **Abdallah Bin Wendo & Anor Vs. R (1953) 20 EACA 166** on guidelines set out for identification they submit that - firstly, the witnesses had prior knowledge of the Appellant whom as the Mayor of Pader Urban Town Council was a public figure; secondly, the incident occurred in broad daylight; thirdly, the incident lasted over three (3) hours giving ample time to see and identify the Appellant; and, fourthly, the witnesses were proximate in distance to the Appellant.
- [35]. It is the Respondent's submission citing **Alfred Bumbo Vs. Uganda SCCA No. 28/1994** that once an Accused has been positively identified and placed at the scene of a crime during the commission of a crime then his claim that he was elsewhere fails.
- [36]. In regard to the Defence asserted by the Appellant and other Accused averring as to the lawfulness of the meeting, the Respondent contends that the Appellant and other Accused had the common purpose of demanding that COVID 19 curfew Regulations are scrapped by the RDC and DPC.
- [37]. The Respondent submits that the Learned Trial Magistrate properly and adequately evaluated all the evidence and ingredients of each of the respective offences and arrived at the correct conclusions in which he duly considered **inter alia** the burden and standard of proof under **Section 101 of the Evidence Act, Cap. 8, Miller Vs. Minister of Pensions [1947] 2 All E. R. 372** and **Woolmington Vs. DPP [1935] AC 462**.
- [38]. It is also the Respondent's case citing **SCCA No. 05/1990: James Sawoabiri and Another vs. Uganda** that the Accused failed to challenge the prosecution evidence and the failure to challenge evidence in chief on material or essential points in cross examination would lead to an inference that the evidence is accepted. Moreover, the Court took note of circumstantial evidence and also noted contradictions in testimony but found the Prosecution's testimony and evidence more reliable and consistent than that of the Defence. In sum, the Respondent prayed that this Court finds that the Appeal is without merit.

Rejoinder.

[39]. In rejoinder on the first ground, the Appellant largely reiterates his earlier Submissions in regard to plea taking insisting that the interpretation in the Acholi language was not done. Secondly, the Appellant refutes any suggestion that there was a supposed typing error in the Record in regard to the plea taking which supposedly could be cured by referencing the Trial Court's original Record in longhand from which the official Record was certified and contends that he did not properly take plea and thus the Appeal should be allowed.

- [40]. In rejoinder on the third ground of Appeal, the Appellant submits citing **Supreme Court Civil Appeal No. 1/1997: Moses Bogere & Another Vs. Uganda** on identification of an Accused that the Court should evaluate the evidence cautiously to eliminate the possibility of mistaken identity and must consider the evidence as a whole especially the factors favouring identification should be the consideration in assessing if the Appellant led other Accused to the District Headquarters and back to the Town Council *via* the Police Station.
- [41]. Specifically, on the charge of taking part in an unlawful assembly, the Appellant submits that the Chairperson of the business community together with himself as Mayor of Pader as well as the LC5 Chairperson Pader District used the megaphone to call for the public meeting and it was the Chairman of the business community and A30 who told the crowd to move from the grounds to the District Headquarters. It is his Submission that PW5 who attended the public meeting testified that it was successful because the business community presented their Petition which was received by the LC5 District Chairperson who then told the crowd to return to their homes - much as the RDC and DPC did not turn up for the meeting. It is therefore the Appellant's case that the meeting was lawfully called by the LC5 District Chairperson and the Chairperson of the business community with the final result being that the offence of taking part in an unlawful assembly is not established. In sum, the Appellant belabours that the meeting was lawfully called by the Chairperson LC5 who had even announced it over the radio. The Appellant reiterates his prayer that the Appeal succeeds.

Representation.

- [42]. Counsel, Mr. Anyuru Boris Geoffrey, represented the 33rd Appellant. The 33rd Appellant, as the sole remaining Appellant, was present in the Court.
- [43]. Counsel, Mr. Hamza Muzige, Chief State Attorney, represented the Respondent.

Considerations and Determination of the Court.

Duty of the Court as a First Appellate Court.

[44]. **Section 34 of the Criminal Procedure Code Act, Cap. 122** provides for the powers of this Court in considering and determining Appeals and the scope of its mandate. In a matter raised as a first Appeal, the Court is conscious of its duty to review, reconsider and re-evaluate afresh the evidence in the case as well as the materials adduced before the Learned Trial Magistrate thus effectively rehearing the case and making up its own mind without disregarding the Judgement Appealed from but carefully weighing and considering it. In considering which witness should be believed over the other, where the question turns on manner and demeanour the Appellate Court should be generally guided by the impressions made on the Trial Court which saw the Witnesses. Notwithstanding, other factors and evidence affecting the credibility of witness testimony may be re-appraised and considered by the Appellate Court warranting a divergent view even on a question of fact where it has not seen the witness. The Appellate Court will only interfere with

errors of the Trial Court where the error has occasioned a miscarriage of Justice - including where the Trial Court did not take into account particular material circumstances or where the conclusions are inconsistent with the evidence on the Trial Court's Record observing that the burden of proof to be discharged to the required standard of beyond reasonable doubt at the Criminal Trial subject of the Appeal rested squarely with the Prosecution. **See: Kifamunte Henry Vs. Uganda: SCCA No. 10/1997 citing with approval Pandya Vs. R [1957] EA 336, Okeno Vs. Republic [1972] EA 32, Charles B. Bitwire Vs. Uganda: CACA No. 23/1985, Fredrick Zaabwe Vs. Orient Bank Ltd: SCCA No. 4/2006, Fr. Begumisa Narsensio & 3 Others Vs. Eric Tibebaga: SCCA No. 17/2002 & Lovinsa Nankya Vs. Nsibambi [1980] HCB 81.**

Consideration of the Testimony and Evidence at the Trial.

