

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0181 OF 2019

UGANDA:.....PROSECUTOR

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VERSUS

MUHINDO GODFREY:..... ACCUSED

BEFORE HON. JUSTICE VINCENT WAGONA

JUDGMENT

101.0. Introduction

The accused is indicted for the offence of aggravated robbery c/s 285 & 286 (2) of the Penal Code Act. It is alleged that the accused on the 4th day of August 2018 at Kabale village in Bundibugyo District, robbed Nyamutswangana Badanga Elisa of pre-mature Vanilla beans estimated to be worth 8,000,000/= (Eight Million 15Shillings only) and during the said robbery, he was armed with a deadly weapon to wit a panga.

2.0. Summary of the Facts

On the night of 4th August 2018at around 11.00pm, the complainant 20Nyamutswangana Badanga Elisa was in his garden guarding his vanilla plants when he saw the accused harvesting his (complainant's) vanilla. The accused was stealing the complainant's immature vanilla beans. The accused was holding a panga in his right hand and using the left hand to harvest the Vanilla. The complainant flashed a torch and at him. When the complainant saw the accused 25advancing towards him, the complainant made an alarm. The alarm was answered

by **PW2 Kule Colonel Kitugu** who was also guarding his own vanilla garden in the neighborhood. PW2 run and assisted the complainant and they arrested and tied the accused, before calling the police. The accused was found with vanilla beans in his Jacket wrapped in his waist and in his trouser pockets. The accused was 30taken to police together with the exhibits that included the vanilla beans and panga. They returned in the morning to the scene and found vanilla beans scattered all over the garden. The complainant lost vanilla that would have been worth 8,000,000/= on maturity. Some of the recovered vanilla, about 10KG, was returned to him. The vanilla that was stolen was not yet ready for harvest, so complainant 35only got 60,000/= out of the recovered Vanilla that was returned to him. The accused was later charged with this offence. The accused made an unsworn statement and called one witness. He testified that on 4/8/2018 he was coming from burial when he met people that he did not know; that they hit his head with a stick and he fell down. That from then, he did not know what followed until the 40next morning when he found himself at police; that to date he is still in prison and does not know what he did. **DW2 Masika Harriet** testified that the accused was his neighbor. That on the 4/8/2018 she was sleeping. The time was 11pm. She heard noise outside and went there and found police officers outside, waking up the relatives of the accused. That she asked them what had happened and was told 45that two men had reported to police that he had been caught stealing. That she was aware that the complainant had vanilla gardens and that she did not know whether the accused stole the complainant's vanilla.

3.0. The Burden and Standard of Proof

50The burden of proof is always on the prosecution. The prosecution has the duty to prove each of the ingredients of the offences and generally this burden never shifts

onto the accused, except where there is a specific statutory provision to the contrary. (see *Woolmington vs D.P.P. [1935] A.C. 462*, and *Okethi Okale & Ors. vs Republic [1965] E.A. 555*). This is not one of those cases where the burden of proof shifts to the accused to prove his innocence.

The standard of proof is proof beyond reasonable doubt. All the essential ingredients of the offence are to be proved beyond reasonable doubt. This standard does not mean proof beyond a shadow of doubt. The standard is achieved if having considered all the evidence, there is no possibility that the accused is innocent.

In *Miller vs Minister of Pensions [1947] 2 All E.R. 372* at page 373 to page 374, Lord Denning stated that:–

"The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with a sentence: 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt; but nothing short of that will suffice."

Evidence is evaluated as a whole. The Court considers evidence of both the prosecution and the defence relating to each of the ingredients before coming to a conclusion. The Court should not consider the prosecution evidence in isolation of the evidence presented on behalf of the accused.

In *Abdu Ngobi vs Uganda, S.C.Cr. Appeal No. 10 of 1991*, the Supreme Court expressed itself as follows, with regard to treatment of evidence:

80 “Evidence of the prosecution should be examined and weighed against the
evidence of the defence so that a final decision is not taken until all the
evidence has been considered. The proper approach is to consider the strength
and weaknesses of each side, weigh the evidence as a whole, apply the burden
of proof as always resting upon the prosecution, and decide whether the
defence has raised a reasonable doubt. If the defence has successfully done so,
85 the accused must be acquitted; but if the defence has not raised a doubt that
the prosecution case is true and accurate, then the witnesses can be found to
have correctly identified the appellant as the person who was at the scene of
the incidents as charged.”

