THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT ARUA

[Coram: Barishaki, Mugenyi & Gashirabake, JJA]

CRIMINAL APPEAL NO. 027 OF 2017

(Arising from Criminal Case No. 0141 of 2006)

BETWEEN

1. OMIRAMBE JIMMY
2. OYENY EMMANUEL
3. OMIRAMBE DAVID. ..... APPELLANTS

AND

UGANDA ..... RESPONDENT.

[Arising from the decision of STEPHEN MUBIRU, J of the High Court of Uganda sitting at Arua in Criminal Case No.0141 of 2006 dated 24th January 2017]

JUDGMENT OF COURT.

Introduction.

The Appellants and others at large on the 15th August 2015 at Angaba Lower village in Zombo District allegedly willingly and unlawfully robbed Ocan Wilson of six goats and one pig valued at UGX 600, 000/= and robbed Warom Charles of a pair of shoes and T-shirt worth Shs. 38,000/=. In both cases the accused, immediately before or after the said robbery threatened to use a deadly weapon to wit bows, and arrows on each of the named victim and set fire to the house of Okumu Malisaters, the house of Jawiambwe Moses, the house of Obemu Albert, the house of Otwing – Cwinyi Albert, the house of Ocan Wilson, the house of Afoyocan Maurine and the house of Warom Charles.

When the above events took place, the complainants were in the garden about 60-70 meters from their houses. They were attacked by a group of around thirty people who included the accused, blowing horns making a lot of noise and armed with bows, arrows and pangas. The group was led by a one Naal. They insulted the witnesses, set fire to PW2's house, the houses of Obengu, Otwing – Cwiny, Jawiambe Moses and many other people. They shot arrows at them and one of the arrows struck Warom Charles in the chest. PW2 saw A2 unfetter his goats and a pig and took them away. He again saw A1 attack PW3 with a panga.

In their defence, the Appellants denied the allegations labelled against them with A1 stating that he was attending prayers that day and later passed time at the trading centre. That he only learned about the incident when he was arrested at around 5:00 pm saying that Angaba was the one falsely accusing them of having been involved in the fight. A2 stated that he was arrested at around 5:00pm. He had spent part of the day in his garden burning charcoal and for the case of A3, he stated that he was arrested when he had gone to his in-law to see the land which had been given to her and in course of asking for directions he was arrested at around mid-day, being a stranger in the area

The Appellants, were convicted on 2 counts of aggravated robbery contrary to Section 285 and 286(2) and 7 counts of Arson contrary to Section 237 (a) of the Penal code act cap 120 by the High Court of Uganda sitting at Arua and subsequently sentenced to 28 years and 6 months imprisonment in respect of count 1 and count 2 and 5 years imprisonment for counts 4, 5, 6 ,7, 9 respectively. Dissatisfied with the decision of the trial Court the Appellants filed an appeal in this court on grounds that:

1. The learned trial Judge erred in law and in fact when he wrongly evaluated the evidence presented before him on record thereby arriving at a wrong decision to convict the Appellants.
2. The learned trial Judge erred in-law and in fact when he ignored the gross inconsistence and contradiction contained in the prosecution evidence that went to the root of the case.
3. The leaned trial Judge erred in law and fact when he chose to place a heavy burden of proof on the Appellants to prove their innocence therefore occasioning a miscarriage of justice to the Appellants.
4. The learned trial Judge erred in law and in fact when he sentenced the Appellants to an excessive prison sentence, in disregard of the Constitution (sentencing Guidelines for courts of Judicature) (practice) Directions, issued in 2013.
5. The learned trial Judge erred in law and fact and arrived at a wrong decision to convict the Appellants on Counts 2, 4, 5, 6, 7 and 9.

Duty of the 1st appellate court

The duty of this court as a first Appellate Court was stated in the case of **Kifamunte Henry V Uganda, S.C Criminal Appeal No. 10 of 1997** where court held that;

> "The first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."

This Court therefore has a duty to re-evaluate the evidence to avoid a miscarriage of Justice as it mindfully arrives at its own conclusion.

Representation

The Appellants were represented by Mr. Madira Jimmy. The Respondent was represented by Ms. Sharifah Nalwanga.

Submissions of Counsel for the Appellant.

Counsel for the Appellants argued grounds 1, 2 and 3 jointly.

