

Uganda v Ssemuga and Another
(Criminal Appeal 18 of 2023)
[2025] UGHC 223 (26 March 2025)
[2025] UGHC 223

Semuga Badru, the 1st Respondent, and Kayima Andrew, the 2nd Respondent, were jointly charged with obtaining money by false pretences, contrary to Section 305 of the Penal Code Act, and Conspiracy to commit a felony, contrary to Section 350(g) of the Penal Code Act, before the Chief Magistrates Court at Buganda Road. The second Respondent was separately charged with Personation, contrary to Section 381, and Forgery of a stamp, contrary to Section 350(g) of the Penal Code Act.

The Prosecution alleged that the Respondents and others at large, on the 2nd day of July, 2018 in Kampala Central Division, Kampala district, with intent to defraud, obtained money amounting to Ugx. 130,000,000/- (Uganda Shillings One Hundred Thirty Million Only) from Wesige John, the complainant, by falsely pretending they were selling land to him when they were not. Regarding the 2nd Respondent, the Prosecution contended that he had, with the intention to defraud Wesige John, falsely represented himself as an advocate (Count II) and that he knowingly and fraudulently possessed a forged stamp of Twesigye, Oyuko & Co. Advocates without any lawful excuse.

On 12th January, 2021, the Respondents herein refuted the allegations, and the case proceeded for trial. On February 24, 2023, a Ruling on a Prima Facie Case was rendered. The Trial Magistrate found that the prosecution failed to establish a prima facie case against the Respondents/Accused persons as charged in Counts I, II and IV. Both Accused persons were therefore acquitted in respect of Counts I, II and IV and A1 was set free. However, a prima facie case against A2 as charged in Count 3 was established and he was put to his defence. The Appellant being aggrieved with the ruling of the Trial Magistrate, filed the present appeal, citing the grounds that:

1. The learned Trial Magistrate erred in law and fact in his assessment, interpretation and application of the law of prima facie case and thereby arrived at a wrong decision acquitting the Respondents.
2. The learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence and law as a whole and thereby coming to an erroneous decision to acquit the Respondents of charges of obtaining money by false pretence c/s 305 of the Penal Code Act, and Conspiracy to commit a felony c/s 390 of the Penal Code Act.
3. The learned Trial Magistrate erred in law and fact in importing and using conjectures and fanciful theories and not evidence on record as his reasons to acquit the Respondents.
4. **Evidence in the Lower Court**

*Dr John Wesige, the complainant and principal witness in this case, testified that he responded to a WhatsApp advert where someone was selling land in Kilasa Village, Galilaya, Kayunga district. He was living abroad at the time. He asked Sylvia Samaya, a friend, to check on the land. Sylvia travelled to the land and found Hon. George Nsamba surveying it. He told her that it belonged to the first Respondent. The complainant then asked Ms. Sheila Kagoro, an advocate, to verify further and do due diligence on the land. She met the 1st Respondent, who confirmed that he owned the land. She negotiated the purchase price of the land at UGX. 800,000 (Uganda

Shillings Eight Hundred Thousand Shillings) per acre for the 300 acres that the complainant wanted to buy.*

Convinced about the land and having satisfied himself that the land was available, the complainant sent UGX. 30M through Western Union to the 1st Respondent to process the title. On 30th June, 2018, the complainant flew into the country. He met the surveyor, who confirmed that the land belonged to the 1st Respondent. At this point, the 2nd Respondent attended the meeting as a lawyer for the seller. On 2nd July, 2018, A2 and the surveyor introduced the complainant to A1 as the owner of the land. He drafted the agreement, which the parties signed. The 2nd Respondent endorsed the agreement using a stamp of M/s Oyugu, Twesige Advocates. The surveyor signed the agreement as a witness. It was agreed that the seller would hand over the land to the complainant within two months. This never happened as the seller disappeared and switched off his phone. However, the 2nd Respondent continued encouraging the complainant to be patient as the seller sorted out some issues concerning the land. Later, the 2nd Respondent contacted the complainant and told him that the seller required another UGX 10M to survey the land. The complainant sent the money through Jeremy, who deposited it in seller's Bank Account in Centenary Bank.

