

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL.

HCT – 01-CR-SC-0048/2003

UGANDAPROSECUTOR

VERSUS

MUSOKE DEUSACCUSED

BEFORE: THE HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT

The Accused Musoke Deus is indicted on seven counts of Aggravated Robbery Contrary to Sections 285 and 286(2) of the Penal Code Act. The particulars of the offences are that the Accused with others still at large on the 15th day of April 2002 at Ntonwa Trading Centre in Kamwenge District robbed from each of the victims in the respective counts and at or immediately before or immediately after the said robbery used deadly weapons to wit SMG riffles on each of the respective victims.

The accused pleaded not guilty to each of the counts. He was represented by Mr. Richard Bwiruka. The State was represented by Ms Rose Tumuheise, a Resident State Attorney Fort Portal.

The prosecution adduced evidence of eleven witnesses. PW2 Rwakihuma Charles, the victim in count 1 testified that on 15th April 2002 while driving from Katakwebwa Trading Centre towards Fort Portal at Murutambo they were by-passed by a saloon car which was heading in the opposite direction. The car shortly came back and started hooting and flashing headlights indicating to him to give way. The road was narrow so he continued driving with the saloon car following closely behind his vehicle. At Ntonwa he slowed down and gave way for the saloon car to overtake. Instead the saloon car pulled up beside his pick-up, a passenger in the saloon car pulled out a gun and pointed it at the witness. The witness stopped the pick-up came out and lay down under the door of the pick-up. There were three passengers in the saloon car, who all came out and left the

driver in the saloon car. The witness was ordered in swahili to produce money. The attackers removed from him shs 1,470,000/= which they took. The attackers removed the witness' shoes and socks in search for more money. They then abandoned him and proceeded to rob from the witness' passengers. The witness saw that one of the attackers was armed with a gun. That in the course of the attack a policeman came from a nearby police post and shouted out in swahili for them to identify themselves. One of the attackers ordered his colleague with a gun to shoot. The attacker started shooting and an exchange of gun fire followed as the policeman also shot back. Two of the attackers who had come out of the saloon car run and bodied the car and drove off. The policeman came out from where he had taken cover and continued shooting towards the saloon car. The fourth attacker who had remained behind as the others drove off run towards where the witness had been driving from. The policeman bodied the witness's pickup and the witness with his passengers drove up to Rwatengye police post where he left the pick-up as it had got damaged when it hit a pot-hole on the way. He continued on a boda boda motor cycle up to Kyenjojo Police Station where they were provided with a vehicle to pursue the robbers but they failed to get them. On his return at Ntonwa he found that the attacker who had run had been arrested by the residents of the area and killed. From the documents on that robber the witness discovered that the robber was a resident of Kasese. He testified that all the robbers were strangers to him and up to the time of his testimony he had not known who they were.

Kamwenge Patrick (PW3), the victim in count 2 testified that on 15th April 2002 he was a passenger in Rwakihuna Charles' pick-up travelling in the cabin with the driver. He also narrated how they were trailed and attacked at Ntonwa Trading Centre by four thugs who were travelling in a salon car Registration No. UAA 455S. That the thugs ordered them out of the pick-up and ordered them to lie down and threatened to shoot anybody who would get up. The witness was beaten with a stick as the thugs demanded for money. The witness testified that he was robbed of his bag containing

clothes, a logbook for his motor cycle Registration NO. UAL 748 and a cheque leaf.

That as they were lying down he heard gun shots. After the fire exchange a policeman told them to get up. That he was able to notice one of the thugs with gun as a black man dressed in a jacket. That up to the date of his testimony he had never seen that man again.

Kahuma Jane PW1, the victim in respect of count 3 testified that she was, with others, a passenger on PW2's pick-up traveling to Fort Portal. She also testified on how they were trailed and at Ntonwa Trading Centre attacked by thugs travelling in a white car. That three of the thugs came out of the car leaving their driver in the car. One of them was armed with a gun and the fat man was armed with a panga, and the third was armed with a stick and had a metallic wire in his trouser pocket. She was beaten with a stick and surrendered to the thugs a sum of shs 30,000/=. The witness also testified about the gun fire exchange between the thugs and a policeman and how the policeman shot after the thugs' car as the thugs drove off and how they re-boarded the pick-up with the policeman and chased after the robbers.