- [45]. In considering, scrutinizing and re-evaluating the testimony presented and the evidence adduced and admitted on the Record of the Trial Court afresh, this Court in its Appellate role shall consider it in its totality and in the context of the Trial as it related to the 33rd Appellant - being the sole remaining Appellant.
- [46]. **The Prosecution.** The Prosecution presented the testimony and evidence of six (6) witnesses as to the events of the 7th December, 2021, including: **PW1** - Sgt. Obiti Francis Xavier a Police Officer at Pader Police Station; **PW2** - Ms. Nabwire Betty a businesswoman who owns a hotel and eatery in Pader Town Council; **PW3** - Mr. Obwoya Fearless Oyat the District Chairperson (LC5) Pader District; **PW4** - D/C Okot Patrick Sam a Police Officer at Pader Police Station; **PW5** - Oyet Geoffrey a businessman who owns a Photo Studio in Pader Town Council; and, **PW6** - IP Kilama Ben a Police Officer at Pader District.
- [47]. **PW1** testified that while in his Office at Pader Police Station, the Station Major told him to go to the Armoury since there was information that demonstrators were moving towards Pader District Headquarters to the Resident District Commissioner's (RDC's) Office. He signed for a gun and after briefing was deployed to the side of the Police Station within the wire mesh fence about six (6) meters from the main road. While there, he observed a group of more than one hundred (100) demonstrators moving towards the District Headquarters to the RDC's Office. The group later returned from the District Headquarters and demonstrators who were rioting stopped in front of the Police Station and while there set ablaze on the road and burnt tyres got from the RDC's residence and plastic cans from a Health facility, hurled insults and threw stones at the Police and shook and attempted to climb the fence. He identified the Appellant whom he knew was a leader, the Mayor, and was with the group as they were rioting. He had moved with them to the District Headquarters and returned with them.
- [48]. The Police fired teargas and fired bullets in the air as the situation deteriorated and the demonstrators became more violent. They dispersed into Pader Town. In cross-examination by the Appellant's Counsel, PW1 testified that the incident begun between 11am and 12 Noon reiterating that he recognized the Appellant in the group but could not understand what he was saying since he was not close enough to him and did not understand the Acholi

language. He, however, understood some of the obscene words from the demonstrators. In reexamination he reiterated that he was deployed on the Western side of the road in front of the Police Station. In questions from the Court, PW1 reiterated that the demonstrators were about six (6) meters from him and the demonstrations in front of the Police Station lasted about forty-five (45) minutes.

- [49]. PW2 testified that she knew the Appellant as the Mayor of Pader Town Council. At about 7am-8am whilst she was at work newly elected members of the business community moved around Pader Town Council mobilizing the public to attend an emergency meeting at the Town Council Grounds, Mayor's Gardens. A fortnight earlier the LC5 Chairperson, RDC and DPC had met the newly elected business Leaders to discuss the curfew imposed during the COVID 19 pandemic and their hardships. A meeting scheduled for 6th December, 2021 had aborted. She attended the meeting and observed the LC5 Chairperson addressing the crowd, some of whom were dancing to music playing. In attendance were an LC5 Councillor (A30) and Accused. The LC5 Chairperson asked the crowd to be calm and listen to him as some in the crowd told him to go and pick the RDC and the DPC. A30 told the crowd enough was enough and they wanted the RDC and DPC out of Pader. The new Chairperson of the business community told the crowd that if the RDC and DPC would not come to attend the meeting the crowd should go to the District Headquarters and pick them. They both spoke on the microphone. It was at that point that she returned to her business.
- [50]. Later, at about 2pm she observed a mob approaching her business place and the mob attacked her as well as her restaurant. She identified the assailants, some of whom had been at the Mayor's Gardens. One assailant held a burning plastic pipe and dropped molten plastic on her. Together with others, he beat her up as she cried. The assailants broke glass windows, kicked her kitchen door, poured out her food, ran off with her sauce pans of soup, stole her bicycle as well as utensils, food stuffs and beverages, broke her furniture and burnt her grass thatched hut used as a kitchen. The rampage continued until about 6pm. The Court observes, in fairness, the Appellant wasn't amongst the assailants named.
- [51]. In cross-examination, she reiterated that the mobilization for the meeting was by the business community and the meeting was to be addressed by the RDC, LC5 and DPC. In her view, the meeting at the Mayor's Gardens was lawful which is the reason she attended it. However, the absence of the RDC and the DPC from the meeting agitated the already rowdy crowd. It was also her view that the newly elected Chairperson of the business community triggered off the strike for the crowd to move to the District Headquarters and thereby incited the crowd. In re-examination, she testified that the Appellant who was the Mayor was amongst the Officials that called the meeting for which they used a megaphone.
- [52]. PW3 testified that he had known the Appellant since his youth and then as the Chairperson of Pader Urban Town Council. He had been with him the day before 6th December, 2021 at about 7pm when there were disturbances in Pader Town Council including gunshots fired in enforcing the COVID 19 curfew, burning of tyres on the streets and many arrests had been made. Together, they tried to calm down and stop the rioters

who were very violent and declared that they did not want the RDC and DPC in Pader. The rioters stoned and broke his vehicle's windscreen. Later, he went to LUO FM Radio Station to address the residents of Pader Town Council and advised them to be calm.

