

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF ENTEBBE
AT ENTEBBE

CRIMINAL CASE NO. ENT – 00 – CR – CO – 0482 – 2016
CRB.NO. 0414/2016

UGANDA

PROSECUTOR

VERSUS

A1. LULE WAMALA RICHARD
A2. KUTEESA JOSEPH
A3. TIBAMANYA ROBERT
A4. MUBIRU ARNOLD
A5. WASSWA HASSAN

ACCUSED

JUDGMENT

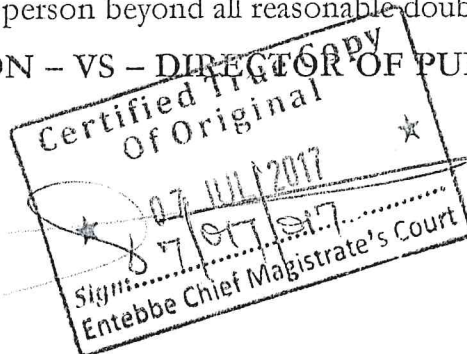
BEFORE HER WORSHIP MULONDO MASTULA, MAGISTRATE GRADE ONE

The five accused persons were charged with four counts, (3) three of which were for assault occasioning actual bodily harm C/S 236 and malicious damage to property C/S 335 (1) of the Penal Code Act 120.

Particulars of the offence in the 1st, 3rd and 4th count indicate that Lule Wamala Richard, Kuteesa Joshua, Tibamanya Robert, Mubiru Arnold, Wasswa Hassan and others still at large, on the 4th day of march 2016 at Entebbe Municipal Council Headquarters in the Wakiso District, unlawfully assaulted KIGONGO SSEBALAM, SEMPIJJA GODFREY and WILLIAM KAKOOZA thereby causing them actual bodily harm. And on the 2nd count, all the five accused persons with others still at large unlawfully and wilfully damaged a NIKON Camera and a T-Shirt the property of KIGONGO SSEBALAMU.

As it is a cardinal rule that in all criminal cases the burden of proof lies on the prosecution to prove the guilty of the accused person beyond all reasonable doubt.

See case of WOOLMINGTON – VS – DIRECTOR OF PUBLIC PROSECUTIONS [1935] also



UGANDA – VS – KIVUMBI AND 5 OTHERS CRIMINAL CASE NO. 0020/2011
and also

UGANDA – VS – ISABIRYE AND 3 OTHERS CRIMINAL SESSION CASE No. 78
of 2011.

It is also the duty of the prosecution to prove all the ingredients of the offence in issue i.e.

a) Assault occasioning actual bodily harm.

- Any hurt or injury.
- Caused wilfully and unlawfully
- Participation of the accused.

See case of R – VS – DONOVAN [1934] KB 498 wherein assault occasioning actual bodily harm was defined:-

“any hurt or injury which does not necessarily have to be permanent but must be more than merely transient and trifling I.e. bruising, cuts, lacerations, scratches or even knife wounds “etc.”

It was further re-echoed in case of MYLNTYRE – VS – R [2009] N.S.W. CCA 305 to mean *“something less than grievous bodily harm which requires really serious physical injury or wounding or which requires breaking of the skin”*.

Literally assault occasioning actual bodily harm would mean anything interfering with the health or comfort of a victim which is more than merely transient or trifling.

b) Malicious Damage to property.

- Act causing damage to be done deliberately and intentionally.

See case of RAIBLE – VS – THE STATE 1991 BLR 315.

Wherein it was held that *“the mens rea of the offence is created or expressed in the words wilfully and unlawfully, the injury to the property should not only be wilful but also unlawful, the ordinary. Meaning of wilful is deliberate or intentionally. When the act is said to have been done unlawfully it means that it was done deliberately and*



intentionally, not by accident or advertence. Therefore the state of mind Contemplated by the word "wilfully" means that the accused had an intention to do the particular kind of harm that was done or alternatively that he must have fore seen that that harm may occur, yet if a person intended to cause injury to a person, but instead caused injury to property the necessary intention would not have been established unless it is proved that the person acted recklessly not caring whether the property was damaged or not.

With regard to the requirement of unlawfulness, it must be proved that the act was unlawful. Thus if an accused person had a lawful excuses for his wilful act, his act would not be unlawful within the meaning of the section

In the instant case court heard evidence from seven (7) prosecution witnesses who gave sworn evidence (testimonies). PW1 told court that he had gone to the council to cover the elections for the people with disabilities he was attacked by the NRM youth supporters who did not want him to cover the same. That Ebamanya kicked him in the private parts and also pulled his collar of the T-shirt. Wasswa punched him on the head, Mubiru Arnold punched him in the ribs and on the back, then Kuteesa started pulling his T-shirt here and there.