Kisembo Robert PW5, the victim in respect of count 4, testified that on 15th April 2002 he was a passenger on PW2's pick-up. He also narrated how they were trailed and attacked by four thugs travelling in a saloon car Registration No. UAA 455S. He saw that one of the three thugs who came out of the car had a gun. The thugs ordered them to get off the pick-up and lie down and threatened to shoot anybody who would attempt to run away. The thugs caned them as they demanded for money. That in the course of the attack the thugs stole from the witness a total sum of shs 507,000/=. The witness also testified that there was an exchange of gunfire between the thugs and a policeman. That as the thugs drove off the policeman came into the road and continued firing towards the thugs' vehicle. He also testified on how they re-boarded the pick-up with the policeman and chased after the thugs. He also testified that one of the thugs had remained behind as the others drove off and had run backwards towards where they had come from. On his way back at Ntonwa he found that that thug had been chased and killed by the residents.

Mbonabana Joyce PW4 the victim in count 6, testified that on 15th April 2002 she was also a passenger on PW2's pick-up. She also testified on how they were trailed and at Ntonwa Trading Centre robbed by four thugs who were travelling in a saloon car. She did not recognise the registration number of the car. She was seated in the cabin of the pickup. She was pulled out by the thugs at gun point and ordered to lie down. She was caned as the thugs demanded for money and one of the thugs ordered his colleague to shoot her if she refused to surrender money. She surrendered shs 250,000/=. The witness also testified about an exchange of gun fire between the thugs and a policeman who had come to the scene and asked the thugs to identify themselves. She also testified on how they re-boarded the pick-up with the policeman and chased after the robbers' car. The witness did not recognise any of the robbers.

Kagaba Adam, PW6, the victim in respect of count 7 testified that he was a passenger on a pick-up travelling from Katalyebwa to Fort Portal Kabarole District when they were trailed from Murutabo up to Ntonwa by people travelling in a saloon car Toyora Corona white in colour Registration No. UAA 445S. The thugs pointed a gun at the driver of the pickup and ordered him and his passengers out of the pick-up. That they were ordered to lie down and were caned. The thugs robbed from the witness shs 215,000/= and some other money which he could not remember. As the witness lay down there was an exchange of gun fire between the thugs and a policeman. Later the thugs bordered their car and drove off. When he rose up the witness saw the policeman firing towards the thugs' car as they drove off. He also testified about how they re-boarded the pick-up with the policeman and chased after the thugs. While being cross-examined the witness testified that he did not know the thugs but that he recognised one of the attackers who was armed with a gun, short, black, fat and dressed in a black jacket, another was tall and black and the one who was killed was a ~~s~~ought short youth. The fourth who was driving and remained in the car had a helmet on his head. That he had never seen any of the thugs anywhere after the robbery.

PW7 Mugisa Samuel testified that in 2002 he was a car washer at Rwenzori Modern Washing Bay, Kasese Town. That one day in 2002 someone brought to him a hind car seat to wash. The seat was dirty and had a clot of blood which he washed but failed to wash it away. That later a person came driving a saloon car white in colour Registration No. UCN 610. The vehicle had no hind wind screen, there was a polythene paper acting as the wind screen, and it had no back seat. The driver introduced himself to the witness as the owner of the seat. That when the witness asked that driver about the existence of blood on the seat, that driver explained to the witness that his boys had put meat on the seat and it had left blood there. The witness later learnt from the police station that the owner of the vehicle was called Musoke. The witness identified the Accused as the person who had come driving the vehicle and picked the seat.

PW10 Augustine Busingye testified that in 2002 he was a car washer at Rwenzori Modern Washing Bay. That while at the bay he received a salon car Toyota Corona white in colour Registration No. UCN 610 for washing. The vehicle had no rear wind screen and had no rear passenger seat. There were pieces of broken glass in the hind part of the vehicle strained with blood. That he removed the broken piece of glass and washed the vehicle including the boot. Asked about the blood the person who had brought the vehicle to the witness explained to the witness that he had put meat in a polythene bag in the vehicle and blood had leaked through. The witness identified the Accused as the person who had brought the vehicle to him.

Bagambe Pasco, PW8 testified that he is a mechanic and owns a repair garage in Kasese Town known as Bagambe Garage. That one day he came back at around 7.30 p.m and found a Toyota Corona Car white in colour parked in his garage. The vehicle had no rear wind screen, instead it had a polythene paper. Soon after his arrival, policemen came to the garage inquiring about the car and how it had come to his garage. That the policemen took the car to the police station. that the witness did not know who had brought the vehicle to his garage but that he recognised the vehicle as that of Musoke.