- [53]. In the morning of the 7th December, 2021 he observed that rioters had stoned and damaged buildings with broken glass strewn on the ground. The streets had burnt tyres and stones blocking the roads. He found leaders of the business community mobilizing the public to attend a meeting at the Mayor's Gardens and they had a Petition of grievances from Traders which they wanted to present. He went to the Appellant's Office of Mayor Pader Town Council and while there the Office was stormed by people who were very violent who then left with the Appellant. He went on to the Mayor's Gardens where he asked the crowd to be calm as some in the crowd were very violent. The Appellant addressed the crowd and declared that the RDC was not wanted and that no Radio Station in Pader Town Council should host the RDC. The Appellant was using a microphone connected to speakers to address the crowd. The crowd was charged and demanding for the RDC. While he was using the microphone connected to speakers A30 took the microphone and told the crowd that they should go and look for the RDC which prompted the crowd to start moving in procession towards the District Headquarters. The Appellant left with the crowd heading for the District Headquarters. He avers that he stayed at the Mayor's Gardens and did not know what occurred as the crowd moved towards the District Headquarters. Later, the crowd returned after about an hour while he was still at the Mayor's Gardens and he advised them to disperse.
- [54]. He later went to the District Headquarters and observed damaged windows and broken glass with destruction to the RDC's Office, the District Hall, the Health Department and his own Office and there was a fire burning near the gate. At Pader Police Station he observed that it had been stoned and glasses broken. In Pader Town Council he observed that the situation had become chaotic and out of hand with the crowd destroying property and targeting non-Acholi members of the Public and their businesses, including PW2's restaurant set aflame.
- [55]. This prompted him to call the Army barracks at Acholi Pii at about 2pm 4pm requesting deployment of the Army alongside the Police to save the situation in Pader Town Council to which the Army responded.
- [56]. In cross examination, he confirmed that he was at the Mayor's Gardens and observed Accused cited participating in mobilizing violence. He also confirmed that he had been on LUO FM with the RDC earlier but denied inviting the public to the Mayor's Gardens averring that it was the RDC who had invited the public to the Mayor's Gardens to resolve their disputes and that the RDC could call a meeting. He went to the Mayor's Gardens to address the public as a leader as any leader would do since there had been destruction of property. It was his view that the assembly at the Mayor's Gardens was not unlawful because it was intended to solve problems in the community. The Appellant and himself ended up attending the meeting because of pressure from the crowd. He reiterated that the Appellant

had said he was going to look for the RDC but he did not see the Appellant with the crowd when it returned from the District Headquarters.

- [57]. **PW4** testified that he knew the Appellant as the Mayor of Pader Town Council. At about 11am, he along with other Police Officers at Pader Police Station were informed by his superiors that a demonstration was being organized to target the Police Station and Pader District Headquarters. He signed for a rifle and was deployed in the compound within the fence about thirty (30) meters from the main road to guard the front of the Police Station. He observed a group of people coming from Pader Town heading to the District Headquarters, some of whom remained opposite the Police Station and begun insulting the Police Officers. As the crowd returned from the District Headquarters they all stopped opposite the Police Station. Some found tyres at the Water Office and plastic jerry cans at the Health Center which they set on fire at the front, hurled insults and threw stones at the Police Officers and attempted to storm Pader Police Station.
- [58]. The Appellant was at the front of Pader Police Station and had a megaphone and said he could not accept that mothers and sisters who were doing business could be chased from the roadside and yet in other Districts there was no curfew time imposed. He demanded that the RDC and DPC explain why they are sending the Police to chase away business people. The Appellant spoke in the Luo language which he understood well. The Police Officers fired bullets to disperse the crowd which had spent about thirty (30) minutes in front of Pader Police Station. The Appellant did not run away from the Police Station.
- [59]. Later at about 5pm, he went to Pader Town and observed destruction including burnt tyres on the road, looting of property of non-Acholi members of the Public, looting of a restaurant, looting of foods and beverages and a grass thatched hut that had been burnt.
- [60]. In cross-examination, he reiterated he was deployed with other Officers about thirty (30) meters from the road. Others were close to the road and close to the Police Station's gate. In re-examination, he stated the distance between him and the Accused as about five (5) meters and PW1 was deployed close to the gate.
- [61]. **PW5** testified that he knew the Appellant as the Mayor of Pader Town Council. He testified that Pader Town Council had been restive on the 6th December, 2021. The RDC asked the public to be calm and called for a meeting for the next day the 7th December, 2021. The LC5 Chairperson was also involved in calling the meeting. On the 7th December, 2021 he went to the Mayor's Gardens where he observed about two hundred (200) people and by 10 am the conveners of the meeting had not arrived prompting the crowd to get angry at the RDC. The LC5 Chairperson among others was present at the meeting. The crowd demanded that the RDC and DPC leave Pader and they had a Petition from the business community concerning water shortages and electricity outages which was received by the LC5 Chairperson who advised them to return to their homes.

- [62]. The crowd left the Mayor's Gardens and headed for Pader District Headquarters insisting on going to collect the RDC who had not turned up for the meeting. The Appellant followed the crowd together with some Councillors. He avers that he stayed in Pader Town and contends that the meeting at the Mayor's Gardens was not unlawful since it was intended to solve community issues.
- [63]. In cross-examination, he reiterated that the RDC and LC5 Chairperson called the meeting at the Mayor's Gardens to resolve issues affecting the business community and it was well intentioned. The crowd became agitated when the RDC failed to appear. He insists the group of rioters carrying stones, pangas and sticks that returned was not part of the group that was at the meeting at the Mayor's Gardens. In his view, the Leaders had followed the crowd to control it.
- [64]. **PW6** testified that he was allocated the Police File on the 8th December, 2021 to investigate incitement to violence, unlawful assembly and malicious damage to property and in his investigation he recorded eighty (80) statements from witnesses and persons Accused. He visited the crime scenes with his Team, observed the damage done and took photographs including - firstly, Pader District Headquarters where he observed that window and door glasses had been smashed and destroyed at the Canteen, the RDC's Office, the District Council Hall, the Health Department Offices and the LC5 District Chairperson's Office; secondly, at Pader Town Council they found PW2's restaurant had had plastic furniture destroyed, utensils damages, items had been stolen and the kitchen of the restaurant had been burnt down. The photographs which he had taken were printed and placed on the Police file. The first batch of eight (8) photographs were tendered as evidence in Court and admitted and marked as **CRB 477/21 Exhibit P1(1-8)** and the second batch of four (4) photographs were tendered as evidence in Court and admitted and marked as **CRB 478/21 Exhibit P2 (1-4)**.
- [65]. In cross examination, he admitted his investigation was limited to visiting the crime scenes, taking photographs and exhibiting them. The Prosecution closed.
- [66]. **The Defence**. In his Defence, the 33rd Accused (herein the 33rd Appellant) testified on oath and besides his own testimony he presented the testimony and evidence of **DW19**, Okot Robert, described as a freelance Journalist. The Appellant testified that, in his view, the Prosecution's case against him was politically motivated. The Accused had all been arrested by soldiers. The meeting at the Mayor's Gardens had been convened by the LC5 District Chairperson. The LC5 Chairperson whom he reiterated had convened the meeting signed the Notice Book of Pader Town Council on the 7th December, 2021 at 09:00 am. He himself had not been invited for or to attend the meeting at the Mayor's Gardens. At one instance, he apparently avers that he did not attend the meeting in the Mayor's Gardens. However, later it was his testimony that the meeting that took place at Pader Town Council compound ended prematurely when the participants begun to shout upon the crowd realising that the RDC and DPC would not appear. He also testified that he had heard noises coming from near a mango tree in the Pader Town Council compound and left his Office and went straight to the

