

Sekinyomo and Another v Uganda (Criminal Appeal 26 of 1993) [1995] UGSC 24 (5 May 1995)

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The facts as found by the trial Judge were as follows. The complainant Anault Serra Horguelin (PW1) and one Fabrice Chuzel lived in a house at Muyenga (Tank Hill) in Kampala. They were employed by a French Non Government Organisation called Medicines Sans Frontieres (MSF) "Doctors without Fronteers" based in Kampala.

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On the day of incident \$(7-7-92)\$ they returned home from town at about 8.00 p.m. They were in separate motor vehicles. As they entered the compound they were attacked by about seven robbers. The robbers were armed with guns.

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The robbers stripped the complainants of their personal effects which included spectacles, shoes, a Casio wrist watch and Shs. 20,000/= in cash. When the complainants tried to resist the robbery one of the robbers assaulted PW1 and injured him on the mouth. One of the robbers also fired his gun into the ground. Then the robbers led the complainants into the latter's house, ransacked it and took away property including two T-shirts, a Walkie Talkie, one pair of trousers and two video tapes. They then drove off in the two motor vehicles which the complainants had been driving but which in fact belonged to their employer.

The complainants reported the robbery to the Police by telephone as soon as the robbers had left the scene of crime. The Police at once mounted a search for the robbers, using elements of the Mobile Police Patrol Units. That night at about 2.00 a.m. John Musisi (PW4), a Patrol station attendant at Ndeba near Kampala, was walking home from night duty when he saw a motor vehicle coming from the direction of Kampala at very high speed. It was being followed by a Police Patrol vehicle. The vehicle was being driven by the first appellant (Sekinyamo). He was alone init. It was the Toyota Corolla Estate Reg. No. UPX 303 which had just been robbed from PW1.

The first appellant suddenly stopped the vehicle on the road and jumped out, leaving the full lights on and the driver's door wide open. He went and hid behind a trailer which was parked nearby. The Police Patrol vehicle arrived there at about the same time. PW1 showed them the appellant and they arrested him.

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He was found with PW1's Casio Wrist Watch.

Acting on information received, the Police arrested the second appellant on 16-9-92,. His rented room in Nsambya (near Muyenga) was searched and properties belonging to PW1 were recovered from there. They included the video tapes two T-Shirts, a pair of white trousers and a long sleeved shirt. A pistol and a magazine full of ammunition was also recovered from there. It was wrapped in a news paper and hidden under the mattress on his bed. An SMG gun and a magazine full of ammunition were recovered from the room next to that of the second appellant.

The trial Judge rejected as false the first appellant's version that the Police Patrol people found him fighting with PW4 over some property and arrested him for that. He also rejected the alibi of the second appellant which was that he was in his house at the time of incident. At the hearing of this appeal learned Counsel for the appellants submitted that if the appellants were indeed found in possession of the stolen articles, which was denied by the appellants, then they could only be guilty of receiving and retaining stolen property but not of the theft itself.

We did not agree. The first appellant was arrested shortly after the robbery. He had on him PW1's watch. PW1's vehicle was parked only 30 meters from the first appellant. According to PW4 it was the first appellant who had parked it there. Clearly the first appellant had constructive possession of that vehicle. In those circumstances the only inference to be drawn was that he had stolen the vehicle and the watch during the robbery.

As for the second appellant several articles which were stolen from PW1 were found in his room during the search. Like the first appellant, he did not explain the possession.

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Instead he denied it, which changed the picture. The irresistible inference was that he participated in the robbery.

We were satisfied that the appellants were properly convicted and dismissed their appeals.

DATED at Mengo t_{his} : \$57k\$ Day of: $\mathcal{N}$ and $\mathcal{N}$. 1995.

S. T. MANYINDO

DEPUTY CHIEF JUSTICE

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B. J. ODOKI JUSTICE OF THE SUPREME COURT

A. H. O. ODER JUSTICE OF THE SUPREME COURT

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