D/AIP Turatunga Gally, PW9, testified that while at Kasese police station on 16th April 2002 he received information that a vehicle suspected to have been involved in a robbery was parked at Pasco Bagambe's garage. The witness with Constable Driver Masereka went to the garage where they found a Toyota Corona car, white in colour Registration No. 610 UCN. That the rear screen was smashed and the mechanics in the garage were trying to fix a polythene paper in the place of the windscreen. That the witness had the car pushed from the garage up to the police station. When he closely observed the vehicle he found that on the right hind door there was a through hole which he suspected could have been caused by a gun shot. The rear seat was soaked with water and there were blood clots in the boot.

The witness further testified that on carrying out investigations he discovered that the vehicle had been delivered to Bagambe's Garage by one Rwecungura Fesham. He traced for Rwecungura and on interrogating him he told the witness that he had been instructed by Deus Musoke to take the vehicle to the garage for repairs. That Deus Musoke, the accused reported to the station and informed the witness that he had hired out the vehicle to one Twakirwa, on self drive basis, who had brought it back and left it at the Accused's residence in a damaged state.

No. 30984 PC Lawoko Jaffrey Sulaiman PW11, testified that in 2002 he was stationed at Ntonwa police post. On 15th April 2002 while on duty at Ntonwa police post he saw two vehicles parking at once at the stage at Ntonwa Trading Centre. The first to stop was a pick-up then a white Toyota Corona Salon car pulled-up and parked panel to the drivers side of the pick-up. The witness saw a tall man putting on a black jacket holding a gun and another had a stick. One of the occupants of the saloon car who had come out ordered the occupants in the pickup in swahili to get off and lie down. The witness got his gun moved towards the scene and took cover in a corridor between houses. That when the witness ordered the people at the scene to identify themselves the driver of the saloon car who had a gray coat and white helmet and seated at the steering wheel of the car ordered his colleague to shoot the witness. That the man with a gun fired three bullets towards the

witness. The witness positioned himself and aimed a shot at the occupant of the back seat of the car. The driver ordered the gunman to enter and go. Then the saloon car was driven off. The man armed with a stick was left behind and he ran into the bush. The witness came into the road and fired at the hind screen of the car as it drove off. The saloon car was Registration No. UAA 455S. The witness went on to testify how he directed the occupants of the pick-up to re-board and pursue the saloon car. The witness stopped at Rwetenja police post and went back to Ntonwa. When back at Ntonwa the witness mobilised the residents and entered the bush to search for the thug who had run away. They traced and arrested a man who identified himself as Musabe Muzamiri a pupil of Bunyangabo Primary School, Kiddima Kabarole district. The witness testified that the thug gave the particulars of his colleagues as Mustafa, Kyomuhendo Jamil and Kusemererwa all from Bunyangabu Village. And further that the thug told the witness that they had hired the saloon car from one Musoke of Kasese. The residents became unruly and killed the thug.

The witness received a message that a saloon car had been intercepted at Kasese. When he went to Kasese he found that the saloon car's registration number had been changed to 610 UCN. The witness did not identify any of the attackers. In cross-examination the witness testified that when he observed the vehicle at Kasese police station it had a small hole the size of the bullet in the right hind door and a polythene paper which was being grewed on in the place of the rear windscreen. The witness suspected the vehicle to be the one he had shot at during the fire exchange with the thugs at Ntonwa.

The Cardinal Principle of our Criminal law as laid down in the case of Woolington v/s DPP (1935) AC 462 and since thereafter followed by our courts is that in all criminal trials the burden of proof rests entirely upon the prosecution to prove the case against Accused person beyond reasonable doubt. The Accused is presumed innocent until proved guilty by the prosecution or pleads guilty. See: Article 28(3)(a) of the Constitution of the Republic of Uganda.

In the instant case the Accused pleaded not guilty, the effect of which plea is that the prosecution must prove beyond reasonable doubt each and every one of the following ingredients of Aggravated Robbery:-

1. That there was theft of some property.
2. That there was use or threat to use violence during the theft.
3. That there was use of or threat to use a deadly weapon immediately before, during or immediately after the theft or that death or grievous harm was caused to any person during the execution of the theft, and
4. That the accused person participated in the theft.