Counsel submitted that the position of the law is settled under Section 103 of the Evidence Act Cap 6 which provides that the burden as to the existence of a particular fact lies on the person who wishes court to believe in its existence, unless it is provided by law the proof of that fact shall lie on any particular person who alleges that fact.

Counsel submitted that the Prosecution case can only succeed on the strength of the Prosecution case and not on the weakness of the defence. See **Sekitoleko vs. Uganda (1967) EA 531, Woolmington vs. DPP (1965) Ac 462.** Counsel submitted that by their plea of not guilty, the accused persons put in issue every essential ingredient of the offence with which they were charged and the prosecution has the onus to prove each of the ingredients of the offence beyond any reasonable doubt.

It was the submission of counsel for the Appellants that the trial judge erred in law and in fact. He failed to evaluate the evidence presented before him on record and thereby arrived at a wrong decision to convict the Appellants thus occasioning a miscarriage of justice.

Counsel submitted that the trial judge stated that '*the evidence on record does not connect each and every accused person and every count*". The trial judge having found so he ought to have held that the prosecution had failed to prove

by evidence each and every ingredient of the offence against the accused persons but instead the judge chose the doctrine of common intention to convict the Appellants.

Additionally, counsel submitted that the trial judge therefore misdirected himself and misapplied the principle of common intention to the facts to find the accused persons guilty and to convict them on the indictment. He argued that the participation of every person must be established.

Counsel further argued that the allegation and contention that two or more persons set out to prosecute an unlawful purpose in conjunction with one another and in the prosecution of that purpose an offence is committed, each of them is deemed to have committed that offence, is not good law. It provides a fertile ground for conviction of innocent persons whose liability and participation has not been proven by evidence. Moreover, the essential ingredients of each offence the accused persons had been charged with are not the same and thereof lining each of them to take responsibility for actions of other persons is against the principles of criminal liability and the law.

Counsel submitted that the Appellants testified on the fact that they were not around when the said offences were committed. A1 stated that he was attending prayers that day and later in the day passed time at Palera trading centre and that they were arrested when they failed to run away like others who did. The trial Judge not only failed to consider but also to give weight to this essential piece of unrebutted evidence that led to arrest of accused persons and the learned judge never considered it to the prejudice of the accused persons.

Counsel submitted that for the case of A2, he had spent part of the day in his garden burning charcoal and for A3 at the time he was arrested, he had gone to

see his sister in law to see the land which had been given to her. Each of these accused persons raised the defence of alibi which they are under no obligation to prove.

Counsel submitted that the case for the prosecution had many inconsistences and contradictions that went to the root of the case. The trial judge ignored their weight and wrongly evaluated them, had he properly and adequately addressed his mind to them he would have probably come to a different conclusion.

Counsel submitted that PW2 stated that the accused persons were about 30 in number as stated by PW4 and that when the incident happened that they took his goats when he was about 50 -60 meters on which he changed to 60-70 meters on cross examination. He stated that he did not know the person who took his goats and indeed there is no person who was specifically implicated in the taking of the goats.

Additionally, counsel submitted that the learned Judge relied on inadequate evidence to hold that the Prosecution had discharged burden to prove essential elements of the offence of robbery such ownership and asportion. It is submitted that the possibility that the animals were untied and escaped on their own was not explored.

Counsel submitted that if the trial Judge had properly and adequately addressed his mind to these facts, He would have come to a different conclusion that the element of ownership of property and their asportion as an essential element of the offence of theft or aggravated robbery has not been established by evidence.

Counsel further submitted that the essence of the offence of aggravated robbery is not only taking of property but rather taking the property in possession of

another by use of force or threat of force or violence and or putting the victim in state of fear by use of a deadly weapon, which has not been established here.

On identification, counsel submitted that PW Ocan Wilson said he knew A1 and A2 but did not know A3. However, in cross examination when asked to identify and distinguish A1 and A2 he failed. The witness instead said he knows A1 but does not know A2 and A3 and went further to say that he only knew A1 on the day of the alleged incident.

Counsel submitted that much as the incident is alleged to have taken place at day time the conditions for proper identification did not obtain due to the abrupt nature of the events that gave no sufficient time for identification of the assailants. The witnesses were all far from the assailants ranging from 60-70 meters, in a garden that has bushes and crops, which hindered them seeing the Appellants.

