

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CR-SC-103-2008

UGANDA.....PROSECUTOR

VERSUS

MULWO ARAMATHAN..... ACCUSED

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

The accused person Mulwo Aramathan represented by Mr. Mudangha on State brief is indicted for Robbery with Aggravation contrary to sections 285 and 286 (2) of the Penal Code Act. Particulars of the indictment allege that the accused person together with others still at large on the night of 5th June 2007 at Kaptido village in Kapchorwa District robbed Chebet Andrew of a mobile phone Motorola S/No.359808009691802, a radio and a trouser and at the time of or immediately before or immediately after the said robbery threatened to use a deadly weapon to wit a gun to the said Chebet Andrew.

The accused person denied the indictment.

During the trial, prosecution adduced the evidence of 4 witnesses and closed its case.

At the closure of the prosecution case, neither the defence nor prosecution made a submission regarding whether the accused has a case to answer or not. Both Mr. Mudangha and Alpha Ogwang the learned Resident State Attorney left the decision to court!

A case to answer is what is known as a *prima facie* case.

A *prima facie* case is one where a reasonable tribunal directing its mind to the law and evidence may convict if the accused person offers no explanation. A *prima facie* case does not mean a case proved beyond any reasonable doubt since at this stage, court has not heard the evidence for the defence.

A finding of a no case to answer can be upheld if at the close of the prosecution case there is no evidence to prove any of the ingredients of the offence charged or where prosecution evidence has been discredited during cross-examination that no reasonable court can safely rely on it.

In an indictment for capital Robbery prosecution must adduce evidence to found a *prima facie* case that there was a theft by the accused. That before, during, or after the said theft there was use or threatened use of a deadly weapon, in this case, a gun.

After a careful evaluation of the evidence by the prosecution, I am inclined to find that the essential ingredients of the offence have not come out as required.

PW.1 who is the complainant testified that he did not identify the attackers to his home. It was at night and there was no light in the house. That his phone, radio and trousers were taken. He described the stolen phone as a Motorola C117 with its Sim card. That he had marked his phone Battery with letter 'X'. A Motorola C117 phone was tendered in evidence for identification but prosecution did not adduce evidence to tender the same in as an exhibit because the store man then deserted the force. PW.I further told court that he saw somebody enter the bedroom. That the person cut him. The witness did not mention that the attackers had a gun. He did not identify the accused but identified a one Somekyo Alex Frances who is not charged.

PW.2 was a medical personnel who treated the complainant.

PW.3 Masa Michael testified that he exchanged a phone with the accused. The accused gave him a Nokia 2600 and PW.3 gave the accused another Nokia 3310. PW.3 was to make a top up of 20,000/= of which he paid 12,000/= leaving a balance of 8000/=. Interestingly it is this Nokia 2600 which led to the arrest of the accused and Police alleged the accused person had stolen not a Motorola C117.

PW.4 D/C Cheptoi Hanningbode the then in charge CID and investigating officer testified that the phone recovered from Bunambutye was a Motorola C117 incomplete contradiction with PW.3's testimony who exchanged Nokia phones with the accused person. This witness did not fill the serial number of the Motorola phone in his statement.

With the above evidence, there is no basis for this court to find that the accused person has a case to answer. The prosecution evidence is unreliable, contradictory and has been discredited in cross-examination to found a *prima facie* case. The accused was not identified either directly or by circumstantial evidence. The accused was arrested on the basis of stealing a Motorola phone but was found with a Nokia Phone. There is no evidence of any weapon having been used during the robbery.

I will consequently find that the accused person has no case to answer.

He will be acquitted of robbery contrary to section 285 and 286 (2) of the Penal Code Act. The indictment is dismissed and accused is set free unless lawfully held.

Musota Stephen

JUDGE

21.3.2011

21.3.2011

Accused produced.

Alpha Ogwang for State.

Mudangha on State brief.

Chebet Interpreter.

Assessors present.

Resident State Attorney: Matter for ruling.

Court: Ruling delivered.

Musota Stephen

JUDGE

21.3.2011