

the kraal
in Kabarole District. He apparently closed/for he alleges that when he checked the same the following day he found it broken into.11 of the head of cattle were missing. At the scene it is alleged there were shoe and foot-marks. The trail of the marks was followed and tracked up to Rwimi, Kabarole District where the complainant found A3 and A4 under arrest. They had been intercepted by the army, under Lt. Ibrahim Tugume (P.W.II). On arrest with the cows in issue A3 and A4 asserted that the cows were handed to them by AI, David Kacunda, the present appellant. Consequently the appellant was also arrested, charged and tried with A3, A4 as already indicated.

The explanation or the defence given by the appellant is an alibi. He testified on oath and asserted that on the material night he was at home with his relatives who included William Kato described as D.W.I by the trial Court. The Chief Magistrate does not appear to have treated the accused persons who testified on oath as defence witnesses. William Kato (D.W.I) stated that the appellant was with him on the material night until bed time. The following day the appellant left for work and returned home at about 6.00 p.m. He (appellant) is a teacher by profession. At no point in the Chief Magistrate's judgment is the defence account treated as an alibi. Evidently it is an alibi for the accused is saying that he was at home and not at the scene when the animals were stolen. As is well known a Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case - S. II2 of the Evidence Act (Cap 43 Laws of Uganda). Needless to emphasise this section is the origin of the doctrine of recent possession. A Court may presume that a

The trial Magistrate purportedly found the required corroboration in the testimony of A1, the appellant whereat he asserted that he did not know A3 and A4. To the trial Court this proved that A3 and A4 had no motive to falsely implicate the appellant. This was a gross misdirection on the part of the Magistrate. I have already outlined why an accomplice may falsely swear and falsely implicate the accused. Indeed as a matter of logic a stranger would not easily pass property to a person he does not know or trust except may be in the market overt. But this was a case of handing over property and cattle at that, at night. It is not likely that A3 and A4 told the truth on this vital aspect of the case. It is also significant that the trial Court did not address its mind to the alibi set up by the accused, a matter which is so trite in view of so many authorities on the matter. It is the duty of the Court to direct its mind to any alibi set up by the accused and it is only when the Court comes to the conclusion that the alibi is unsound that the Court would be entitled to reject it SEKITOLEKO v UGANDA [1967] E.A. 531 applying R v Thomas Finch (1916) 12 Cr. App. Rep. 77. If an accused person puts forward an alibi in answer to a Criminal charge he does not thereby assume the burden of proving the defence. The burden of proving the accused's guilt remain throughout on the prosecution - R v Johnson [1961] 3 ALL E R 969, applied in Sekitoleko's case (supra). For a recent application of the principle see Nekemiya Tenga v Uganda Cr. Appl. No. 5 of 1982, a decision of the Court of Appeal for Uganda (as it was then known) and Thomas Rushoma v Uganda, Cr. App. No. II of 1989, a of the Supreme Court of Uganda.

In view of the trial Court's failure to consider the alibi set up by the accused as his defence and the misdirection on the

issue of accomplice evidence, it is unsafe to allow the conviction to stand. Counsel for the Respondent/State, Mr. Kikomeko did not support the conviction. In agreement with counsel for the appellant, Mr. Musana, the appeal is allowed. The conviction is quashed and sentence set aside so that the appellant is released from custody forthwith.

Sgd. (J. P. M. TABARO)

J U D G E.

25/5/1994.

25/5/1994:- Appellant present.

Mr. Musana for appellant.

Mr. Kikomeko for respondent.

Judgment read.

Sgd. (J. P. M. TABARO)

J U D G E.

25/5/1994.