904.0. The Ingredients of the offence

For the accused to be convicted of Aggravated Robbery, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- i. Theft of property belonging to the victim
- ii. Use of violence or threat of use of violence during the theft
- 95 iii. Possession of a deadly weapon during the theft
- iv. Participation of the accused in the theft.

5.0. The Evidence in this Case

i. Theft of property belonging to the victim

100 While the prosecution contended that this ingredient had been proved by the evidence of PW1 the complainant and corroborated by PW2 and PW3, the defence contested the evidence and submitted that the evidence of vanilla as an exhibit was fabricated because the vanilla was only harvested in the morning and brought to the police as an exhibit. The defence therefore contended that it followed that the

105 use or threatened use of violence and possession of a deadly weapon were therefore also not proved.

Theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen (per Section 254 of the Penal Code Act). The 110 prosecution is required to prove that an item capable of being stolen was taken from the complainant with the intention to permanently deprive him of the same. For this ingredient, there must be proof of what amounts in law to an asportation (that is carrying away) of the property of the complainant without his consent or lawful claim of right.

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In the case of **Sula Kasiira v Uganda Criminal Appeal No.20 Of 1993** (SC) the following legal position from **Halsbury's Laws of England, Vol. 10, 3rd Edition, paragraph 1484** was cited with approval with regard to the act of taking or carrying away as an element of theft: "There must be what amounts in law to an 120 asportation (that is carrying away) of the goods of the prosecutor without his consent; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they are not entirely carried off. The removal, however short the distance may be, from one position to another upon the owner's premises is sufficient asportation, and so is a 125 removal or partial removal from one part of the owner's person to another. ... The offence of larceny is complete when the goods have been taken with a felonious intention, although the prisoner may have returned them and his possession continued for an instant only." (emphasis added)

130 **PW1** Nyamachwaga Elisha Bandanga testified that on 4/8/2018 at around 11.00pm, he was in his garden guarding his vanilla when he saw the accused

harvesting his (complainant's) vanilla. The accused had stolen his Vanilla. The witness saw the accused harvesting his Vanilla. The accused was found with Vanilla in a Jacket wrapped in his waist and in his trouser pockets. The Vanilla 135 was worth 8,000,000/= . In answer to court and the assessors, the witness said that some of the recovered vanilla, about 10KG, was returned to him; that the vanilla that was stolen was not yet ready for harvest, so he only got 60,000/= out of the recovered Vanilla. **PW2 Kule Colonel Kitugu** testified that at around 11:00pm, P.W.1 made an alarm saying that a thief had entered his garden. PW2 was in own 140 garden guarding his Vanilla in the same area separated by a road. PW2 came running to help him. PW2 found P.W.1 getting hold of the accused and he helped and they arrested the accused. He had harvested Vanilla and placed it in his jacket. He had harvested the vanilla from PW1's garden. They took the accused together with the Vanilla. The vanilla was around 22 KGs. In cross examination the witness 145 said that he saw the Vanilla; that it came from the garden of PW1; that he also saw where it was harvested from in the morning that the Vanilla was recovered and taken to police. **PW3 No 25455SGT Bwambale Chris** who at the time was the Officer in Charge at Harugale Police Station in Bundibugyo District testified that on 4/8/2018 at 23:00 hours, PW1 came and reported that he had arrested a person 150 in his Vanilla garden. They went to the garden. They found the person tied with banana fibers. They recovered vanilla beans. They returned in the morning to the scene and found Vanilla beans scattered all over the garden. They photographed the suspect with the Vanilla beans and other exhibits and exhibited them. **PW4 Kahamba Rashid** a Photographer testified that early in the morning, he was 155 invited to the police station. They brought the suspect out of cells to the reception. They brought the items - vanilla, a Jacket and panga. He took and later printed the photos of the suspect and the items (Prosecution Exhibit PE2) and gave them to the police. The vanilla was a half of a basin in quantity. **PW5 No 32643 D/CPL**