Around February/ March, the 2nd Respondent sent the complainant a copy of the title of the land. However, when the complainant did due diligence on the land, he found that the land had been sold to Modern Agriculture Infra Limited on 3rd July 2019. On contacting the 2nd Respondent and the surveyor about the land, they advised him to be patient as they sorted out the issues. He reported the matter to the Police, who arrested the Respondents. The 1st Respondent promised to refund the money to the complainant. It is worth noting that by the time the duo was arrested, the complainant had paid UGX.120M for the land. See PEX.2, PEX3 and PEX.5 to the 1st Respondent.

The complainant met the new buyers of the land, who promised to refund his money. Convinced, the complainant removed a caveat he had lodged. Unfortunately, the complainant never got the money. In cross-examination, the complainant told the court that the Indian owner of the company that bought the land disappeared after he removed the caveat. The complainant confirmed that by the time he purchased the land, it belonged to the 1st Respondent. This land was only transferred to Modern Agriculture on 3rd July, 2019. In cross-examination by the 2nd Respondent, he testified that he first met the 1st Respondent before meeting him. He denied sending money to him. He said his only complaint against the 2nd Respondent was a conspiracy to commit a felony and forgery of a stamp. In re-examination, the complainant testified that A2 acted as PR for A1 and was the only link to A1. He also said he had never seen a duplicate title in A1's name.

No.39448 DC Atoke Beatrice, the Investigating Officer in this case and PW2 testified that she learned from the Kayunga Land Board that the 1152-acre land belonged to the Indian. The land had been transferred from the 1st Respondent to Moden Agriculture Infra Limited. She and DC Chemutai searched the 2nd Respondent's vehicle Registration number, UAM 519U, where they recovered the original sales agreement for the land, a stamp in Kayima Andrew's name, and an acknowledgement letter by the 1st Respondent for UGX. 130M.

As part of their investigations, PW2 wrote a letter to the Chief Registrar inquiring whether the 2nd Respondent was an advocate. The Chief Registrar replied in the negative. In cross-examination by the 1st Respondent, she confirmed that the land was initially registered in his name before being transferred to Agriculture. In cross-examination by the 2nd Respondent, PW2 testified that the stamp of Twesigye Ouko Advocates was not recovered.

1. Representation

Ms. Apolot Joy Christine, a Senior State Attorney in the Office of the Director of Public Prosecutions, represented the Appellant. The 2nd Respondent was self-represented. The 1st Respondent did not show up in court.

1. Arguments of the Parties

2. The Appellant's Submissions

Appeal Grounds 1 & 2

Ms. Apolot Joy Christine, Senior State Attorney, argued grounds I and II of the Appeal together.

The Senior State Attorney submitted that at the no-case-to-answer stage, the prosecution does not need to prove the case beyond a reasonable doubt. She explained that at this stage, the prosecution only has to present a case requiring the accused to provide some explanation or risk conviction if he or she fails to present any evidence in rebuttal. She referred me to the cases of *Wabiro alias Musa v. R* [1960]EA 184; *Kadiri Kyanju and Others v. Uganda* 1974HCB 215; *Twagira v. Uganda Cr. Appeal No. 168 of 2002* and *Uganda v. Alfred Ateu* 1874HCB 179.

She submitted that the prosecution proved all the ingredients of obtaining money by false pretences contrary to section 305 of the Penal Code Act. The ingredients of the Offense are –

1. Presence of a false pretense
2. Intention to defraud
3. Obtaining from someone something of value that is capable of being stolen
4. Participation of the accused person.