Counsel submitted that these were major contradictions which the trial judge failed to evaluate the evidence thus arriving at an erroneous decision which occasioned a miscarriage of justice to the Appellants. Counsel cited **Alfred Tajar vs. Uganda Criminal Appeal No. 167/1969 and Kazarwa vs. Uganda, Criminal Appeal No.17 of 2015.**

Submissions of Counsel for the Respondent.

Counsel submitted that the learned trial judge so rightly evaluated the evidence presented before him thereby arriving at a correct decision. Counsel submitted that PW2, PW3, PW4 and PW5 recognised the three Appellants. The Judge then cautioned himself against reliability of the evidence of visual identification made by each of the witnesses although the events had occurred during day time also considering that all the accused had raised the defence of alibi. Counsel stated

that the trial Judge cited **Sekitoleko vs. Uganda, (1976) EA,** which cautions court on identification issues.

Counsel argued that the trial judge looked at the chaotic and violent nature of the attack and whether it could have hampered correct identification. Counsel submitted that the trial court observed that the offences were committed in broad day light, out in the open, in close proximity of the identifying witnesses who had ample opportunity to see the accused since it was a prolonged attack and some of the witnesses knew the accused before the date. The Judge in conclusion found that the evidence of identification was free from the possibility of error and found that each of the accused were squarely placed at the scene of crime as an active participant in one or another of the counts. Counsel cited **Abdulla Nabulere and others v Uganda COA No.09 of 1978.**

Counsel submitted that in the instant case, the quality of identification was good, the crime was committed in broad day light, at close proximity, the Appellants were known to the witnesses

Counsel cited **Obwalatum Francis v Uganda, SCCA No. 30 of 2015, the court cited Wanjiro Wamiro v. R (1955)22 E.A.C.A 521,** where it was held that it is immaterial whether the original common intention was lawful so long as the unlawful purpose develops in the course of events.

Consideration of Court

According to the evidence on record the Appellants and the others at large were indicted on 9 (nine) counts. The trial Judge tried them on all the counts. He however acquitted the Appellants on Counts 3 and 8 of the offence of Arson contrary to section 237 (a) of the Penal Code Act.

The trial court however found them guilty in respect to counts 1 and 2. Each Appellant was convicted of the offence of aggravated robbery contrary to Sections 285 and 286(2) of the Penal Code Act. Court also found the Appellants guilty in respect of counts 4, 5,6 ,7 and 9 where each party was convicted of the offence of Arson contrary to section 237 (a) of the Penal Code Act in respect of counts 4,5,6,7 and 9.

In evaluating evidence on record, we will first consider count 1 and 2 which is in respect of Aggravated Robbery. For the Appellants to be convicted of the offence of aggravated robbery the prosecution had the burden of proving the essential ingredient against the Appellants beyond reasonable doubt. **See Woolmington vs. DPP [1935] UKHL.**

According to **Miller vs. Minister of Pensions [1947] 2 ALLER 372**, proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt.

Accordingly, in the circumstances of this case the prosecution on count 1 and 3 ought to have proved beyond reasonable doubt:

1. Theft of property belonging to another
2. Use of threat or violence during the theft
3. Possession of a deadly weapon during the commission of the theft.
4. The accused participated in the commission of the theft.

The prosecution averred that the 3 Appellants and others still at large, on the 15th August 2015, at Angaba Locer village in Zombo District while armed with bows, arrows and pangas robbed Ocen Wilson and Warom Charles of their properties namely 6 goats and 1 pig worth 600,000/=, a pair of shoes and a T-shirt worth 38,000/=.

Proof of theft

Theft of the items in the indictment was not contested. According to Section 254 Penal Code Act (PCA), theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen. In the lower Court the Prosecution relied on the evidence of PW2, PW4 and PW5.

PW2, averred that the Appellants took the goats and one pig, during cross examination he further stated that they looked for them but they could not find them. While PW 4, stated that the Appellants picked his jacket.PW5 stated that the Appellants started picking goats from his neighbors, when the Appellants left the goats were missing and could not be found. His groundnuts were also taken.