The defence did not contest the first three ingredients of the offence but contested the participation of the Accused in the robbery. All the same this court is still duty bound to evaluate the evidence and make a specific finding on each of the essential ingredients of the offence. See:- Mawanda Edward v/s Uganda Crim. Appeal No. 4 of 1999 (SC) unreported.

The first ingredient is whether there was theft. Section 254(1) of the Penal Code Act defines theft thus:-

“ A person who fraudulently and without any claim of right takes anything capable of being stolen or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing”.

Under Sub Section 2(a) of the above Section theft is deemed committed if a person who takes anything capable of being stolen does so with an intent to permanently deprive the owner of the thing of it. And under Sub Section (e) in the case of money, with an intent to use it at the will of the person who takes or converts it although he or she may intend afterwards to repay the amount to the owner.

With respect to count 5 of the Indictment the particulars of the offence were that the

Accused and others still at large on the 15th day of April 2002 at Ntonwa Trading Centre in the Kamwenge District, robbed Katuramu Nyansio of cash shs 6000/= and at or immediately before or immediately after the said robbery used deadly weapons to wit SMG rifles on the said Katuramu Nyansio. The said Katuramu Nyansio was not called as a witness. By the closure of the prosecution case there was no evidence of any theft of any money of the said Katuramu Nyansio or use of any deadly weapon against him. I accordingly ruled that the accused had no case to answer in respect of count 5 of the Indictment and acquitted him in respect of that Account.

With regard to the remaining six counts PW1, PW2, PW3, PW4, PW5 and PW6 testified that on 15th April 2002 they were travelling in a pick-up Registration NO. UAA 734H from Katalyebwa Trading Centre to Fort Portal when after Murutambo they were trailed by thugs travelling in a white saloon car Toyota Corona Registration No. UAA 445S who attacked them at Ntonwa Trading Centre and robbed each one of them of various properties including money.

PW2 the victim in respect of Count 1 testified that he was robbed of cash shs 1,470,000/= PW2 the victim in respect of count 2 testified that he was robbed of his bag containing cloths log book for his motor cycle Registration No. UAL 748 and a cheque leaf. PW1 the victim in respect of count 3 testified that she was robbed of cash shs 30,000/= Kitembo Robert PW5, the victim in respect of count 4 testified that a total sum of shs 507,000/= was stolen from him in the course of the attack. While PW4 the victim in respect of count 6 testified that her money in the sum of shs 250,000/= was stolen. And PW6, the victim in respect of count 7 testified that a sum of shs 215,000/= and some other money which he could not remember was stolen from him.

I have no reason to doubt any of the above six witnesses. I am therefore satisfied that the prosecution had proved beyond reasonable doubt the ingredient of theft in respect of each of the remaining six counts of the Indictment.

Regarding violence PW1, PW2, PW3, PW4, PW5 and PW6 testified that they were trailed by the thugs who were driving at high speed closely behind them from Murūtambo to Ntonwa Trading Centre for a distance of about three kilometres hooting and flashing head lights and ordering them to stop. That PW2, who was driving the pick-up indicated to the thugs to pass them at Ntonwa Trading Centre but the thugs stopped their car beside the pick and three of them got out. One of the three was armed with a gun, another with a stick and the third with a panga. At gunpoint all people on the pick-up were ordered to come down and lie down. They were each caned and threatened to be shot if any attempted to get up or run, as the thugs removed money and other properties from each one of them. P.C Lawoko Jaffrey Sulaiman testified that he heard and saw one of the occupants of the saloon car order the occupants of the pick-up to get off and lie down. The above evidence shows that there was threat to use and actual use of violence in the close of the theft. I find that the prosecution has proved this ingredient of violence beyond reasonable doubt in respect of each of the six counts.

The third ingredient is whether there was use of a deadly weapon immediately before, during or immediately after the theft or causing death or grievous harm to any person during the execution of the theft. There was no death or grievous harm caused to any of the victims of the attack or at all by the thugs. Pw1, PW2, PW3, PW4, PW5, PW6 and PW11 testified that there was an exchange of gunfire between PW11 and the thugs. PW11 testified that the thug who had remained seated at the steering wheel of the car ordered his colleague to shoot at the witness. That the man with a gun fired three bullets towards the witness. His testimony is corroborated by that of PW1, PW2, PW3 PW4, PW5 and PW6. Once a gun is fired it is sufficient evidence to prove that it is a deadly weapon within the premises of Section 286(3) of the Penal Code Act. I find that the prosecution has proved use of a deadly weapon beyond reasonable doubt in respect of each of the six counts.