Muwanga Samson testified that he participated in the investigations. Among the 160 exhibits he received were young Vanilla beans that were later handed back to the complainant,

It is the finding of this court that the act of harvesting the complainant's Vanilla beans without his consent and without any lawful claim of right and stuffing the 165 beans in his clothes and/or pockets amounted to theft. I am therefore satisfied that this ingredient of the offence has been proved beyond reasonable doubt.

ii. Use of violence or threat of use of violence during the theft

170 The prosecution was further required to prove that during the commission of that theft, the assailants used or threatened to use violence. For this ingredient, there must be proof of the use or threat of use of some force to overcome the actual or perceived resistance of the victim.

175 **PW1 Nyamachwaga Elisha Bandanga** testified that when he saw the accused harvesting his Vanilla, the accused was holding a panga in his right hand and using the left hand to harvest the vanilla. That the accused started running when the witness made an alarm. He was assisted by those who responded to the alarm and they arrested the accused. In cross examination the witness stated that he first saw 180 the accused, when the accused had reached close to him. He had reached about 2½ meters from the witness. Then the witness flashed a torch at the accused. The accused first continued advancing towards the witness. That it was the alarm that the witness made that made the accused ran away; that the witness threw a spear at him when he was running about 10 meters away. He stated that he missed the

185accused; that he threw the spear again and missed the accused again. **PW2 Kule Colonel Kitugu** testified that when he came running to help PW1, the accused had harvested Vanilla and placed it in his coat and he was holding a panga. **PW3 No 25455SGT Bwambale Chris** testified that they recovered a panga at the scene where the complainant met the accused. **PW4 Kahamba Rashid** testified that 190among the exhibits he photographed was a panga. **PW5 No 32643 D/CPL Muwanga Samson** said that among the exhibits he received in the case was a panga; the witness tendered the panga as Prosecution Exhibit PE1.

Based on the evidence that the perpetrator was armed with a panga; that the 195complainant first saw the perpetrator, when the perpetrator had reached close to him and that when he flashed a torch at the perpetrator, he first continued advancing towards the complainant; that it was only when the complainant made an alarm that the perpetrator ran away; I have concluded that there was use or threatened use of violence. I therefore find that the prosecution has proved this 200ingredient of the offence beyond reasonable doubt.

iii. Possession of a deadly weapon during the theft

The prosecution was further required to prove that immediately before, during or 205immediately after the said robbery, the assailants had a deadly weapon in their possession. A '*deadly weapon*' is defined to include any instrument made or adopted to... stabbing or any imitation of such instrument which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person, that it is likely to cause death or grievous harm. A *panga* 210is a deadly weapon because it is made or adapted for cutting or stabbing and when

used offensively on a person it can cause death(See *Supreme Court, Kwesimba Vs Uganda SCCA NO. 14/95*). The position of the law is that as much as possible, the weapon of attack should be exhibited in Court, and where it is not, it should be explicitly described. The description is required in assisting the court to determine whether the said instrument or weapon was lethal or not.

PW1 Nyamachwaga Elisha Bandanga testified that when he saw the accused harvesting his Vanilla, he was holding a panga in his right hand and using the left hand to harvest the vanilla. That the accused started running when the witness made an alarm. He was assisted by those who responded to the alarm and they arrested the accused. In cross examination the witness stated that he first saw the accused, when the accused had reached close to him. He had reached about 2½ meters from the witness. Then the witness flashed a torch at the accused. The accused first continued advancing towards the witness. That it was the alarm that the witness made that made the accused ran; that the witness threw a spear at him when he was running about 10 meters away. He stated that he missed the accused; that he threw the spear again and missed the accused again. **PW2 Kule Colonel Kitugu** testified that when he came running to help PW1, the accused had harvested Vanilla and placed it in his coat and he was holding a panga. **PW3 No 23025455SGT Bwambale Chris** testified that they recovered a panga at the scene where the complainant met the accused. **PW4 Kahamba Rashid** testified that among the exhibits he photographed was a panga. **PW5 No 32643 D/CPL Muwanga Samson** said that among the exhibits he received in the case was a panga.

