

UGANDA / JUDGMENT

# Uganda v Odaga (Criminal Case 107 of 88) [1990] UGHC 31 (13 July 1990)

[1990] UGHC 31

## COURT

High Court of Uganda

## BEFORE

GM OKELLO, J

## CASE / FILE NUMBER

Criminal Case 107 of 88

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**THE REPUBLIC OF UGANDA**

DI THE MAGISTRATE'S COURT OF ARUA AT KEBBI

**CRIMINAL CASE NO. MCN. 107/88**

UGANDA <sup>2</sup> <sup>2</sup> <sup>s</sup> <sup>2</sup> 2:2: <sup>s</sup> : 2:3 ? : 2::  
2:: <sup>2</sup> <sup>s</sup> 2:2 : u : <sup>2</sup> 2: 2:: 2: :: 2; :j • PROSECUTOR

**VERSUS**

JOSEPH ODAGA :: <sup>2</sup> 2:2:2 2;; <sup>2</sup> <sup>2</sup> <sup>s</sup> 2:: 2::  
<sup>2</sup> <sup>3</sup> 2: s; 3:3:2.: s: 2::: 3:3; ACCUSED BEFORE: <sup>T</sup>he Hon, Mr.  
Justice G. M, Okello ?

**CONFIRMATION OF SENTENCE:- Section <sup>167</sup> kCAt<sup>70</sup>**

This file was sent to this court by the Magistrate Grade One of Nebbi for confirmation of sentence under section <sup>167</sup> of the Magistrates Court Act 1970<sup>9</sup> The file was placed before me for the purpose.

The accused, Joseph Odaga who was employed by the Pakwach Town Board as a Xand Supervisor was charged and convicted after a full trial of the offence of the office breaking and theft contrary to section 283 (a) and 252 of the Penal Code Act. He had no previous conviction and he was sentenced to twenty-four months imprisonment.

<sup>A</sup> sentence of twenty-four months imprisonment by a Magistrate Grade II or by Magistrate Grade One attracts confirmation under section 167 of the Magistrates Court Act\*

## I

The office alleged to have been broken into was the office of the Lands supervisor with the Pakwach Town Board. From that office, the thief claimed into the office of the Cashier and stole from there a sum of about 40,000/=. There was no direct evidence connecting the accused with the commission of the offence. He was convicted on circumstantial evidence only.\* The law regarding circumstantial evidence

is that to found a conviction on such evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt, (see Musoke -v- R<sup>></sup> (1958) EA 713) see also Uganda, -v- Mbyazita (1972) ULR 3 - '

4. . .

In the instant case the circumstantial evidence include the fact that the accused was in the evening before the fateful night desperately in need of money, he begged the cashier for a salary advance which he was denied. He insisted and the cashier only put him off by giving him Shs.110/= which the accused accepted. Late in the night between 9.00 and 9.30p.m the accused was seen around his office and that even at <sup>></sup>l<sup><</sup>\* that late hour he asked the night watchman where the cashier was. The night watchman had been away for supper when on his return he found the accused coming from the direction of his office. The shoe marks found on the furniture in the office after the break-in were found to be the same with the marks made by the shoe the accused was wearing. The following morning the accused was found with a large sum of money hidden under his mattress. The accused explained that the money found with him was a debt paid to him by someone who had bought his bricks on credit. He denied having been deperate for money. The trial Magistrate rejected the explanation of the accused and convicted him.

I found nothing obviously wrong with the record. The Trial Magistrate was entitled to believe or to reject the explanation of the accused depending on the credibility of the witnesses who gave the circumstantial evidence. On the whole, I find the conviction proper.

As regards the sentence, I consider that it is proper and adequate having regard to all the circumstances of the case. It is therefore confirmed.\*

V K <sup>></sup>o<sup><</sup> G.\* M. Okello JUDGE\*. 1337/1990.

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