She submitted that the prosecution adduced evidence showing how the complainant was lured by a WhatsApp advert about the land, which the purported sellers had put out. The First Respondent posed as the seller, and the second respondent posed as the lawyer for the 1st Respondent. The 2nd Respondent assured the complainant that the land was available, and the complainant paid

for it on this account. On receipt of the money, the 1st Respondent switched off his phone. At the same time, the 2nd Respondent continued to give false assurances to the complainant that all was well, whereas it was not.

She submitted that the Respondents had a dishonest intention when they purported to sell the land to the complainant. They knew their actions' probable consequences but chose to continue with them. She submitted that a person will be held liable when the consequences directly result from their actions. She submitted that the court could infer the parties' intention from post-sale conduct, which the Respondents exhibited by defrauding the complainant of UGX. 120,000,000.

Ms. Apolot submitted that the offence of impersonation, contrary to section 381 of the Penal Code Act, is committed when a person pretends to be someone else. The ingredients of the offense are:

1. Intentional conduct
2. False pretences
3. Deceptions
4. Harm or loss

She submitted that on June 30, 2018, the 2nd Respondent held himself out as an advocate when he acted as counsel for the 1st Respondent when the sales agreement between the complainant and the 1st Respondent was formalised. He acted as counsel for the 1st Respondent. He drafted the sale agreement. She submitted that the 2nd Respondent held himself out as an advocate, whereas he was not.

She referred me to the testimony of PW2, who testified that the Chief Registrar wrote a letter to the Police denying that the 2nd Respondent was an advocate. PW2 also testified that M/s Twesigye Ouko and Company Advocates denied that the 2nd Respondent was their employee. PW2 testified that the 2nd Respondent was found with a stamp of the law firm. She submitted that the 2nd Respondent's role was to deceive the complainant into believing that the 1st Respondent owned the land. The complainant was duped into paying UGX.120M for the land, and he did so on the strength of the 2nd Respondent, who had acted as an advocate.

On the charge of conspiracy to commit a felony, Ms Apolot submitted that the prosecution's evidence adduced sufficient evidence to warrant the accused persons to offer an explanation in defence.

Ground 3 of the Appeal

Ms Apolot submitted that the Trial Magistrate imported his ideas on the record when he observed that the 1st Respondent cheated the complainant when he got a better buyer for the land at UGX. 1,225,000 per acre for the entire land, including the 300 acres the complainant had bought. Yet none of the prosecution witnesses discussed an offer to buy this land at UGX. 1,225,000 per acre.

1. The Second Respondent's Submissions

The 2nd Respondent submitted that he never committed the offence of Obtaining money through false pretences. He said that he never received any money from the sale of land when the first Respondent sold land to the complainant. He submitted that there was no immoral intention to defraud the complainant, and the complainant did due diligence before buying the land. He insisted that he did not participate in any criminal way in depriving the complainant of his money and that, in any case, the matter was purely civil.

Concerning the offence of conspiracy, the 2nd Respondent submitted that the charges were brought under the wrong section. Conspiracy is provided for in section 390 rather than section 350(g) of the Penal Code Act under which he was charged. Additionally, he stated that the evidence presented by the prosecution was insufficient to sustain a finding of a **prima facie** case.

On a charge of personation, the 2nd Respondent stated that the prosecution failed to present a Kayima, whom he is alleged to have impersonated. Finally, concerning Ground III of the Appeal, the 2nd Respondent stated that the Trial Magistrate never relied on conjectures as he correctly evaluated the evidence on the record.

1. Resolution of The Appeal

6.0.1. Duties of an Appellate Court

This is a first Appeal. In *Kifamunte Henry v Uganda (Criminal Appeal No. 10 of 1997) [1998] UGSC 20*, the Supreme Court guided that:

The first Appellate Court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The Appellate Court must then make up its own mind, not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour, the Appellate Court must be guided by the impressions made on the judges who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not, which may warrant a court in differing from the Judge even on a question of fact turning on the credibility which the Appellate Court has not seen.* *See Pandya v R (1957) EA. Furthermore, even where a trial Court has erred, the Appellate Court will only interfere where the error has occasioned a miscarriage of justice. (See s. 331 of the Criminal Procedure Code Act).**

Therefore, I shall evaluate the evidence of the Trial Court, keeping in mind that I never had the chance to observe the witnesses' demeanour.

