**Uganda v Matovu**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 6 October 1973

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**Case Number:** 164/1973 (11/74)

**Before:** Wambuzi CJ

**Sourced by:** LawAfrica

*[1] Criminal Practice and Procedure – Compensation – Accused must be heard.*

*[2] Criminal Law – Theft – Same offence as theft by servant.*

.

**JUDGMENT**

**Wambuzi CJ:** The accused was convicted by a Magistrate Grade II sitting at Bukoto in Masaka

Magisterial area on 11 January 1973 of theft contrary to s. 252 of the Penal Code. He was sentenced to 9 months imprisonment and ordered to pay back to the complainant the sum of Shs. 101/50, the subject matter of the charge.

The facts appear to have been that the accused, a Mutongole chief, demanded graduated tax from the complainant and the complainant paid to him the sum of Shs. 101/50, representing his tax for the year

1972. The accused failed to issue the complainant with a tax receipt and later denied that the complainant had paid to him the amount in question.

The court found as a fact that the accused received the money and converted it to his own use. A

Senior State Attorney for the Director of Public Prosecutions in his letter expressed some doubts as to whether the evidence did not support a charge of theft by servant, since the complainant had willingly parted with the money to the accused who received it on behalf of the Local Administration, of which the accused was an employee, entitled to collect taxes. I think the accused was mid-way between the tax-payer on the one hand and the Local Administration, the receiver of the tax, on the other. As a chief, the accused received the money on behalf of the Local Administration and if he converted it to his own use, a charge of theft by servant could be sustained against him. At the same time, however, the complainant would be liable to pay tax unless he could show that he paid it. This he could do only if he could produce a tax receipt showing that the amount due from him was paid. S. 71 (1) of the Local Administrations Act 1967 provides:

“A receipt for the amount of any rate or tax paid by a tax-payer shall be issued by the collector and delivered to the person paying the rate or tax and such receipt shall be evidence of the payment of the rate or tax.” In this case the only person who knew about the payment and who could have issued, or caused to be issued, the receipt is the accused. Before such receipt is issued, it is arguable that any money paid to a tax-collector is refundable, although the person remains liable to pay the tax due. It appears to me that in this case the tax-payer had an interest in the money till a tax receipt was issued to him. Accordingly I am of the view that where there is failure to issue a tax receipt a charge of theft from the person paying the tax could be sustained against the tax collector. I hold therefore that this charge was properly laid. In any case, whether the accused stole from the Local Administration or from the tax-payer, it would be theft all the same. Theft by servant merely attracts a heavier penalty, it does not change the nature of the offence.

As regards the order for restitution, s. 209 (1) of the Magistrates’ Courts Act 1970 provides.

“When any accused person is convicted by a magistrate’s court of any offence and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, such court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable: . . .”

Referring to a similar section in the law of Tanzania, the Court of Appeal in *Selemani v. Republic*, [1972]

E.A. 269 said three things must be present for the section to apply:

(1) The person entitled must have suffered material loss or personal injury;

(2) Compensation would be recoverable by a civil suit; and

(3) The compensation must be reasonable.

The material loss suffered by the complainant in this case would be the sum of Shs. 101/50 paid to the accused. There is no evidence that the accused suffered any other loss. He could probably recover the money by a civil action, but then there could be no question of compensation being paid. What would be recovered is a straightforward debt. I cannot see that it can be said that in this case there is room for the court to consider whether the payment is fair and reasonable. I have doubts that the section would apply to cases where any civil suit filed would be to recover a debt as opposed to damages. If the section applies in the present case, then the trial court should have given the accused an opportunity of being heard before the order was made. This was not done. The Director of Public Prosecutions agrees that the order is illegal and for the foregoing reasons it is set aside. It is directed that if any money was paid, pursuant to the order, the same shall be refunded.

*Order accordingly.*

No appearances.