LC5 Chairperson and told him that he could not have a meeting during the COVID 19 lockdown. Having communicated this to the LC5 Chairperson, he then went straight home and avers that he communicated to the DPC and other Officials about the security situation to which they responded and brought the situation under control. At 3 pm he was informed that the Army was picking people from their houses. On the 9th December, 2021 he met the DPC and was arrested on grounds that he had convened the meeting and was later given Police Bond. In concluding, he states that there were claims that the disturbance in Pader Town Council had some Political involvement.

- [67]. In cross examination, he admitted that there had been violence on the 7th December, 2021 had heard that property was damaged. He confirmed his statement to the Police recorded on the 4th January, 2022. He testified that members of the public were angry but did not riot and he and the LC5 Chairperson calmed public. He first disputed but later admitted organizing a meeting but insisted he was in his Office. The Appellant's Police Statement dated 9 th December, 2021 was admitted in evidence as PEX15. He, however, denied certain parts of his Police statement. The Appellant was incoherent.
- [68]. The Trial Court recalled PW6 to explain the process in making the statement. He testified that he explained the reason for recording the statement and the charges to the Appellant who narrated the events which he wrote down in his hand writing and after finishing recording read it to the Appellant who signed it. Nobody else was present during the recording of the statement. In cross examination by the Appellant, he admitted he was instructed by the DPC to record the statement insisting he had read it to the Appellant who had signed it.
- [69]. DW19 testified that the community was assembled at Pader Town Council with the Appellant and the LC5 Chairperson. The crowd demanded the presence of the RDC and DPC and on not seeing them left for the District Headquarters. He avers that none of the Accused went with the crowd. At the Police Station they asked for the RDC who was not there. He went with the crowd as it moved to the District Headquarters finding the gate locked and a member of staff opened the gate for them. The crowd entered the District Headquarters and started destroying glass later moved back causing destruction. The Police fired in the air dispersing the crowd which returned to the Town Council grounds.
- [70]. In cross-examination, he insisted the Appellant did not participate in the rioting. Nor did he restrain the crowd. After first claiming only children went to the District Headquarters he admitted there were also adults. The Defence closed.

Consideration and Determination of the Grounds of the Appeal.

- [71]. At the outset, the Court observes that the Constitutional fundamentals of the right to freedom of assembly and specifically the Regulation of the convening, organization and management, attendance and participation, responsibilities of organizers and participants and the role and powers of the Police in relation public meetings, public events and public

processions has been the subject of significant litigation in the Constitutional Court. Not being included amongst the non-derogable rights provided for in **Article 44 of the Constitution**, the Constitutional Court has had to balance the right of freedom to assemble of individuals asserting their entitlement while taking into account the entitlement of others to similarly enjoy their other rights and while also giving due consideration to the public interest. The test of permissible restrictions and moreso Statutory limitations on such rights is a consideration at the threshold of what is acceptable and demonstrably justifiable in a free and democratic society which is established in the provisions of **Article 43 of the Constitution**. See: **Constitutional Petition No. 9/2015: Muwanga Kivumbi Vs. The Attorney General**, **Constitutional Reference No. 022/2020: Uganda Vs. Lule David and 4 Others**, **Constitutional Petition No. 56/2013: Human Rights Network Uganda & 4 Others Vs. The Attorney General** and **Constitutional Petition No. 5/2007: Moses Mwandha Vs. The Attorney General**.

- [72]. The fundamental right to free speech provided for in the Constitution has similarly been extensively litigated and adjudicated upon on the basis of the same tests and standard. See: **Supreme Court Constitutional Appeal No. 2/2002: Charles Onyango Obbo & Andrew Mwenda Vs. The Attorney General**.
- [73]. These dynamics are already apparent in the circumstances of this Appeal as in the earlier Trial before the Lower Court as would similarly be apparent and expected in other matters concerning public order offences.

[74]. The Court will now consider the grounds of the Appeal raised by the 33rd Appellant in the Memorandum of Appeal commencing with the first ground in respect of the plea taking before the Trial Court and then the third ground in respect of the evaluation of the testimony and evidence presented to the Trial Court and the conclusions reached by the Learned Trial Magistrate.

Ground 1 - The Learned Trial Magistrate erred in Law and in fact when he convicted the Appellant without following the proper procedure in plea-taking thereby leading to a miscarriage of Justice.

[75]. This Court has scrutinized the official Record of the Trial Court. It indicates that the Appellant who was the 33rd individual Accused (A33) initially took plea on the 9th December, 2021 and then following an amendment of the charge sheet by the Prosecution again took plea on the 14th December, 2021 and then most significantly yet again took plea on the 5th January, 2022 following another amendment and a consolidation of the charge sheet by the Prosecution all of which had been allowed by the Trial Court. The Court observes that on each occasion the charge on the first count of incitement to violence contrary to **Section 83(1) of the Penal Code Act** was read and explained to him to which he responded and stated that - **"It is not true."** whereupon the Trial Court entered on its Record a Plea of Not Guilty ("PNG."). This was followed by the charge on the second count of taking part in an unlawful assembly contrary to **Section 66 of the Penal Code Act** similarly being read and explained to him to which he responded and stated that - **"It is not**

true." whereupon the Trial Court entered on its Record a Plea of Not Guilty ("PNG."). This is reflected at pages 95 - 104 of the Record of Proceedings of the Trial Court. The Appellant (A33) was not charged with the offence of causing malicious damage to property.