The items in count 1, of goats and one pig were valued approximately at 600,000/= and items in count 2, a pair of shoes and T-shirt were worth 38,000/= are capable of being stolen. We are convinced that this ingredient was satisfied beyond reasonable doubt

Use of violence during the robbery

According to the prosecution evidence, all the witnesses PW2, PW3, PW4, PW5 and PW6 testified that there was use of violence during the attack. On this ingredient the trial court held that:

> "in proof of this element, the court was presented with the oral testimony of PW2 Ocan Wilson who said the assailants shot arrows at them and set houses on fire. PW3 Afworoth Maureen testified that she was cut with a panga and showed a scar to court. PW1 Okello Ronald examined her on 22nd August 2015 and his report P.E.X.1, confirmed existence of that injury. PW4 Warom Charles testified that it a one Naal shot him with an arrow. PW 5 Jawiambe

> Morris said the assailants shot arrow at them and set houses on fire. He also witnessed the attack on PW 3 and her baby"

There was indeed use of violence during the offence and we conclude that this ingredient was also proved to the required standard.

Use of a deadly weapon

It is provided under Section 286(3) (a) (i) of the Penal Code Act that,

> "Deadly weapon" includes any instrument made or adopted to .....stabbing.....or any imitation of such instrument which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person, that it is likely to cause death or grievous harm..."

According to PW 2, PW3, PW4, and PW5, all testified that the assailants were armed with bows, arrows and pangas. In her testimony P3 testified that she was cut with a panga and an attempt was made on her baby. PW4 testified that he was shot with an arrow. There is no doubt that pangas and Arrows are a deadly weapon as they are made for cutting and piercing and can be adapted for stabbing See **Wasajja Vs. Uganda [1957]1 EA 181 (CAK). In Mudasi Vrs. Uganda [1999]1 EA, 193** court held that a club was held to be a deadly weapon

We therefore concur that the trial Court rightly found that this ingredient was proved beyond reasonable doubt.

Proof of participation of the accused persons

In his evidence PW2, testified that he knew A1 and A2 but he did not know A3. PW 3 on the other hand testified that she knew A1 and she did not know the others. Whereas PW4 averred that he knew A1 and A2. He additionally stated

that Naal was among them. He also knew A1 and A2 before the incident. PW5 testified that he knew A1, A2 and A3. The evidence of these witnesses proved that the Appellants participated in said offence.

The Appellants were acquitted on counts 3 and 8. Under this offence of Arson the prosecution has to prove beyond reasonable doubt that:

1. Setting fire to a building
2. The fire is set unlawfully and willfully
3. The accused set the fire.

As we re-evaluate the evidence on record, it is the role of this Court to establish that the prosecution proved beyond reasonable doubt that fire was set to a dwelling house. It must be proved that this was as a result of a deliberate act and not accidental. In this case there was the undisputed testimony of PW2, PW3, PW4 and PW 5 who testified that there was fire on the dwelling house. While analyzing the evidence the trial court held that:

> "in the instant case, there is no evidence to suggest that the fire was a mere inadvertent or accidental occurrence but rather a deliberate act. PW4 testified that it was A1 who lit the fire. Pw4 Warom Charles and PW 5 Jawiambe gave an eyewitness account of how the houses were set on fire by the assailants, starting with that of Onen, then they continued to the rest. PW2 testified that his house, that of Obemu Albert, Otwing –Cwinyi Albert, Jawiambe and many other houses were burnt. PW5 testified that A3 gathered clothes that had been put out to dry, threw them inside the house and set it in fire. PW6 Obemu Albert too testified that his house was burnt down. Although in the seven counts it was alleged that houses belonging to Okumu Malisters in Count 3, Jawiambe Moses in count 4, Obemu Albert in count 5, Otwing- Cwinyi Albert in count 6, Ocen Wilson in count 7, Afoyocan Maurine in count 8, and Waron

> Charles in count 9, there is no evidence before court in relation to the house of Okumu Malisters in count 3 and that of Afoyocan Maurine in count 8"

The Court appropriately evaluated this ingredient to the satisfaction of the standard beyond reasonable doubt.

Under the second ingredient it is for the Appellants to prove that the fire was set unlawfully and willfully. Black's Law Dictionary defines the word *willfully* as *"voluntary and intentional, but not necessarily malicious."* The word *unlawful* is defined in the same dictionary as *"violation of law, an illegality."* The prosecution must prove that there was deliberate act of setting of fire. This was elaborately handled by the trial Judge on page 8 and 9 of the Judgement and we find nothing to fault him.