The last ingredient is whether the accused person participated in the commission of the offence. All the above six prosecution witnesses testified that the thugs were strangers to

them and since the attack none of them had seen any of the thugs up to the date of their respective testimonies. The Uganda Police Standing Orders 7th Ed. 1984 Vol.II Crime and the CID provides:-

" 59 (1) In all cases in which there is any doubt as to the identification of an Accused person by any prosecution witness, subject to the consent of the Accused, an identification parade will be held".

In view of the fact that none of the thugs who committed the robbery was identified at the scene of crime I find that this was a proper case to utilise the above procedure following the arrest of the Accused. For reasons best appreciated by the police Officers who investigated this case there was no identification parade conducted. What courts look for is identification at the scene of crime and not identification in court when an Accused is distinctly standing in the dock separated from the rest of the people in court room. The practice of identification in the dock is disapproved and discouraged. See Uganda v/s Evasisto Nyanzi & others H.C.C.A Crim 46 of 1987. Kvalimpa Edward v/s Uganda SCCA No. 10 of 1995. Muhamed Mukasa & Anor v/s Uganda SCCA No. 27 of 1995.

To connect the Accused with the commission of the offence the prosecution relied on the evidence of the witnesses at the scene of crime who testified that the thugs who attacked and robbed them and exchanged gun fire with PW11 were travelling in a white saloon car Toyota Corona and that as the thugs drove off PW1 continued firing towards the car. In addition to that evidence the prosecution relied on the testimony of PW7, PW8, PW9, PW10 and PW11.

According to PW7 sometime in 2002 a hind car seat soaked with blood was brought to him to wash. That the Accused who he later learnt was Musoke came in a white salon car Registration No. UCN 610 and claimed the seat as his. The car had no back seat and the rear wind screen was missing, with a polythene paper acting as the wind screen. PW10 testified that sometime in 2002 he received and washed a white Toyota Corona Registration UCN 610. The car had no rear windscreen and had no rear passenger seat.

There were in it pieces of broken glass in the hind part stained with blood. PW8 testified that one day he found a white Toyota Corona car which he recognised as that of Musoke parked in his garage. It had no rear wind screen but a polythene paper instead. PW9 testified that he recovered a white Toyota Corona car Registration No. 610 UCN from PW8's garage. It had the rear screen smashed with a polythene paper being filled. That the Accused reported to the police station and claimed the vehicle as his. PW11 testified that he believed the white Toyota Corona Registration No. UCN 610 which he found at Kasese Police station was the vehicle involved in the robbery which vehicle he had shot at since it had a bullet hole in the right hind door, had a smashed wind screen and there was evidence that it had blood clots on its rear seat. It was the testimony of PW3, PW5, PW6 and PW11 that the thugs were travelling in a white Toyota Corona Registration No. UAA 455S.

The prosecution's evidence outlined above is purely circumstantial. The law is that in a case depending exclusively upon circumstantial evidence, the court must find, before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. See Simon Musoke v/s R of (1958) EA 715.

In Temper v/s R (1952) AC 480 the Privy Council held:-

" It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference".

Taylor on Evidence 11th Edition page 74 provides:-

" The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt".

I must point out that PW7 and PW10 described the vehicle they handled as Registration No. UCN 610 while PW9 and PW11 described it as Registration No. 610 UCN. I believe

PW7 and PW10 confused the registration number, they were referring to Registration No. 610 UCN. The issue before me is whether the white Toyota Corona car Registration No. 610 UCN was the same white Toyota Corona car registration No. UAA 455S which the thugs were travelling in the course of the robbery. If so whether the accused was among the thugs, or if not whether the Accused was a principal offender under the provisions of Section 19(1)(c) of the Penal Code Act as one who aided or abetted the thugs in the commission of the offence.