- [76]. The Court further observes from the Record of the Trial Court's Proceedings of the 9th December, 2021 that it explicitly reflects that the proceedings were interpreted in the Acholi language while the Records of 14th December, 2021 and 5 th January, 2022 do not reflect that the proceedings were similarly interpreted. Significantly, the Court Clerk and Interpreter is indicated on the Record as being in attendance throughout the Trial proceedings. The Court, out of an abundance of caution, also reviewed the hand written Record of the Learned Trial Magistrate in long hand and the Records do in fact correspond. It is the Appellant's case that the failure of the Learned Trial Magistrate to have the charges read and explained to him before the Court with an interpretation in the Acholi language which he speaks and understands that he contends constitutes a miscarriage of Justice since he did not have a full understanding or apprehension of the charges and factual details of the allegations against him and therefore did not knowledgeably take plea thereby causing the miscarriage of Justice.
- [77]. This argument coming from the Appellant does not ring true. Indeed, as reflected in the Record of this very Court in these very Appellate proceedings arising from his Trial, this Court enquired from the Appellant which language he speaks and understands for the purpose of these Appellate proceedings to which he responded confirming that he speaks both the English language and the Acholi language. It would in and of itself be an absurdity if this Court disregarded its own Record that the Appellant understands both the English language and the Acholi language to go ahead and find a miscarriage of Justice resulting in the circumstances. The Appellant's claim not to have understood or apprehended the Trial Court's proceedings in the Official English language while following the Appeal in English is simply opportunistic and not credible - an approbation and reprobation. This Court therefore finds that since the Appellant understands the Official English language there was no miscarriage of Justice occasioned.
- [78]. It is a requirement of the Law and not in dispute that testimony and evidence at Trial proceedings or for that matter in any Legal proceedings are duly interpreted where it is apparent that the Accused does not know or understand the Official language of the Court which is English. **See: Article 28(3) of the Constitution** and herein **Section 139 of the Magistrate's Courts Act**. Significantly, this Court observes that the Court Clerk and Interpreter was reflected on the Trial Court's Record as being in attendance at all the Trial proceedings. The Record indicates that there was in fact interpretation in the Acholi language. This Court further observes that the Appellant's submissions on the ground of Appeal regarding the supposed absence of interpretation is raised only in respect of the plea taking and is not raised in respect of the Trial proceedings not having been interpreted in its entirety. It is a fact that the Trial progressed through all its stages and the Record does not indicate any objection by the Appellant or his Attorney in regards to any difficulties in or

arising from the interpretation in the Court.

- [79]. In consideration of the foregoing, this Court while conscious of the significance and centrality of plea taking in the entire Trial process, is satisfied that in the circumstances of this case the Appellant fully understood and apprehended the proceedings of the Trial Court even when the charges on incitement to violence and taking part in an unlawful assembly were read and explained to him in the English language *vide* the second amended and consolidated charge sheet in response to which he while knowledgeable and informed took plea by pleading not guilty. The Court therefore finds that the first ground of Appeal is without merit and no miscarriage of Justice was occasioned. It therefore fails.

See: Criminal Appeal (Court of Appeal) No. 267/2017: Nsubuga Ali aka Cobra Vs. Uganda, Criminal Appeal (Court of Appeal) No. 274/2014: Niyonzima Valenzi Vs. Uganda and Criminal Appeal (Court of Appeal) No. 97/2020: Othieno Michael Vs. Uganda.

- [80]. The Court, upon reflection, observes that this should serve as a cautionary tale to Judicial Officers to routinely always make a carefully and meticulously constituted complete Record of their proceedings. Moreso, at the crucial stages such as plea taking as demonstrated here. A supposed inadvertency in a Court's Record may be framed as and ultimately constitute a ground of Appeal, even where there was in fact no omission. A Court's Record must speak for itself.
- [81]. The Appellant, in his oral highlights, raised a novel objection to the charge sheet contending that it was not specific in as far as it did not identify or mention the locale in terms of the specific cell or ward within Pader Town Council where the offences of incitement to violence and unlawful assembly were alleged to have been committed. It is his case that in as far as the charge sheet only mentioned Pader Town Council generally it did not provide sufficient information for him to knowledgeably take plea to the offences he was charged with which constituted a miscarriage of Justice. The Court observes that this argument was not raised as a ground of Appeal or in his Written Submissions. However, since the Respondent had an opportunity to address it, it shall be considered by the Court. In response to this objection, the Respondent submitted that the offences occurred in different locations within Pader Town Council initially at the Mayor's Gardens then corresponding with the Appellant's movement towards the Pader District Headquarters and in so doing passing by Pader Police Station and then returning being a distance of a few kilometres. The Respondent contended that the mention of the incidents occurring within Pader Town Council did not constitute a miscarriage of Justice. The Court is in agreement. The testimony and evidence produced *in extenso* by this Court is that the Appellant and others traversed different parts of Pader Town Council and were not confined to the Mayor's Gardens. This was an accurate description of particulars as portrayed in the charge sheet. The Court finds that no miscarriage of Justice was occasioned.

[82]. The Court will now proceed to resolve the remaining ground of Appeal raised in the Memorandum of Appeal in respect of the evaluation of the evidence and the conclusions reached by the Learned Trial Magistrate.

Ground 3 - The Learned Trial Magistrate erred in Law when he failed to evaluate and scrutinize the evidence on Record thereby coming to a wrong conclusion in convicting the Appellant.