In the process he was holding a camera which was on its stand. That Arnold tried to pull it away and Wasswa joined him in doing the same. In the process it fell off the stand. Wamala was just giving instructions or directions.

PW2 KAKOOZA told court that when he learnt that their colleague had been assaulted while covering the elections at the council, he also ran to the scene. Kuteesa prevented him from accessing the venue. Wasswa kicked him on the back while others pulled him here and forth in the process his shirt got torn.

This witness stated it categorically that it is Kuteesa and Wasswa who assaulted him, others just pulled him.



PW3 SEMPIJJA told court that when he reached the venue where the elections were being held, Kuteesa told others that "I know this one he is also a journalist" and that Lule Wamala kicked him in the abdomen. Arnold Mubiru boxed him on the right cheek, Tibamanya pulled his shirt and as he tried to run he fell on the ground and tore his trouser. He also said that Wasswa was part of the group but he did not beat him.

PW4 DIANA testified that she arrived and saw Kigongo after being assaulted and that Kigongo told her that it was Tibamanya who had done it and that she saw the camera stand but without the camera, she later saw it at police with a broken lens.

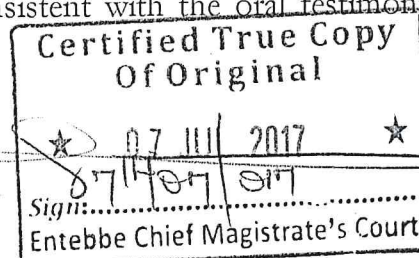
PW5 NAKIGANDA in her own testimony said that she saw with her own eyes Kuteesa assaulting Sempijja and later the others joined. This witness also identified the photos she had taken of the complainants while at police. PX/P3:

PW6 AUMA is the police officer who said that she received the file on 6th /03/2016 after the incident and that she exhibited the T-shirt.

PW7 DR.KALYESUBULA is the medical officer who examined all the (3) three complainants and he explained his findings as per the Police form 3 and the same were exhibited as EXP4, P5 and P6.

In defence all the five accused persons gave sworn evidence and they denied the charges. Some acknowledged seeing the complainant at the scene on that day the 4/03/2016 but denied ever interacting or assaulting them. Like DW1 Wamala he said he did not know the complainants before until this court case. DW2 said he knew Sempijja PW3 and that they studied together and also Kigongo Sebalamu. DW4 also said he did not know the complainants before this incident. DW5 said he knew one of the journalists as his neighbour.

Drawing from the evidence of the complainants themselves PW1 – PW3 each explained how he was assaulted and by who. Their testimonies were corroborated by that of the medical officer who examined each of them and even identified the police form 3s (EX/P4-P6). The evidence of PW7 was consistent with the oral testimonies of the complainants.



Further still the evidence of PW5 Nakiganda an eye witness corroborated that of PW3 Sempijja about his attack by Kuteesa and others.

With that evidence I find that the prosecution proved the first and second ingredient of the offence of assault against the complainants.

I SO FIND.

Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

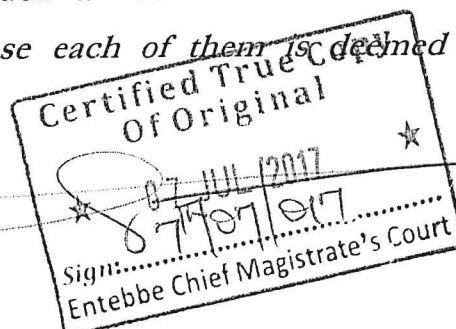
What remains unclear however is the participation of the accused person in the different counts.

In the first count of assault on Ssebalamu Kigongo he identified Tibamanya, Kuteesa, Arnold and Wasswa as the people who directly inflicted the injuries on him. However during both his evidence in chief and during further cross examination by the defences counsel Kikomeko Muhammad, he (PW1) insisted that Al Wamala Richard was the leader of the whole group and was directing the rest on what to do.

In a similar testimony (PW2) identified Wasswa Hassan and Kuteesa as the people who assaulted him but the whole group was there some just pulling him.

For (PW3) he said it was Kuteesa, Wamala, Tibamanya and Arnold who assaulted him that Wasswa was part of the group but did not participate and that he was watching.

In the case of UGANDA – VS – ISABIRYE AND 3 OTHERS, CRIMINAL SESSION CASE NO. 78/2001 Holden at Iganga High Court: Justice Angeim Flavia Senoga held that *“Where two or more persons form common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of that purpose an offence is committed of such a nature that it’s commission was a probable consequence of that purpose each of them is deemed to have committed the offence”*.



This holding is also in line with the provisions of section 20 of the Penal Code Act Cap 120.