6.0.2. Consideration of the Appeal

I will consider grounds I and II of the Appeal because they were argued together. But before I go into the merits of the appeal, I will address the Appellant's argument that the Trial Magistrate misapplied the law on a **prima facie** case by judging the case on the standard of proof beyond reasonable doubt.

Section 127 of the Magistrates Courts Act provides that:

If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall forthwith acquit him or her.

While section 128(1) of the Magistrates Courts Act provides that:

(1)At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him or her to make a defence, the court shall again explain the substance of the charge to the accused, and shall inform him or her that he or she has the right to give evidence on oath from the witness box and that, if he or she does so, he or she will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask the accused whether he or she has any witnesses to examine or other evidence to adduce in his or her defence; and the court shall then hear the accused and his or her witnesses and other evidence.

The above provisions require the court to evaluate the prosecution's evidence to show whether a prima facie case has been made, requiring the accused to be put on his defence. The evidence presented must bring out all the ingredients of each of the offences. It should be supported by sufficient evidence to secure a conviction if the defence does not offer any evidence in rebuttal. Unlike a conviction, which requires proof beyond reasonable doubt, in a prima facie case, the prosecution only needs to show that it is likely or more probable that the accused committed the offence.

In **Uganda v Ojwiya Santo & 4 Others (Criminal Appeal No. 12 of 2017)** [2020] UGHC 140, the High Court observed that:

At the close of the prosecution case, sections 127 and 128 (1) of The Magistrates Courts Act, require the trial court to determine whether or not the evidence adduced has established a prima facie case against the accused. It is only if a prima facie case has been made out against the accused that he should be put to his or her defence (see section 128 (1) of The Magistrates Courts Act). Where at the close of the prosecution case a prima facie case has not been made out, the accused would be entitled to an acquittal (See **Wabiro alias Musa v. R** [1960] E. A. 184 and **Kadiri Kyanju and Others v. Uganda** [1974] HCB 215).*

[25] A prima facie case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence (See **Rananlal T. Bhatt v R.** [1957] EA 332**). The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted. It is the reason why in that case it was decided by the Eastern Africa Court of Appeal that a prima facie case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence. The prosecution though at this stage is not required to have proved the case beyond reasonable doubt since such a determination can only be made after hearing both the prosecution and the

defence.*

Proof of a prima facie case.

[26] There are mainly two considerations justifying a finding that there is no prima facie case made out as stated in the ***Practice Note of Lord Parker which was published and reported in [1962] ALL E. R 448*** and also applied in* ***Uganda v. Alfred Ateu [1974] HCB 179****, as follows: -*

1. *a) When there has been no evidence to prove an essential ingredient in the alleged offence, or*
2. *b) When the evidence adduced by prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable court could safely convict on it.*

I have read the record, and I agree with the Appellant that the Trial Magistrate acted overzealously in evaluating the prosecution's case. He subjected the prosecution's case to a higher standard than he should have ordinarily used in a normal prima facie case.

Grounds 1 & 2 of the Appeal

As a first appellate, I will be required to re-evaluate the evidence. I will subject the prosecution's case to a fresh evaluation to determine whether the Trial Magistrate arrived at the correct decision in holding that the prosecution had not established a *prima facie* case. I will now consider the respective offences i.e. Obtaining Money by False Pretense, Personation, and, Conspiracy to Commit a Felony.

1. Obtaining Money by False Pretences

The ingredients of the offence of obtaining money by false pretences contrary to section 305, which has been renumbered to S.285, of the Penal Code Act are:

1. Making a false pretense;
2. Intention to defraud;
3. Obtaining from someone something of value that is capable of being stolen;
4. Participation of the accused person;

Section 284 of the Penal Code Act defines a false pretence as:

Any representation made by words, writing or conduct of a matter of fact, either past or present, which representation is false in fact and which the person making it knows to be false or does not believe to be true is a false pretence.