- [83]. The Appellant was convicted and subsequently sentenced by the Trial Court on both offences of incitement to violence and taking part in an unlawful assembly.
- [84]. This Court has duly scrutinized the charge sheet, Trial testimony and evidence presented and the exhibits admitted on the Record of the Lower (Trial) Court.
- [85]. The first offence the Appellant was charged with was incitement to violence contrary to **Section 83(1) of the Penal Code Act, Cap. 120 (now cited as Section 79 of Cap. 128 under the revised Laws of Uganda, 2024. It provides: Section 79 of the Penal Code Act - Incitement to violence.**
 - 1) "Any person who incites any other person to do an act of violence against any person by reason of his or her race, place of origin, political opinions, colour, creed or sex or office commits an offence and is liable, on conviction, to imprisonment for a term not exceeding fourteen years.
 - 2) For the purposes of subsection (1), "Office" means the office of a Minister of the Government, a member of Parliament or a councillor, a public office, employment in the service of the administration of a district or the council or board of a municipality or town, any religious office and employment as a director, officer or other official in or by any body corporate established by or under the auspices of or controlled by the Government."
- [86]. The essential ingredients and elements of the offence of incitement to violence the Appellant was charged with must therefore include: (1). There must have been an occurrence violence. (2). There must have been an intent to cause the violence by words either spoken or written urging the perpetrators on. (3). There must have been a targeting established of a victim or victims on account of at least one of the identified groups or classes stipulated in the provisions of the Act including race, place of origin, political opinions, colour, creed or sex or office (**virtute officii**). (4). There must have been participation of the Accused.
- [87]. The Court observes that the provision in respect of which the Appellant was charged for the offence of "incitement to violence" **vide** **Section 83 of the Penal Code Act, Cap. 120 (now cited as Section 79 of the Penal Code Act, Cap. 128 - Revised)** is rather similar to the offence of "incitement to violence" as provided for by **Section 51(1)(a) of the Penal Code Act, Cap. 120 (now cited as Section 47(1)(a) of the Penal Code Act, Cap. 128 - Revised)**. The provisions both require that the targeted specific person and, or group or class and, or

community - expressed as "**by reason of**" - is duly identified as to their specific stipulated characteristics in the Act. It therefore follows that a general reference to incitement to violence as against the general public or for that matter the world without stipulating a grouping or classification is ambiguous, misconceived and incompetent. It is now trite that ambiguity in defining the nature of offences and ambiguity in disclosing the material particulars in a charge sheet raise questions as to the Constitutionality of the offence or the charge sheet itself in conveying the nature of the offence as the case may be. The Court further observes that the fundamental difference between the provisions of the offences is that the latter **Section 47 of the Penal Code Act Cap. 128** specifically requires the consent of the Director of Public Prosecutions (DPP) under **Section 47(2) of Cap. 128** as a condition precedent to instituting the charges.

- [88]. Bearing these provisions in mind, it is incumbent that guidance is given to Prosecuting Authorities where the offence is disclosed to identify and name the person(s) or class or group or community being subjected to the targeting. One cannot simply ignore or be blind to a requirement staring one in the face.
- [89]. It is therefore the finding of this Court that since the charge sheet under which the Appellant was tried for incitement to violence contrary to **Section 79 of the Penal Code Act, Cap. 128 - Revised** fell short of the fundamental requirement to specify or disclose the material particulars of the essential ingredients and elements of the offence of incitement to violence with which the Appellant was charged - specifically the omission to identify and name the targeted person(s), group, class or community as required by the Statute and merely mundanely referenced the general public and unknowns, the omission rendered the charge sheet incompetent and fatally defective in as far as it did not sufficiently or effectively disclose the required basic information on the material particulars of the offence to enable the Appellant duly and knowledgeably take plea on the charge. This amounted to and constituted an impermissible derogation of his right to a fair hearing in **Article 28 of the Constitution**, as to the offence, with the net effect being **inter alia** that the Accused would not be sufficiently seized of the case against him to adequately respond to the charge in his Defence.
- [90]. In the final result, the consequence of the Appellant having been charged, convicted and sentenced on the first count of incitement to violence on the basis of the incompetent and fatally defective charge sheet is to vitiate the proceedings of the Trial Court in respect of the first count of incitement to violence. The Appellant's conviction on the first count of incitement to violence contrary to **Section 83 of the Penal Code Act, Cap. 120 (now cited as Section 79 of the Penal Code Act, Cap. 128)** is accordingly quashed and overturned and the sentence given of **twelve (12) months** is thereby set aside.

[91]. The second offence the Appellant was charged with and then after the Trial convicted and sentenced to six (6) months imprisonment for was taking part in an unlawful assembly. The offence is provided for in Sections 65 and 66 of the Penal Code Act, Cap. 120 (now cited as Sections 61 and 62 of the Penal Code Act, Cap. 128).

Section 61 of the Penal Code Act: Definition of unlawful assembly and riot.

- 1) When three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace or will by assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.
- 2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in the manner described in subsection (1).
- 3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Section 62: Punishment for unlawful assembly. Any person who takes part in an unlawful assembly commits a misdemeanour and is liable, on conviction, to imprisonment for a term of one year.

- [92]. The essential ingredients and elements of the offence of taking part in an unlawful assembly which the Appellant was charged with are: (1). There must in fact be an assembly convened or constituted of three (3) or more persons. (2). The common intent of the assembly was to commit an offence and was thus unlawful and, or the assembly originally being lawful and legitimate in its common purpose in and of itself was or becomes unlawful by virtue of its subsequent conduct by threatening and, or breaching the peace and, or without reasonable occasion provokes others to breach the peace. (3). The persons Accused participated in the unlawful assembly.
- [93]. The Court has already observed that by the time of the incidents alleged, on the 7th December, 2021, the social context of the Country was that the COVID 19 global pandemic had already reached its heights and with it the National restrictions and prohibitions known as the "lockdown" on *inter alia*: - public meetings and gatherings and assemblies; limitations on movement; restrictions and limitations on trade including on hawking and vending; closure of certain facilities including Offices, Academic Institutions and public spaces to facilitate social distancing; and, a National curfew imposed - as well as other areas of what had previously been considered to be ordinary life. The intent behind these actions was to combat the spread of COVID 19 amongst the population. This was the *Status Quo** until the lockdown was completely lifted in January, 2022.

See: Public Health (Control of COVID – 19) Rules: SI No. 52/2020, SI No. 55/2020, SI No. 83/2020, SI No. 38/2021, SI No. 59/2021 etc. made under the Public Health Act, 281 (now cited as Cap. 310 - Revised).

[94]. This culminated in general public apathy, inertia and frustration. The events both the Prosecution and the Defence witnesses testified to in Pader Town Council reflected a degree of antipathy towards the Public Authorities with residents being restive especially as regards the curfew and restrictions on trade.