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I am satisfied that the Prosecution has proved beyond reasonable doubt that the commission of the offence involved the possession of a deadly weapon.

iv. Participation of the accused in the theft.

240The prosecution submitted that this ingredient was proved by the evidence of PW1 the complainant and corroborated by PW2 and PW3. The submission of the defence is that this ingredient was not proved because the conditions for identification were unfavorable and the evidence of PW1 was not credible.

245This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime as the perpetrator of the offence. The last ingredient that was required to be proved is that each of the accused participated in committing the offence with which they are indicted. This is achieved by adducing direct or circumstantial evidence, placing each of the accused at the scene of crime
250not as a mere spectator but active participant in the commission of the offence.

P.W.1.Nyamuchwaga Elisha Bandangathe complainant testified that he knew the accused as Muhindo Godfrey a resident of Kasulenge Village. On 4/8/2018 he arrested the accused in his (complainant's) garden. He had stolen the complaint's
255Vanilla. The time was 11:00 p.m. He was in the garden guarding his Vanilla. He saw the accused harvesting the Vanilla. He used a torch. He ran after the accused while making an alarm. People came in response to alarm. They arrested the accused. They also found him with Vanilla. The vanilla was in a Jacket wrapped in his waist and in his trousers pockets. Then the police took him to the police station
260together with the items. In cross examination, the witness stated that he knew the accused; that he used to see the accused in their village of Kasulenge; that there is another village between his village and that of the witness, called Kihokwo. In further cross examination, the witness said that he first saw the accused in the garden when the accused had reached near the witness; that the witness saw the

265accused first; that he flashed a torch and saw him; that when he flashed a torch, the
accused first continued in the direction of the witness; that when he flashed, the
accused was about 2½meters from the witness.

PW2 Kule Colonel Kitugu testified that he too knew the accused as a village mate
270and fellow farmer. At around 11:00pm, P.W.1 made an alarm. He was calling
saying a thief had entered his garden. He came running to help him. He found
P.W.1 getting hold of the accused and I helped and they arrested the accused. He
had harvested Vanilla and placed it in his jacket. They tied him. They ran to the
police to come and assist them. The police responded and came immediately. They
275took the accused to police. **PW3 No 25455 SGT Bwambale Chris** at 23:00 hours
the complainant came to the police station and reported that he had arrested a
person in his Vanilla garden and tied him up. They went to the garden and found
the person tied with banana fibers. They recovered vanilla beans. They Police took
him to the station. **DW1 Muhindo Godfrey** the accused in his unsworn statement
280testified and denied the offence. He testified that on 4/8/2018 he was coming from
burial when he met people that he did not know; that they hit his head with a stick
and he fell down. That they hit his ear with a stone; that from then, he did not
know what followed until the next morning when he found himself at police; that
to date he is still in prison and does not know what he did. **DW2 Masika Harriet**
285testified that the accused was his neighbor. That on the 4/8/2018 she was sleeping.
The time was 11pm. She heard noise outside and went there and found police
officers outside, waking up the relatives of the accused. That she asked them what
had happened; that they told her that Muhindo is dead, that two men had reported
to police that he had been caught stealing. That she went along with the police
290together with other neighbors. That at the police the accused was shown to them;
that he was bleeding around the face, the neck was swollen, the eyes were swollen.

That they went back home; that the next morning, they went back to the police; that at about 8:00am the complainant and others left and returned with a half basin of vanilla. That then, the O/C ordered for the accused to be brought out and he was
295photographed together with the vanilla, a panga, jacket and some herbs all brought out from the office. In cross examination by the prosecution, the witness accepted that the complainant had vanilla gardens; that that night he was not with the accused; that she would not know if the accused went to the complainant's garden; and that she would not know whether or not the accused stole the complainant's
300Vanilla.