In **BIRIKADDE – VS – UGANDA** [1986] HCB 6 it was held;

“To prove common intention, it is not necessary to prove prior agreement between the accused persons. It is sufficient to prove their intention which can be inferred from the presence of the accused, their omissions to disassociate themselves from the attack”

Drawing from the facts and evidence adduced by the prosecution and which evidence was never challenged by the defence, it is clear that the accused persons were all placed at the scene of crime – factors for identification were so convenient as it was during broad day both the complainants and accused were and are known to each other therefore there could be no mistake as to the identity of the accused persons.

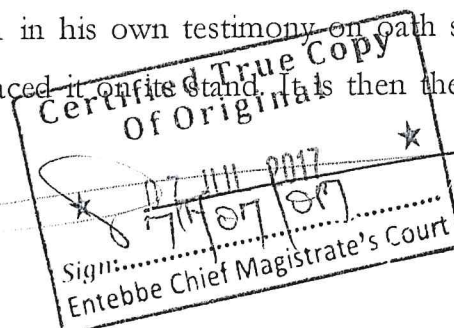
It is also clear that all the accused had a common intention of not allowing the journalists or media cover the election – which act at that point, was not unlawful as they might have had their own reasons. However in trying to stop the journalists they committed the offence of assault as against each of the complainants (see exhibit EX/P4, P5 and 6).

With that discussion above I find that prosecution proved their case in count I, III and IV as against all the five accused persons and as such, I find each of them guilty as charge on count I, III and IV and convict them accordingly.

I SO FIND.

Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

On the 2nd count of malicious damage, the prosecution had to prove that the camera was damaged plus the T-shirt and the act of damaging it was wilful (deliberate) and unlawful (without justifiable reason). PW1 in his own testimony on oath said when he reached the scene (Municipal Council) he placed it on its stand. It is then the accused person attacked



him stopping him from covering the election process. He said that Arnold tried to pull the camera away, Wasswa joined him in pulling and in the process the camera fell on the ground and its lens got broken.

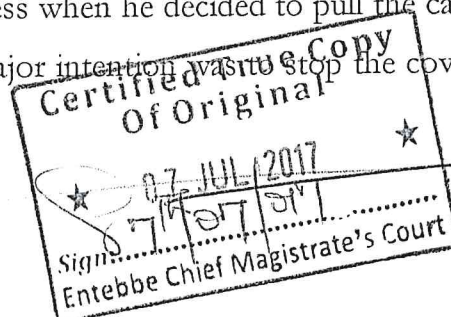
During further cross examination by defence counsel Muhammed, this witness maintained the same testimony. PW4 DIANA told court that when she arrived at the scene, she walked up stairs to where Kigongo was standing, that his black T-shirt was torn. That she saw a cameral stand without the camera itself, when she asked Kigongo, he said he did not know. And that was after the incident that she saw the broken camera at police. The said camera was tendered in court as EX/PI plus the black T-shirt which was torn on the upper side/part.

On the other side each of the accused persons denied the act of damaging the T-shirt belonging to Ssebalamu and the camera.

In the case of **RAIBLE – VS - THE STATE 1991 BLR 315**. It was held that the word wilful in the case of malicious damage means that the accused had an intention to do particular kind of harm that was done, or alternatively that he must have foreseen that that harm may occur, yet never the less he continued recklessly to do the act, if a person intended to cause injury to a person, but instead caused injury to property the necessary intention would not have been established unless not caring whether the property was damaged or not.

In the instant case and following my finding on the 1st, 3rd and 4th count I note that the accused persons attacked PW1 with the purpose of stopping him from covering the election, scuffle ensued wherein some of the Accuseds like Arnold, Wasswa and Tibamanya (as pointed out by PW1) tried to pull away his camera in the process the camera fell and got broken.

Comparing the holding in the above cited case of “RAIBE” with the facts at hand, I find that the accused persons were reckless when he decided to pull the camera several times and eventually it fell. And since there major intention was to stop the coverage, damaging of the



complainants camera served their purpose well. Therefore I find that their actions were wilful and unlawful (uncalled for given the circumstances) in the absence of a proper explanation for their actions.

I find the (5) five accused persons guilty as charged on the second count of malicious damage to property (T-shirt, camera) and further convict all of them accordingly.

I SO FIND

Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

29/03/2017

State: Christian

Baker court clerk

Accused present

Pros: All the Accuseds are in court, counsel Ntende on watching brief; Counsel Kikomeko Muhammedi for accused, matter is for judgment and am ready to receive it.

Counsel Kikomeko: Due to unavoidable circumstances, we could not make our submissions within the time allocated by court. We pray to be allowed four days to make our submissions and serve the state.

Pros: The case was fixed for judgment and if it is ready we are ready to receive it. But if it is not, we have no problem with counsel's prayer as long as he serves us in time.

Court: Court fixed the time schedule for the submissions in the presence of both the state and the defence and closing date was 15th/03.2017. Since they did not comply to what was agreed court went ahead and wrote the judgment and it is ready. Granting counsel's pray for adjournment will be useless when court has already prepared the judgement.