- [95]. This was characterized by violent actions including protests and riots, breaches of the curfew, burning of tyres and other flammable items on the streets, destruction of property and in some instances targeting of non-Acholi members of the general public in Pader Town Council. In response, the Authorities tried to calm and placate the restive crowds. In his testimony, PW3 vouched for the Appellant whom he claimed also previously tried to placate the restive crowd including by offering them alcoholic beverages to supposedly diffuse tensions.
- [96]. The first essential ingredient or element requires that the Prosecution proves and establishes that there was in fact an assembly convened or constituted of three (3) or more persons. This Court accepts the testimony and evidence presented by both Prosecution witnesses (PW2 and PW3) and the Appellant and his witness (DW19) before the Trial Court already elaborated **in extenso** establishing that there was in fact an assembly on the 7th December, 2021 which first convened at the Mayor's Gardens in Pader Town Council as an emergency public meeting to address concerns raised by the Pader Town Council business community through their leaders including their Chairperson about their hardships as a result of the COVID 19 restrictions. This was the meeting at which the Leaders of the business community presented a Petition to the District LC5 Chairperson and it was attended by other District Leaders. The Court finds that the purpose of this meeting was legitimate and accepts that the meeting had been called by or with the acquiescence of the District Leaders including - the Resident District Commissioner (RDC) and the District LC5 Chairperson. The meeting at the Mayor's Gardens comprised the Leaders and a crowd of the business community whom they addressed. The Court observes that even the mere inclusion of the District LC5 Chairperson (PW3), the Appellant as the Mayor and PW2 whom admittedly were in attendance already constituted an assembly for purposes of the Act. The requirement for an assembly is satisfied.
- [97]. This, however, was not the full extent of the assembly. The Court accepts the testimony and evidence of the Prosecution witnesses (PW2 and PW3) and of the Appellant and his witness (DW19) that the entire assembly also comprised other District Leaders, the Leaders of the business community and the general public. PW5 testified that up to two hundred (200) attended. The convening at the Mayor's Garden undoubtedly constituted an assembly. The Court so finds.

- [98]. In addition, the Court accepts the testimony of the Prosecution witnesses (PW1- PW5) and finds that the assembly that originally gathered at the Mayors Gardens degenerated into chaos upon the participants learning that the RDC and DPC would not attend the meeting and at the instigation of the Chairman of the business community and A30 constituted itself into and formed a procession which included some of the participants who had attended the meeting at the Mayor's Gardens and which embarked on a march toward Pader District Headquarters intended to confront "collect" the RDC and the DPC during which the procession passed by Pader Police Station and later returning to Pader Police Station after leaving Pader District Headquarters and eventually was dispersed by the Police at Pader Police Station firing gunshots with the participants in the procession returning to the Mayors Gardens and, or dispersing into other parts of Pader Town Council. The procession comprised between one hundred (100) and two hundred (200) participants. The Court finds that the foregoing constituted and met all the requirements of an assembly.
- [99]. The second essential ingredient or element requires that the Prosecution proves that the common intent of the assembly was to commit an offence and was thus unlawful and, or the assembly originally being lawful and legitimate in its common purpose in and of itself was or becomes unlawful by virtue of its subsequent conduct by threatening and, or breaching the peace and, or without reasonable occasion provokes others to breach the peace.
- [100]. While this Court has already observed herein-above and accepted that the legitimate purpose of the meeting on the basis that it was convened by or with the acquiescence of District Leaders and Officials; the Court stops short of finding that the meeting at the Mayor's Gardens was altogether lawful since the COVID 19 restrictions imposed on public meetings by the various **Public Health (Control of COVID 19) Rules of 2021** cited herein-above were still in place. This was alluded to by the Appellant in his testimony. These Regulations provided for their own penalties for violation of their provisions relating to the COVID 19 pandemic and are outside the scope of these proceedings. It would be far-fetched for this Court to find that the intent of the meeting at the Mayor's Gardens was convened with the intent of committing an offence.
- [101]. The Court has examined the conduct of the participants at the Mayor's Gardens and of the participants in the subsequent procession which formed after the meeting at the Mayor's Gardens degenerated into chaos. The Court accepts the testimony of the Prosecution witnesses (PW1, PW2, PW4 and PW5) as to the conduct of the participants in the procession as they embarked on their march toward Pader District Headquarters intended to confront "collect" the RDC and the DPC during which the procession passed by Pader Police Station and later returning to Pader Police Station after leaving Pader District Headquarters.
- [102]. The conduct of the participants in the procession has been elaborated at length, including: - destroying buildings and smashing glass doors and windows at Pader District Headquarters; hurling stones and obscenities at the Police Officers and Pader Police Station; shaking the fence and attempting to storm Pader Police Station; burning tyres and plastics

on the road at both the Police Station and the District Headquarters; carrying weapons including pangas, sticks and stones. The participants in the procession acted with impunity in causing public disorder and their actions constituted a breach of the peace culminating into riots.

- [103]. The Court accepts the testimony and evidence of the Prosecution witnesses (PW1-PW5) and the Appellant's witness DW19 that the rioting started amongst the participants in the procession comprising a crowd of about one hundred (100) to two hundred (200) individuals as they moved around Pader Town Council and their riotous conduct prompted the Police at Pader Police Station to fire bullets to disperse them. The Court accepts that the rampage of the rioters subsequently spread throughout Pader Town Council leading to further destruction of property and attacks on the general public and included instances of rioters targeting non-Acholi members of the general public. This only ended when the Army was deployed to assist the Police quell the rioting.
- [104]. The Court therefore finds that the conduct of the participants in the procession which in itself and of itself constituted an assembly not only caused persons in the neighbourhood of Pader Town Council to fear that the persons comprising the procession would commit a breach of the peace but their actions amounted to a major breach of the peace resulting in general public disorder and rioting.

See: Section 61(3) of the Penal Code Act, Cap. 128.

[105]. As such, much as the original assembly at the emergency public meeting at the Mayor's Gardens in Pader Town Council had a legitimate purpose as this Court has already found; the turn of events which led to the formation of the procession and the conduct of the participants in the procession which marched to Pader District Headquarters *via* Pader Police Station and then returned to Pader Police Station and in so doing degenerated into rioting, rendering the procession an unlawful assembly by virtue of **Section 61(2) of the Penal Code Act, Cap. 128** which provides that - **"It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in the manner described in subsection (1)"**. Thus, the second ingredient is satisfied.