The representation may be in words, writing, or conduct. The representation must relate to either a past or present fact. It must be factually false, and the person making it must neither know that it is not true nor believe it to be true. However, this provision does not cover future events.

In *Uganda v Muwawu* [2013] UGHCCRD 103, Justice Rugadya Atwooki observed that:

*The cases of *Mubiru Charles and Wasswa v. Uganda* [1994-95] HCB 46 and *Uganda v. John Kategaya* [1977] HCB 283 were relied on. In each of these cases it was held that to constitute an offence under this (Section 305) the obtaining of money or anything capable of being stolen must be a false pretence as to the past or present and such obtaining must be with intent to defraud...*

The case for the Appellants is that the Respondents made false representations to the complainant that they had land they were selling in Kayunga when, in fact, they did not either have the land or did not intend to sell it to him. The complainant testified that he saw an advert on a *WhatsApp* group in Jomayi where someone was selling land in Kayunga. He got interested in buying the land.

Since he was abroad, he contacted Sylvia, a friend in Uganda, to learn about the land. Sylvia made inquiries and confirmed that the land existed. The complainant then contacted his lawyer, Sheila Kagoro, whom he asked to do his due diligence. Sheila confirmed that the land was available after visiting the land. She found Hon. Kumama surveying the land. He confirmed that the land belonged to the 1st Respondent. At this point, the land was not yet registered in the name of the 1st Respondent.

Convinced about the existence and ownership of the land, the complainant entered into a contract with the 1st Respondent, where he agreed to buy 300 acres at a unit price of UGX. 800,000. He sent the first instalment of UGX. 30M through Western Union to the 1st Respondent. Out of this money, he made instalments of UGX.120M. Unfortunately, as the evidence reveals, the complainant, up to this day, has never gotten the land because the second respondent sold the land to Modern Agricultural Infra Ltd on 3rd July, 2019 after transferring the land into his name.

The second Respondent said he never made any representations to the Complainant about the land. He only got involved in the transaction after the first Respondent and the complainant agreed to buy the land. He argued that, in the circumstances, he did not make any representations to the complainant about the land. The Trial Magistrate found that the 1st Respondent offered to sell the land he owned to the complainant. In cross-examination, the complainant confirmed that the land belonged to the first Respondent at the time of the purchase.

The facts in this case are straightforward. It is a fact that the 1st Respondent owned land, which he advertised for sale through a *WhatsApp* group of Jomayi properties. The complainant got interested in the land. He conducted due diligence on the land, first through Sylvia, then Sheila Kagoro, an advocate, and ultimately himself when he visited the land. He established that the 1st Respondent owned the land through this due diligence. Convinced that the land was legitimate, he paid the initial instalment of UGX. 30M. It is worth noting that at this point, the second Respondent had not yet come into the picture. The 2nd Respondent got involved in the land transaction when drafting the sale agreement, acting as the 1st Respondent's advocate.

The land for which the complainant paid existed when he purchased it, although it was not yet registered in the 1st Respondent's name. The land was eventually registered in the 1st Respondent's name. Therefore, the 1st Respondent did not make false representations to the Complainant when he told him that he had land to sell and when he sold him the land. It may well be that misunderstandings developed between the parties. Still, these misunderstandings came after the 1st Respondent, having registered the land in his name, changed his mind and sold it to Modern Agricultural Company Limited.

Even if the 1st Respondent had made false representations to the complainant, the second Respondent could not be held culpable because he was not yet involved in the transactions. His role was to advocate for the seller, and this cannot, in the absence of criminal conduct, make him liable for the actions of the 1st Respondent. The Trial Magistrate was correct when he found that the Respondents never made false representations to the complainant.