In his defence the Accused admits ownership of the white Toyota Corona Registration No. 610 UCN. The evidence to connect the Accused' motor vehicle with the white Toyota Corona Registration No. UAA 455S are the findings that his had a smashed rear windscreen and the prosecution's evidence is that PW11 had continued to shoot at the thugs motor vehicle as they drove off and smashed its rear wind screen. That the accused' car had a bullet hole in the right rear door and had blood clots on the rear passenger seat. It is PW11's testimony that in the shoot out he aimed at one of the thugs who was seated in the rear seat as the thugs got in to drive away. He was shooting from his hiding place which was to the right of the thugs' car. PW11 contends that the Registration number must have been changed from UAA 455S which was involved in the robbery to Registration No. 610 UCN. In the circumstances of this case this is a very persuasive contention. However court was not helped with evidence relating to the particulars of motor vehicle registration No. UAA 455S. The prosecution should have produced evidence from the Registrar of Motor Vehicles indicating the other particulars of motor vehicle Registration No. UAA 455S. Such evidence would have helped court to find out the make of motor vehicle Registration No. UAA 455S, that is whether it was a Toyota Corona or not, whether it was a saloon car or not and whether it was white or not. In absence of that evidence it does not rule out the possibility of existence a white Toyota Corona Saloon car Registration No. UAA 455S which might have actually been used in the robbery.

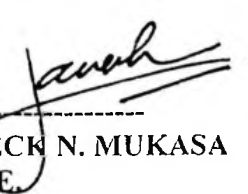
In his defence the Accused testified that on Sunday 14th April 2002 he hired out his motor vehicle Toyota Corona Registration No. 610 UCN to one Twakwirwa from Rwakaina Parish on self drive basis. That when the said Twakwirwa brought back the vehicle the following day it had a broken rear wind screen. That when he asked Twakwirwa about the broken wind screen and the blood on the back seat, the said Twakwirwa had explained to him that the screen had been stoned and the stone had injured the person seated in the back seat. DW2 testified that on 14th April 2002 a person, whom she later found out was called Twakwirwa came to their home and her husband the Accused gave that man the keys to the accused's motor vehicle and the man drove away. That he asked the accused who explained to her that he had hired out the vehicle as he usually did. Her husband remained behind. That when she saw the vehicle the following day, after it had been brought back, its rear windscreen was missing. P.C Lawoko Jaffrey Sulaiman testified that when the thug who had not boarded the vehicle was arrested the witness interrogated the thug before he was killed by the residents. That the thug gave his particulars as Musabe Muzamiru of Bunyangabo Primary School, Kididimo Kabarole District. That the thug named his colleagues as Mustafa, Kyomuhendo Jamil and Kusemererwa all from Bunyangabo village. It is the prosecution's undisputed evidence that the thugs were four. Deus Musoke was not among those named. This lends credence to the Accused's defence that he was not at the scene of crime when the offence was committed. PW11 further testified that this thug further informed him that they had hired the vehicle from one Musoke of Kasese. If it is to be believed that the motor vehicle Reg. No. 610 UCN was the one changed to Reg. No. UAA 455S in the course of the robbery then the above evidence corroborates the Accused defence that he had hired out the vehicle on self-drive on the particular day of the occurrence of the robbery. I find further corroboration of the Accused's defence in the testimony of D/AIP Turatunga Gally who testified that when the Accused reported himself to the police station he informed the witness that he had hired out the vehicle to one Twakwirwa on self-drive basis, who had brought it back in the damaged state. The witness testified that there existed a Twakwirwa of Kadidimo village Rwimi Sub County, Kabarole District and a son of one Jamil. Jamil was one of the names of the colleagues named by the thug who was arrested

and killed. He had also named Kadidima as their village. In view of the testimony of PW11 as to the information he gathered from the arrested thug before his death and the accused's defence as corroborated by the testimony of PW9 it is doubtful whether the Accused was aware of the mission for which the vehicle was taken by the said Twakwirwa. The said Twakwirwa was not arrested and did not testify.

It is trite that any doubt in the prosecution case created by the defence or generally should be resolved in favour of the Accused. In Mushikhona Watete & others v/s Uganda SCCA NO. 10 of 2000 their Lordships of the Supreme Court stated:-

“ We should observe that generally Court should go a long way to give an Accused particularly one on a capital charge, latitude in the prosecution and interpretation of his defence. The Court should, where appropriate consider any relevant material before it if it be favourable to the defence ”

Considering all the prosecution and the defence evidence as a whole I find that the prosecution has failed to prove beyond reasonable doubt that Deus Musoke participated in the robbery as indicted. I agree with the gentlemen Assessors who advised me to find the Accused not guilty and acquit him. I find the accused not guilty and I acquit him. The Accused is set free unless he is liable to be held in custody on other lawful charges.



LAMECK N. MUKASA
JUDGE.
11/2/2005.