As I warned the assessors, I hereby warn myself, that in an offence involving a single identifying witness of an incident that took place at night, such identification evidence should be considered with caution, and corroboration is required as a
305matter of practice. Corroboration means additional independent evidence connecting the accused to the crime. There is need to find other independent evidence to prove not only that the offence occurred but also that it was committed by the accused. Corroboration may be in the form of direct or circumstantial evidence or expert evidence. The EACA adopted the definition in the context of
310accomplice evidence in ***R v. ManilalIshwerlal Purohit (1942) 9 EACA 58 (p.61)*** as follows:

*“The corroboration which should be looked for is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. It must be independent evidence which affects
315 the accused by connecting or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it. It is of course not necessary to have confirmation of all the circumstances of the crime.*

320 *Corroboration of some material particular tending to implicate the accused is enough and whilst the nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged, it is sufficient if it is merely circumstantial evidence of his connection with the crime. Corroboration may be found in the conduct of the accused.*”

325 In **R. v. Baskerville [1916] 2 K.B 658**, it was held that:

330 *“We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.”*

In this case, the court must approach the evidence of PW1 with caution and must be satisfied that PW1 was not mistaken and that his evidence is free from any possibility of error. Where identification is made under difficult conditions then the 335 court should look for **“other evidence”** to corroborate the identification. This is because a witness may be honest and convincing but mistaken in regard to identification. Factors to be evaluated include: length of time the accused took to observe the assailant; the distance between the witness and the accused; conditions regarding source of light during the attack; familiarity of the witness to the accused 340 before the attack. (See. **Abdalla Bin Wendo & another vs R 1953**) 20 EACA 166; See. **Roria vs Republic [1967] EA 583**; See. **Abdulla Nabulere and others vs Uganda [9791] HCB 79**; See. **Bogere Moses & another vs Uganda Criminal Appeal 1/1999 Supreme Court of Uganda**).

345 In the case of **Jamada Nzabaikukize SCCA No, 01/2015**, it was held that:

“The law on identification by a single witness has been laid out in several cases. The leading authority is that of **Abdullah Bin Wendo and another vs. R (1953) 20 EACA 583**. The law was further developed in the authorities of **Abdulla Nabulere vs. Uganda Criminal Appeal No.9 of 1978** and **Bogere Moses vs. Uganda (supra)**. The principles deduced from these authorities are that-

- i) Court must consider the evidence as a whole.
- ii) The court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to

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have been made were favourable or difficult.

- iii) The court must caution itself before convicting the accused on the evidence of a single identifying witness.

iv) In considering the favourable and unfavourable conditions, the court should particularly examine the length of time the witness observed the assailant, the distance between the witness and the assailant, familiarity of the witness with the assailants, the quality of light, and material discrepancies in the description of the accused by the witness.”

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I can proceed to rely on the evidence of a single identifying witness even without corroboration, if I am satisfied that the witness was truthful and that there is no possibility of error in the identification of the perpetrator. (See **Abdala bin Wendo & Anor v. R (1953) 20 EACA 166**). I have evaluated all the evidence as a whole. PW1 **Nyamuchwaga Elisha Bandanga** the complainant knew the accused very well and he was able to identify him with the aid of torchlight as they were close to

each other. **PW2 Kule Colonel Kitugu** who responded to the alarm of PW1 and helped him to arrest the accused also knew the accused very well. **PW3 No 25455 SGT Bwambale Chris** found the accused already arrested and tied with banana 375fibers. **DW2 Masika Harriet** heard noise outside and went there and found police officers outside; they told her that two men had reported to police that the accused had been caught stealing. The evidence of the accused is a mere denial. The evidence of PW1, PW2, PW3 and DW2 taken together, demonstrates that the accused was caught red handed in the act of stealing the complainant's Vanilla. I 380am satisfied that the PW1, PW2 and PW3 were truthful witnesses and that there is no possibility of error in the identification of the accused who was caught red handed. I find that the Prosecution has proved the case against the accused, by proving each of the elements of the offence, beyond reasonable doubt. In agreement with the Lady and Gentleman Assessors, I find the accused Guilty of 385the offence of Aggravated Robbery as indicted and I convict him accordingly.

Dated at Fort portal this 15th day of March 2022.



Vincent Wagona

390**JUDGE**

15.03.2022

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

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HCT-01-CR-SC-0181 OF 2019

UGANDA:.....PROSECUTOR

VERSUS

MUHINDO GODFREY:..... ACCUSED

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BEFORE HON. JUSTICE VINCENT WAGONA

SENTENCE AND REASONS FOR SENTENCE

The accused has been convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*.