Did the Respondents intend to defraud the complainant? It was incumbent upon the prosecution to prove that the Respondents made representation with the sole intention of defrauding the complainant. The representation must be made with intent to defraud. In the case of **Terrah Mukinda v. Rep.** [1966] EA 425 (CA), it was held that an intent to defraud is an essential ingredient of the offence of obtaining by false pretences. To defraud means to cheat, deceive, con, swindle, fleece or even take advantage of.

Lord Radcliffe in **Welham v. DPP** [1960] 1 ALL ER 805 stated that:

“deceit can involve a reckless indifference to truth or falsity as well as the deliberate making of false statements; and in all cases it may include the inducing of a man to believe a thing to be false which is true as well as to believe to be true what is false.”

Similarly, in **Re London and Globe Finance Corporation Ltd.** [1903] 1 Ch. 728 Buckley J., said that, “*a person acts with intention to deceive when he induces another to believe that a thing is true, which is false, and which the person practicing the deceit knows or believes to be false*.” I could not agree more.

In Muwawu's case (*supra*), Rugadya J, observed that:

*In **Re London and Globe Finance Corporation Ltd.** [1903] 1 Ch. 728 Buckley J., said that a person acts with intention to deceive when he induces another to believe that a thing is true, which is false, and which the person practicing the deceit knows or believes to be false. I could not agree more.*

The accused all along was aware that he had no gold to sell. He simply had some snippets of the same which he splashed around as samples and duped the unsuspecting complainants, willing and ready to make a quick financial kill, that he had 70 plus kilograms of gold for sale. He was all the time aware he had no gold to sell, and he sold none. The offer to sell gold was false. He made it knowing its falsity.

The case for the Appellant was that the Respondent intended to defraud the Complainant. The 1st Respondent pretended to be the seller while the 2nd Respondent posed as the Advocate for the 1st Respondent. The Appellant also submitted that the participation of the 2nd Respondent in the deal as the advocate for the 1st Respondent gave the complainant assurances that the land he was buying was genuine. The complainant testified that he did due diligence at three levels before purchasing the land. He first engaged Sylvia, a friend, to verify the existence of the land. Then, he asked his lawyer, Sheila Kagoro, to verify the existence of the land. Lastly, he visited the land to confirm its existence. The 2nd Respondent argued that he never intended to defraud the complainant because the land existed at the time of sale, and the 1st Respondent intended to sell the land.

A person acts with the intention to deceive when he induces another to believe that a thing is correct when it is not for his or her benefit. False intention may be proved through direct or indirect evidence to show that the accused person duped the complainant into acting to their disadvantage. The culpable party must act solely to gain an advantage from the complainant without offering them valid consideration.

I have considered the evidence on the record and found that the 1st Respondent, at the beginning of the transaction, had land which he genuinely offered to sell to the complainant. He exercised the right to sell when he sold to the complainant. However, he changed his mind after obtaining part of the purchase price and sold the land to a third party.

The fact that the 1st Respondent changed his mind after receiving part payment without additional evidence to show that he advertised the land to defraud the unsuspecting public is insufficient to prove that he intended to defraud the complainant when he agreed to sell the land. And in any case, in the offence of obtaining money by false pretences, the false representations must be either to the past or the present. It is never about the future.

About the 2nd Respondent, his role was limited to acting as an Advocate for the 1st Respondent. He took no part in the negotiations other than drafting and endorsing the sales agreement. Therefore, it is incorrect to say that the 2nd Respondent was purposely present to dupe or cause the Complainant to buy the land. The complainant purchased this land, having satisfied himself that it existed, as it did exist. The 2nd Respondent neither duped nor was he present to induce the complainant to buy the land.

Did the Respondents obtain anything that could be stolen? The prosecution's evidence did not show that the second Respondent received any money from the complainant; as well as from the first Respondent and acknowledged receipt of the money from the complainant.

