

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL SESSION CASE NO. 97 OF 2011

UGANDA :::PROSECUTOR

VERSUS

TWIJUKYE MEDARD:::ACCUSED

BEFORE HON. JUSTICE J.W.KWESIGA

R U L I N G

The Accused person, Twijukye Medard is indicted for Aggravated Robbery contrary to Sections 285 and 286 (2) of the Penal Code Act. It is alleged the particulars of the offence that on 14th October, 2010 at Nyamiringa Village, in Kabale District, the Accused Robbed Sh. 76,000/= from Barigye John and at, or immediately before or immediately after the said robbery used a deadly weapon, to wit a panga and caused Grievous harm on the said Barigye John. The Accused person was represented by MS. Nowangye Jacenta, on State brief while the Prosecution was conducted by Mr. Arinaitwe Rajab, Resident State Attorney for the State.

The Accused person pleaded not guilty to the indictment and the state called Four (4)

witnesses and closed the Prosecution case. Miss Nowangye made submissions of No case to answer on two grounds;

- That the Prosecution evidence did not establish all the ingredients of the offence.
- Secondly that the Principal witness, the complainant gave a testimony that materially contradicted what he initially reported to the Police.

The offence of Aggravated Robbery under Sections 285 and 286 (2) of the penal Code Act can only be said to have been established if the Prosecution evidence at its closure establishes the following:-

- (a) That theft took place.
- (b) That theft was accompanied by violence or that a deadly weapon was used.
- (c) That the Accused person participated in the commission of the offence. (See **OPONYA VS UGANDA (1967) E.A 752.**)

The Law governing "A NO CASE TO ANSWER" is settled by Section 73 (1) of **TRIAL ON INDICTMENTS ACT (TIA)**

which states that when the case for the Prosecution has been concluded, if the court considers that there is no sufficient evidence that the Accused has committed the offence.

It shall, after hearing the Advocates for the Prosecution and defence, record a finding of not guilty. It was settled in the case of **Bhatt Vs R (1957) EA 332 which defined a Prima facie** case as one where a reasonable tribunal properly directing its mind to the Law and evidence could not convict if no explanation is offered by the defence. The above status would exist where there has been no evidence to prove an essential element in the alleged offence or where the Prosecution evidence has been so discredited in cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. In the instant case a conviction can not be secured on the single identifying witness who purported to have recognised the Accused person under extremely difficult conditions. PW 1 Barigye, the complainant told court that he was attacked at 8:30 p.m, he was ambushed in the middle of a bushy swamp. The Assailant cut him on the head and mouth and he lost his senses until the next day. This attack was in darkness, the attack was done abruptly and the victim became unconscious. The evidence of identification is manifestly unreliable because the conditions prevailing at the scene were unfavorable to correct identification and therefore the essential element of participation is not established. The victim does not give evidence that establishes the alleged theft. The Prosecution evidence must establish that Barigye John had Sh. 76,000/= and was stolen by the attackers. If he had the money, it could have been lost or taken by people who could have come to the scene after the Attack. In view of the above I find that theft was not established by evidence on record. There no

case to answer against the Accused person and he is hereby **Acquitted** .

Dated at Kabale this 23rd Day of **August, 2011**.

J.W.KWESIGA
JUDGE
23-8-2011

Read in the presence of :-

Ms. Nowangye Jacenta for Accused.

Mr. Rajab Arinaitwe, Resident State Attorney for the State. Mr. Turyamubona Milton

Court Clerk.