- [106]. The third essential ingredient or element required to be established by the Prosecution is that the Appellant as the 33rd Accused participated in the unlawful assembly. The conduct of the Appellant has been extensively elaborated and the Court accepts the testimony of the Prosecution witnesses (PW1, PW2, PW3, PW4 and PW5). The Appellant elected of his own accord to join the procession. He was observed as he remained in the midst of the procession as it degenerated into a riotous mob. He continued and remained with the procession even as the procession now turned rioters wreaked destruction at Pader District Headquarters and attempted to storm Pader Police Station. A significant factor is that the Appellant was observed using a public address system variously described as a microphone with speakers or a megaphone in front of Pader Police Station denouncing the COVID 19 guidelines which he was well aware was the reason that had sparked the unrest

and caused the breach of the peace in Pader Town Council. The Court inevitably finds that the Appellant was front and centre of the unlawfully assembled procession and fuelled the riotous crowd.

- [107]. The Appellant denied moving with the procession to Pader District Headquarters and Pader Police Station and testified that after the meeting at the Mayor's Gardens he returned to his home in effect asserting an alibi. The Court accepts the testimony of the Police Officers (PW1 and PW4) who observed the Appellant in front of Pader Police Station. The Court also accepts the testimony of PW2 and PW3 who observed the Appellant join the procession. The Appellant was already well known as the Mayor of Pader Town Council and was conspicuous by the fact that he continued to operate and speak on the megaphone through the turmoil and rioting around him. The megaphone was clearly a powerful instrument of command and control which he misused. The argument that he could not be identified from the hundreds in the crowd is not credible. Neither is notion that he was a peacemaker calming the crowd.
- [108]. The Court is satisfied that the third and final essential ingredient and element of the offence was met.
- [109]. In sum, this Court finds that the Trial Court reached the correct conclusion in finding that the ingredients of the offence of taking part in an unlawful assembly contrary to **Sections 65 and 66 of the Penal Code Act, Cap. 120 (now cited as Sections 61 and 62 of the Penal Code Act, Cap. 128)** was duly established beyond reasonable doubt as against the Appellant and thus came to the correct conclusion in convicting him. This Court shall not interfere with the sentence of six (6) months imposed by the Learned Trial Magistrate.
- [110]. In sentencing, the Trial Court observed that the Appellant had jumped bail leading to his bail being cancelled and he would serve his sentence from the date he would be apprehended or submit himself to the Authorities. No explicit deduction of the time he had already spent on remand was made. This was insufficient and ambiguous. Both Counsel had the opportunity to address this Court on the time the Appellant initially spent on remand and on the time he had been serving his sentence in the custody of the Prisons Authorities after he was apprehended following his abscondment of bail during the Trial. Based on their representations and confirmations, the Court finds that the Appellant spent twenty-seven (27) days on remand after being arraigned on the 9th December, 2021 until he was granted bail on the 5th January, 2022 by the Trial Court. The Prisons Authorities confirmed that the Appellant had spent two (2) months and four (4) days in their custody from the 16th January, 2025. The total time the Appellant has already spent in custody is ninety-one (91) days or three (3) months and one (1) day. The remaining period he will serve from the sentence of six (6) months after deducting the time he has already spent in custody is eighty-nine (89) days or two (2) months and twenty-nine (29) days. **See: Supreme Court Criminal Appeal No. 25/2014: Rwabugande Moses Vs. Uganda.**

[111]. Having considered the grounds in the Memorandum of Appeal, the Judgment and Record of Proceedings of the Trial Court, the testimony and evidence of the respective witnesses at the Trial, the Submissions filed on the Record of the Court and the Law Applicable the Court makes the following Orders.

Orders of the Court.

- i. The charge sheet in respect of the first count in which the Appellant was charged with the offence of incitement to violence contrary to **Section 83(1) of the Penal Code Act, Cap. 120 (now cited as Section 79 of Cap. 128 under the revised Laws of Uganda, 2024 – Revised)** was incompetent and fatally defective and consequently the conviction is overturned and quashed and the sentence of twelve (12) months imprisonment is hereby set aside.
- ii. The conviction for taking part in an unlawful assembly contrary to **Sections 65 and 66 of the Penal Code Act, Cap. 120 (now cited as Sections 61 and 62 of the Penal Code Act, Cap. 128)** and the sentence of six (6) months imprisonment imposed by the Trial Court is upheld.
- iii. The Appellant having already served ninety-one (91) days or three (3) months and one (1) day of his six (6) months' sentence taking into account the time he has already spent on remand before being granted bail and the time he has already served in Prison since being apprehended by the Authorities after absconding bail - which has been deducted - shall now serve the remaining part of his sentence of eighty-nine (89) days or two (2) months and twenty-nine (29) days.

It is so Ordered.

Right to Appeal: Either of the Parties may institute a second Appeal to the Court of Appeal - within the time prescribed.

Signed and Dated on the 20th day of March, 2025. (High Court, Kitgum).

Philip W. Mwaka

Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Judgement has been read and delivered to the Parties and Counsel in attendance in Open Court by the presiding Judge, the Resident Judge of the High Court Kitgum Circuit on **Thursday, the 20th day of March, 2025 at 10:00am**. The parties in attendance are Recorded. Certified copies of the Judgement shall be retained on the Record of this Court for the benefit of and to be availed to the respective Parties.

- 2. The 33rd Appellant as the
- 3. Counsel for the Respondent Mr. Ojara Patrick,

Philip W. Mwaka

Acting Judge of the High Court.

20th day of March, 2025

- 1. Counsel for the Appellant Counsel, Mr. Anyuru Boris Geoffrey.
- Sole remaining Appellant Mr. Kilama Fearless Wod Acholi.

Senior State Attorney.

4. Court Clerk, present - Mr. Ongom Samuel Grey.

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Prepared on 10 October 2026 · Esheria