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According to section 286 (2) of the *Penal Code Act*, the maximum penalty for the offence of Aggravated Robbery is death. However, this punishment is by sentencing convention reserved for the most extreme circumstances of perpetration of such an offence such as where it has lethal or other extremely grave consequences.

I have to be guided by *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*.

420 Under paragraph 30 (1) The court shall be guided by the sentencing range specified in Part III of the Third Schedule in determining the appropriate custodial sentence for robbery; (2) The court shall, using the factors in paragraphs 31 and 32 determine the sentence in accordance with the sentencing range.

Under paragraph 31, in considering imposing a sentence for robbery, the court shall be guided by the following aggravating factors— (a) degree of injury or harm; (b) the part of the victim’s body where harm or injury was occasioned; (c) whether there was repeated injury or harm to the victim; (d) use and nature of the weapon; (e) whether the offender deliberately caused loss of life in the course of the commission of the robbery; (f) whether the offender deliberately targeted or caused death of a vulnerable victim; (g) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime; (h) whether the offence was motivated by, or demonstrates hostility based on the victim’s age, gender, disability or such other discriminating characteristics; (i) the nature of the deadly weapon used during the commission of the offence; (j) the gratuitous nature of violence against the victim including multiple incidents of harm or injury; (k) the manner in which death occurred during the commission of the offence; (l) the value of the property or amount of money taken during the commission of the offence; (m) commission of other criminal acts such as rape or assault; (n) whether the offence was committed as part of a pre-meditated, planned or concerted act and the degree of pre-meditation; (o) the rampant nature of the offence in the area or community; (p) whether the offence was committed in the presence of other persons such as children, a spouse of victim or relatives; (q) whether the offender is a habitual offender; (r) whether the offence was committed while under the influence of alcohol or drugs; (s) whether the offender is remorseful; (t) previous incidents of violence or threats to the victim by the offender; (u) evidence of impact on the victim’s family, relatives or the community; or (v) any other factor as the court may consider relevant.

Under paragraph 32, in considering a sentence for robbery, the court shall take into account the following mitigating factors — (a) lack of pre-meditation; (b) whether

the offender had a subordinate or lesser role in a group or gang involved in the commission of the offence; (c) mental disorder or disability; (d) whether the offender is a first offender with no previous conviction or no relevant or recent conviction; (e) whether there was a single or isolated act or omission occasioning 455fatal injury; (f) whether there was no injury or harm occasioned or no threat of death or harm; (g) remorsefulness of the offender; (h) the value of the property or amount of money taken during the commission of the offence; (i) whether property or money was returned or recovered; (j) family responsibilities of the offender; or (k) any other factor as the court may consider relevant.

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When imposing a custodial sentence upon a person convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 4 of Part I (under Sentencing ranges - Sentencing range in 465capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors of reduced on account of the relevant mitigating factors.

In **Ninsiima v. Uganda Crim. Appeal No. 180 of 2010**, the Court of appeal 470opined that these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. I have not found many closely comparable cases.

In **Byaruhanga Edison Vs Uganda, Criminal Appeal No. 0081/2010**, the 475Appellant was convicted for Aggravated Robbery contrary to sections 285 and 286 (2) of the Penal Code Act and sentenced to 17 years' imprisonment. The Court of

Appeal substituted the sentence of 17 years' imprisonment with a sentence of 11 years' imprisonment after deducting the period the appellant spent on remand. In **Turyahabwe Remigio and others Vs Uganda, Criminal Appeal No.25/2016** the 480 appellants were convicted of aggravated robbery and attempted murder and each sentenced to 7 years' imprisonment on each count. Both the Court of Appeal and the Supreme Court maintained the sentences. In **Ouke Sam vs Uganda - C.A. Crim. Appeal No. 251/2002**, the Court of Appeal confirmed a sentence of 9 years imposed on the appellant for aggravated robbery.