Lastly, the evidence implicating the Appellants in setting the fire must place them at the scene of the crime. All prosecution witnesses gave direct evidence of the participation of the Appellants in this offence which was consistent among all the witnesses. The lower court also properly assessed the evidence of the Appellant's participation. We find that this was proved beyond reasonable doubt. On the issue of identification, it was counsel's submission that the circumstances were not favorable for proper identification of the Appellants. This court in **Abdalla Nabulere and Other v Uganda (Criminal Application 9 of 1978) [1978] UGSC 14 (05 December 1978)** held that:

> "Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one and that

> even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances in which the identification came be made, particularly, the length of time the accused was under observation, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good, the danger of a mistaken identity is reduced but the poorer the quality, the greater the danger."

From the Above precedent, court set out the standard of identification. Court needs to establish the following:

1. Warning himself and assessors on the special need to caution before convicting
2. Examine closely the circumstances which identification are made.
3. Length of time accused was under observation.
4. Distance
5. Light
6. Familiarity with the witnesses with the Appellants.

According to the record of Appeal at page 10 and 11 of the judgement is evidence that the trial judge warned himself of the circumstances under which the attack was made. He noted that, "*I have considered the chaotic and violent nature of the attack and whether this could have hampered correct identification.*" The trial Judge evaluated the fact that the PW2 knew A1 and A2 before the attack. Whereas PW3 saw A1 because the proximity of the attack with the panga. PW4 knew A1 and A2 before the attack. Whereas PW5 observed A3 unhang dry clothes and threw them into the house to be burnt.

With regard to light, PW 2, PW 3, PW4, PW5 and PW 6 testified that the attack was at approximately 11 and 12 a.m. This means the offences happened during broad day light. It is therefore not in dispute that this matter passed the test of identification laid down in **Abdulla Nabulere' case** (*Supra*).

Turning to the law of contradictions and inconsistencies, we agree with the submissions of counsel of the Appellant and Respondent on the law of inconsistencies. Counsel for the Appellant stated that the trial court ignored the contradictions that went to the root of the matter.

It is our observation that the Appellants did not point out any pieces of the prosecution evidence that were inconsistent in this matter. To the contrary, the prosecution was consistent and reliable. We therefore find no merit in this allegation by the Appellants counsel.

Consequently, it is our finding that grounds 1, 2, and 3 lack merit.

Ground 4

Submissions of counsel for the Appellants

Counsel for the Appellants submitted that the trial court after giving reasons for the sentence of arson went ahead to sentence them to five years imprisonment but without deducting the period of one year and six months the Appellants spent on remand according to Article 23(8) of the Constitution of the Republic of Uganda 1995. Counsel cited **Byamukama Herbert vs. Ug. Criminal Appeal No. 21 of 2017 and Abele Asuman vs. Ug Criminal Appeal No. 66 of 2016**.

Counsel further submitted that the fact that the judge lumped a prison sentence of the 28 years imprisonment for two counts of aggravated robbery together with 5 years imprisonment for the 5 counts of arson and ordered then to run concurrently, that makes the combination of the sentences irregular and unlawful thus being harsh and excessive in the circumstances.

Submissions of Counsel for the Respondent

Counsel submitted that the sentences were not excessive in the circumstances. He submitted that the evidence was properly evaluated to arrive at the sentence handed down to the Appellants.

On the offence of arson counsel conceded that the trial court did not take into consideration the years spent on remand.

He however cited **Karisa Moses vs. Ug. SCCA No. 23 of 16,** where court cited **Kiwalabye Bernard vs. Uganda Criminal Appeal No. 143 of 2001,** where court held that the Appellant court will be hesitant to interfere with discretion of court in sentencing.

we disagree with Counsel for the Appellant that the sentences were lumped together. The trial judge handled count by count.

We however agree with the submissions of counsel for the Appellant that the trial judge did not take into consideration the 1 year and six months spent on remand while considering the offence of arson. This is contrary to contrary to Article 23(8) of the Constitution. Having failed to do the said sentence is illegal and warrants the interference of this court.

The sentence of five years is therefore reduced from 5 years after deducting the period spent on remand to 3 (Three) years and 6 months.

Ground 5

Counsel for the Appellant submitted that Plea taking is a fundamental principle of a fair trial as enshrined under article 28(3)(b) of the Constitution which provides that everyone charged with a criminal offence shall be informed

immediately, in the language that the person understands of the nature of the offence.

Counsel submitted that section 60 of the Trial on Indictment Act, cap 23 provides for mandatory taking of Plea by accused persons to the indictment. Counsel submitted that the Appellants were charged with two distinct offences:

1. 2 two counts of the offence of Aggravated robbery contrary to section 285 and 286 and
2. 7 counts of the offence of Arson, contrary to section 327 of the Penal Code Act and 9 counts.