Did the Respondents participate in defrauding the complainant? The second respondent's participation was restricted to serving as counsel for the first respondent. The first respondent sold the land to the complainant, but the deal fell through when he changed his mind.

In conclusion, since the prosecution did not establish all the ingredients of obtaining money by false pretences, the Trial Magistrate was correct when he concluded that a prima facie had not been made out.

1. Personation

Section 354 (1) of the Penal Code Act provides that:

Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour.

The offence of Personation is about assuming another person's identity by taking on their role, name and characteristics. It is about identity theft for wrongful reasons- where someone pretends to be the person or uses the person's identity information, whether by itself or in combination with identity information about any person, as it relates to the person using it. Therefore, the ingredients of this offence are:

1. Intent to defraud
2. False representation
3. Pretending to be someone living or dead
4. Participation of the accused person.

The Appellant submitted that the 2nd Respondent falsely presented himself as an advocate of the High Court and subordinate courts intending to defraud the complainant. The prosecution submitted that the 1st Respondent brought the 2nd Respondent on board to pose as his lawyer and give credence to the land transaction. The prosecution led evidence of PW2, who testified that they asked the Chief Registrar to confirm whether the 2nd Respondent was an advocate. PW2 testified that the Chief Registrar replied that the 2nd Respondent was not an advocate.

Furthermore, PW2 testified that M/s Twesigye, Ouko and Co Advocates, where the 2nd Respondent claimed to be working as an advocate, disowned him. The learned Senior State Attorney submitted that this evidence was sufficient to show that the 2nd Respondent falsely presented himself as an advocate when he was not. The 2nd Respondent argued that the prosecution failed to present a Kayima to show that he had impersonated him.

The history of this transaction may help to answer this question. This transaction started with the 1st Respondent advertising the land on a WhatsApp group. This is where the complainant got to know about the land. Having become interested in the land, the complainant did due diligence through Sylvia and Sheila Kagoro. He also visited the land and met the 1st Respondent. So, when he decided to buy the land, the complainant was satisfied that there was genuine land on sale. In fact, by the time the 2nd Respondent was introduced as the 1st Respondent's lawyer, the complainant had already paid a deposit of UGX. 30M for the land. So, it cannot be said that the 2nd Respondent held himself out as an Advocate to induce the complainant to buy the land.

Secondly, I expected the Appellant to have called evidence from the Chambers of the Chief Registrar of the Judiciary to show that the 1st Respondent was not an advocate beyond presenting a letter from that office that was not properly admitted in evidence. Equally, I would have expected the Appellant to have called a witness from the firm of M/s Twesigye, Ouko and Co Advocates to show that the 2nd Respondent was not an advocate in their firm.

The evidence, as called by the Appellant, fell short of proving that the 2nd Respondent held himself out as an advocate when he was not. In criminal law, the burden of proof lies on the prosecution to prove its case beyond reasonable doubt. The accused person never bears the burden of helping the prosecution to prove its case by filling in its gaps during the defence.

Furthermore, while the 2nd Respondent played a role in coordinating some activities between the 1st Respondent and Complainant, such as requesting UGX.10M to complete the survey of the land and passing on a certificate of title to the complainant, these fell short of establishing that the 2nd Respondent, by allegedly holding out as an advocate, intended to defraud the complainant. Lastly, the offence of personation involves stealing or falsely assuming the identity of a living or dead person. The prosecution never provided evidence to prove that the second Respondent had assumed the identity of any person.

In conclusion, the Trial Magistrate was correct in finding that the prosecution had not established a prima facie case of personation against the 2nd Respondent.

1. Conspiracy to Commit a Felony Contrary to Section 363 of the Penal Code Act

Section 363 of the Penal Code Act 128 provides that:

Any person who conspires with another to commit any felony or to do any act in any part of the world which if done in Uganda would be a felony and which is an offence under the laws in force in the place where it is proposed to be done, commits a felony and is liable, on conviction, if no other punishment is provided, to imprisonment for a term of seven years, or if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for a term of seven years, then to such lesser punishment.