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In this case the prosecution has proposed a sentence 20 years' imprisonment and additionally, a compensation order shs. 8,000,000/= in favour of the complainant on the basis that the offence carries a maximum sentence of death; the sentencing guidelines place the range between 30 years and death sentence, and the starting 490 point at 35 years; the case law shows a practice of sentencing range of 15 – 25 years in such cases; the convict carried a deadly weapon; and he caused a financial loss of shs. 8,000,000/= to the complainant. The defence has submitted in mitigation that the convict is a first offender with no record of previous conviction; he is a young man who at the time of committing the offence, was aged 28 years 495 and can reform and be a useful citizen; a long custodial sentence can turn him into a hardened criminal as opposed to the desired goal of reforming; he is remorseful and regrets his actions; he is a care giver to his 3 children and 3 other children of his late brother, as well as his mother, who all need his support; the stolen vanilla was recovered and returned to the complainant; although the accused held a panga, 500 he never used it against the complainant, there was no actual violence, no harm and no injury; he has been on remand for more than 3 years; sentencing is a discretion of court and all cases are different; that most decided cases had more aggravating factors compared to this case. The defense proposed a sentence of 10 years'

imprisonment, out of which, the period spent on remand should be deducted, plus
505 compensation of shs. 300,000/=. In allocutus, the convict requested for a lesser
sentence than that proposed by his lawyer; he said he had been assaulted when he
was caught stealing and needs medical attention. I have considered all these
factors. Additionally, I have considered that people who work hard to produce an
income through income generating activities including agriculture, need protection
510 from the kinds of the accused who prefer to reap where they did not sow; offences
of this nature appear to have been on the increase, necessitating the complainant
and his neighbors to stay in their farms in the night guarding their vanilla.

After taking all factors into consideration, I consider a sentence of 6 years'
515 imprisonment to be appropriate in this case.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of*
520 *Judicature) (Practice) Directions, 2013*, is to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account.

The convict has been in custody since the 5th day of August 2018. He has therefore
525 been in custody for 3 years, 7 months, and 10 days. I hereby take into account and set off 3 years, 7 months, and 11 days, which period is hereby deducted from the 6 years, as the period the convict has already spent in custody. **I therefore sentence him to a term of imprisonment of 2 years, 4 months and 19 days, to be served starting today.**

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It is mandatory under section 286 (4) of the Penal Code Act, where a person is convicted of Aggravated Robbery c/s 285 and 286 (2), unless the offender is sentenced to death, for the court to order the person convicted to pay such sum by way of compensation to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person.

The complainant PW1 Nyamutswagana Bandanga testified that the Vanilla was 20kgs worth 8,000,000/=; that 10 kgs out of the 20kgs was returned to him by the police; that the vanilla that was stolen was not yet ready for harvest; so he only got 60,000/= out of the recovered Vanilla. PW2 Kule Colonel Kitugu testified that he found the accused with PW1 in his Vanilla garden; that the vanilla was around 22 kgs; that a kilogram of ready Vanilla was worth between 210,000/= and 220,000/=. PW5 No 32643 D/CPL Muwanga Samson said that the vanilla was handed to him as part of the exhibits; that he estimated it to have been 67kgs; that the vanilla was returned to the complainant; that the estimated value was 8,000,000/= according to the complainant; that dry vanilla was costing between 200,000/= and 250,000/= per kgs. The cost of 8,000,000/= was based on 32kgs each at 250,000/=.

I believe it is fair to conclude that the complainant lost about 20kgs of vanilla valued at about 200,000/= per KG totaling to shs. 4,000,000/=. He cannot be said to have recovered the value of his vanilla as it was stolen young, only 10kg was returned to him, and he only got shs. 60,000/= out of it. Whatever may have happened to some of the recovered vanilla, the fact remains, that the complainant incurred the loss because the accused stole about 20kgs of his vanilla before it was ready for harvest and sale, worth shs. 4,000,000/=. In effect, he only recovered shs. 60,000/=.

I consider an award of Shs. 3,940,000/= to be a reasonable compensation. The convict is to compensate the complainant in the sum of Shs. 3,940,000/= within 560a period of 6 months from the date of this judgment in default whereof the defaulting convict is to serve an additional term of 4 years' imprisonment.