I SO FIND.



Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

Counsel for defence: Ready to receive the judgment.

Pros: Ready to receive the judgment.

Court: Judgment delivered in open court.

Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

Court: Matter is stood over.

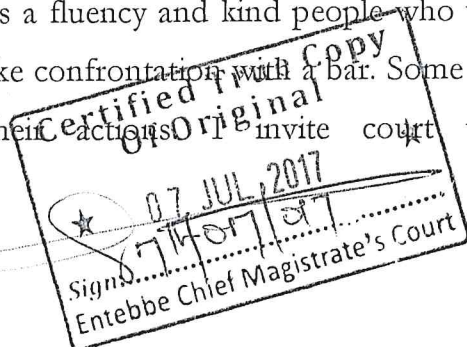
Court as before 1:25pm.

Pros:

Parties are as before, counsel Ntende on watching brief and counsel Kikomeko for defence. Matter is for submissions. The accused persons now convicts have no past criminal record however, I invite court to consider the fact that they wasted court's time and state resources, they caused lose to the complainants. They did not show any remorse during the trial. These cases are now rampant and especially done on the journalist. For that I pray for deterrent sentence to act as a bar to other potential offences. I further pray for compensation. I so pray.

Counsel for defence:

The convicts are first time offenders with no known past criminal record. Some of the convicts are holding positions of responsibility in the community like AI is LC councillor of Wakiso district engulfed with work. They are young men with young families e.g. AI has wife with kids to take care of. I invite court to consider the participation as some convicts has minor role. E.g. the record does not reflect that Mr.Wamala assaulted any one, he was just a by stander. The accused showed some remorsefulness during trial when they reached the complainants to have matter settled out of court. Ignorance of law is not defence but sometime it is a basis for court to reduce sentence in criminal justice (ODOKI) page 51 ignorance of the law can be considered by court to reduce sentence. Most of the convicts are illiterate people less a fluency and kind people who we think that a confrontation between parties would be like confrontation with a bar. Some are butcher men who would not know the result of their actions. I invite court to look at the victim culpability



- this was confrontation certainly one could not expect to standby. With this I invite this court to give the convicts a non – custodial sentence or a lower fine.

I so pray.

Signed: Mulondo Mastula
Magistrate Grade One
29/03/2017

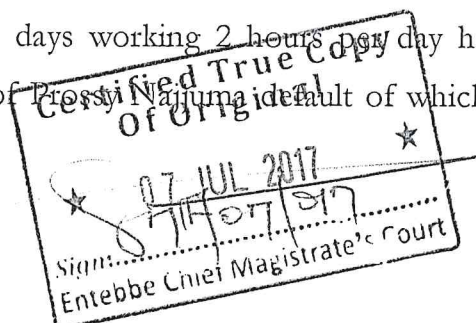
Court: I have heard the submission from both the state and defence. I also note that the accused persons are young men probably with young families but this in itself cannot make them innocent or mitigate what they did. Counsel for defence pointed out that Wamala AI did not participate wholly but was watching this is not true because in my judgement I pointed out the testimony of PW3 Sempijja who clearly pinned him as an active participant. On the same note I would like to appreciate the submission of the state on the fact that offences of this nature are on the rise and are mostly committed against the journalist, something that is so bad, belittling on the part of their profession. It is only the justice system that can put and or cheek acts of this nature by furnishing the culprits – by giving serious or reasonable sentences so that even those still out there are barred from doing the same. I thus sentence all the (5) convicts as follows.

On the first (1st) count to a FINE of shs 1,000,000/= out of which 750,000/= shall cater for the compensation of Kigongo the victim default serve 6 months.

On the third (3rd) count still a FINE of shs 1,000,000/= for each of the convicts out of which 750,000/= shall cater for compensation of kakooza default to serve 6 months.

On the fourth (4th) count a FINE of 1,000,000/= and out of which 750,000/= shall cater for compensation of Sempijja in default to serve 6 months.

On the 2nd (second) count I sentence each of the convicts to community service for a period of 30 days working 2 hours per day here at the court premises under the supervision of Prossy Najjuma default of which each shall serve 4 months. On the



part of compensation for the camera and T-shirt the prosecution did not state the value on the charge sheet nor prove the value during trial. Thus advise complainant to seek relief under the civil forum if he so wishes. The sentences to run consecutively.

I SO ORDER

Signed: Mulondo Mastula
Magistrate Grade one
29/03/2017

Court: Right of appeal explained.

Signed: Mulondo Mastula
Magistrate Grade one
29/03/2017

Certified True Copy
Of Original
07 JUL 2017
Sign: [Signature]
Entebbe Chief Magistrate's Court

CERTIFIED