The ingredients of the offense of conspiracy are:

1. The presence of an agreement
2. An agreement made between the two persons
3. The agreement has a criminal objective
4. The accused persons are responsible.

To conspire is to plan and act together secretly to commit a crime. It is also to combine or work together for any purpose or event. It is to act together towards the same result. See: *Ssimbwa & Another v Uganda* (Criminal Appeal 78 of 2024).

In *Osadolor v Uganda* (Criminal Appeal 138 of 2022) [2023] UGHCCRD 96, it was held that:

*“*The offence of conspiracy is committed when two or more persons agree to do or cause to be done an illegal or legal act by unlawful means. The offence is complete the moment such an agreement is made. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. The offence is complete as soon as there is a meeting of the minds and unity of purpose between conspirators to do that illegal act or legal act by illegal means*.” Also See DPP vs. Nock [1978]2ALL. ER 654. In R v Shannon (1974) 2 ALL ER 1009 on Pages 1020 – 1021, where the House of Lords observed that, “*Criminal responsibility is personal to an individual, even in the case of conspiracy*.”*

The Prosecution in the lower Court had to prove that the Respondents had an agreement, that the agreement was to commit a crime (in this case, to commit a felony), and that the accused persons were duly responsible. The offence of conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or a legal act by illegal means. The offence is complete the moment such an agreement is made. The Parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed upon has not been done. The offence is complete as soon as there is a meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. *See: Angodua v Uganda (Criminal Appeal No. 0013 of 2016).

The unlawful agreement that amounts to a conspiracy need not be formal or express but may be inherent in and inferred from the circumstances, particularly the declarations, acts, and conduct of the conspirators. In this case, the prosecution relied on the conduct of the 1st Respondent and the 2nd Respondent, who posed as seller and advocate, respectively, to dupe the complainant into purchasing the land. The prosecution also relies on the 1st Respondent's act of switching off his phone and the 2nd Respondent's behaviour of providing false hope that the issues were being addressed.

The Prosecution had to prove a meeting of the minds concerning a common design to do something unlawful, which they failed to do. The 1st Respondent did not pose as a seller because he was indeed the actual owner of the land; the land belonged to him. The 2nd Respondent acted as his advocate, whose purpose was to draft the agreement and witness as an advocate. The Prosecution did not adduce evidence to show proof of a common agreement between the Respondents. The 2nd Respondent came in after the pre-transaction steps had been taken between the 1st Respondent and the complainant.

Therefore, I cannot fault the Trial Magistrate's ruling that no prima facie case was established. In conclusion, I do not find merit in grounds I and II of the Appeal. The grounds are dismissed.

Ground of the Appeal 3.

The Appellant asserted that the Trial Magistrate imported new facts on the record when he observed that the 1st Respondent opted out of the sales agreement with the complainant when he got a new buyer who offered him UGX. 1,250,000 per acre, which was higher than the UGX. 800,000 per acre, which he had negotiated with the complainant. The 2nd Respondent stated that the Trial Magistrate correctly evaluated the evidence and made the right conclusions. There is

merit in this ground of appeal because none of the prosecution witnesses testified about the 1st Respondent being offered UGX 1,250,000 per acre for the land. Therefore, the Trial Magistrate imported these facts from materials outside the record. Ground III of the Appeal succeeds.

1. Decision

The Appeal is dismissed except for ground III, which succeeded. I direct the Deputy Registrar to return the file to the Trial Magistrate to continue with the trial of the 2nd Respondent on the count of forgery. It is so ordered.

Gadenya Paul Wolimbwa

JUDGE

March 26th 2025

I request the Assistant Registrar to deliver this decision on 31st March 2025.

[A black and white image of a person]

AI-generated content may be incorrect.](data:image/png;base64...)

Gadenya Paul Wolimbwa

JUDGE

March 26th 2025

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Prepared on 14 October 2026 · Esheria