Counsel submitted that the record shows that the accused persons pleaded to count one of the indictment only, which was read and explained to them in Alur language. He further submitted that the accused persons did not plead to the rest of the counts 2, 3, 4, 5, 6,7 ,8 and 9 neither were they explained to the accused persons.

Counsel submitted that this was a major incurable procedural irregularity in the trial process that rendered the proceedings a nullity and occasioned an injustice to the Appellants as evidence was led against them and subsequently convicted for an offence they had not been charged.

Counsel further submitted that procedure of plea taking is laid down in the case of **Adan vs. Republic, (1973) EACA.** One of the underlying principles is that, where a charge or indictment contains several counts the accused must be asked to plead to them separately and this was not followed, as none of the Appellants pleaded separately.

Counsel submitted that **in Rev father Santos Wapokora vs. Uganda, Criminal Appeal No. 204 of 2012**, it was held that the appellant was convicted on an indictment to which he never pleaded, and the trial was accordingly a nullity.

That the proceedings of the trial were also set aside, and the conviction and the sentence too were quashed.

Counsel asked that these proceedings be quashed.

Counsel for the Respondent did not respond to this ground.

Consideration of Court.

Section 60 of the Trial on Indictment Act provides that:

> "The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court; and the accused person is entitled to service of a copy of the indictment, he or she shall object to the want of such service, and the court shall find that he she has not been duly served with a copy"

This was re-echoed in **Adan vs. Republic, [1973] EA 445** at page 447, The East African Court of Appeal set down a procedure and held that:

> "When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can peak and understand. The magistrates should then explain to the accused person all the essential ingredients of the offence charged. if the accused person, then admits all those essential elements, the magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrates should record a change of plea to "not guiltily" and proceed to hold a trial."

From the record it is evident that the learned trial Judge followed the procedure laid down in **Adan v Republic** (*Supra*) during the plea taking by the Appellants.

Though it must be appreciated that the emphasis of this procedure is in regard to accused persons who have pleaded guilty. This was not the case in the circumstances in this case. It is indicated that the indictment was read and explained to the accused persons in Alur, and they all denied the facts stating that they are lies. A Plea of not guilty was entered and court proceeded on trial.

Criminal proceedings have serious implications on the life and liberty of persons accused depending on the offence charged. Criminal procedure is designed with safeguards in such a way that only the guilty should be convicted. Some of the safeguards include the detailed Plea taking process.

We acknowledge in the circumstances of this case that the indictment was read in an omnibus way contrary to the practice of the accused persons pleading to each count as the practice is in criminal proceedings. Ordinarily this would be fatal if the Appellant had pleaded guilty to the indictment.

However, this case is different because the Appellants pleaded not guilty to the indictment and a Plea of not guilty was entered on each of the accused persons. The accused persons had the opportunity to confront and challenge the prosecution evidence against them. During the trial the Appellants had the opportunity to make submissions to persuade the court that they are innocent as regard to each count. They were given opportunity to call evidence against the prosecution. The burden to prove the case beyond reasonable doubt does not rest upon them but the prosecution.

Given all the safeguards during the trial, we are of the view that the failure of the trial court to give the Appellants an opportunity to plead on each count would not change the outcome of the case since their plea would have been the same plea of not guilty.

A look at the record of appeal reveals that the trial court led evidence against all the counts and the Appellants were given an opportunity to dispute this evidence through cross examination. It is our opinion that the Appellants did not suffer any miscarriage of justice because of this omission during trial. The results would have been different if the Appellants had been convicted on a plea of guilty, this would have an implication of affecting the right to fair trial. Which is not the case in this matter. In this case the Appellants enjoyed their right to a fair trial through a full trial.

We therefore do not agree that these proceedings should be quashed. We find that this ground fails.

It is our finding that the Appeal lacks merit.

1. The conviction of the lower court is upheld
2. The sentence of the lower court is upheld

We so hold.

Dated at Arua this 28th **of** April **2022**

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CHEBORIONBARISHAKI

JUSTICE OF APPEAL

5 .....

MONICA MUGENYI

JUSTICE OF APPEAL

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10 **CHRISTOPHER GASHIRABAKE**

JUSTICE OF APPEAL