The summary of the sentence is therefore as follows:

- 565 1. The convict is sentenced to serve a term of imprisonment of 2 years, 4 months and 19 days, to be served starting today.
2. The convict is to compensate the complainant in the sum of Shs. 3,940,000/= within a period of 6 months starting from today; in default 570 whereof, the convict is to serve an additional term of 4 years' imprisonment.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

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Dated at Fort-portal this 16th day of March 2022.



Vincent Wagona

580**Judge**

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

585

HCT-01-CR-SC-0181 OF 2019

UGANDA:..... PROSECUTOR

VERSUS

MUHINDO GODFREY:;..... ACCUSED

590

BEFORE HON. JUSTICE VINCENT WAGONA
NOTES OF SUMMING UP TO THE ASSESSORS

1. INTRODUCTION

Lady and Gentleman Assessors, you sat through the trial as the law requires you to do. You listened to all the evidence given by the witnesses for the Prosecution and you also heard the evidence of the accused. Your duty is to assess that evidence and advise me whether the accused should be acquitted, found responsible as indicted or of some other minor and cognate offence.

2. THE INDICTMENT

The indictment in this case is that of Aggravated Robbery contrary to sections 285 and 286(2) of the Penal Code Act.

It is alleged that Muhindo Godfrey on the 4th day of August 2018 at Kabale Village in Bundibugyo District, robbed Nyamutswangana Badanga Elisa of premature vanilla beans estimated to be worth 8,000,000/= (Eight Million shillings only) and during the said robbery, he was armed with a deadly weapon to wit a panga.

3. THE INGREDIENTS OF THE OFFENCE

For the accused to be convicted of Aggravated Robbery, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- 610 v. Theft of property belonging to the victim
 - vi. Use of violence or threat of use of violence during the theft
 - vii. Possession of a deadly weapon during the theft
 - viii. Participation of the accused in the theft.

615 **4. THE BURDEN AND STANDARD OF PROOF**

The burden of proof is always on the prosecution. The prosecution bears the duty to prove each of the ingredients of the offence and generally this burden never shifts onto the accused, except where there is a specific statutory provision to the contrary which exception does not exist in this case.

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The standard of proof is “proof beyond reasonable doubt. “All the essential ingredients of the offence are to be proved beyond reasonable doubt. This standard does not mean proof beyond a shadow of doubt. It is achieved if you are satisfied that having considered all the evidence from a perspective that is most favourable
625to the accused, you are satisfied that all evidence in favour of or pointing to the innocence of the accused, at best creates a mere fanciful possibility but not any probability that the accused is innocent.

Evidence is evaluated as a whole. Consider evidence of both the prosecution and
630the defence relating to each of the ingredients before coming to a conclusion. You should not consider the prosecution evidence in isolation of that of the accused.

When a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although
635 he or she was not charged with it. The minor offence sought to be entered must belong to the same category with the major offence. The offence of Simple Robbery c/s 285 and 286 (1) (b) of *The Penal Code Act* is minor and cognate to that of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*.

640 When court considers all the essential ingredients of the offence charged, finds one or more not to have been proved, finds that the remaining ingredients include all the essential ingredients of a minor cognate offence court may then, in its discretion, convict of that offence.

645 5. THE EVIDENCE IN THIS CASE

i. Theft of property belonging to the victim

Theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen (per Section 254 of the Penal Code Act). The prosecution is required to prove that an item capable of being stolen was taken
650 from the complainant with the intention to permanently deprive him of the same. For this ingredient, there must be proof of what amounts in law to an asportation (that is carrying away) of the property of the complainant without his consent or lawful claim of right. Provided there is some severance, the least removal of the goods from the place where they were, is sufficient, although they
655 are not entirely carried off. The removal, however short the distance may be, from one position to another upon the owner's premises is sufficient asportation, and so is a removal or partial removal from one part of the owner's person to another.

PW1 Nyamachwaga Elisha Bandanga testified that on 4/8/2018 at around 66011.00pm, he was in his garden guarding his vanilla when he saw the accused harvesting his (complainant's) vanilla. The accused had stolen his Vanilla. The witness saw the accused harvesting his Vanilla. The accused was found with Vanilla in a Jacket wrapped in his waist and in his trouser pockets. The Vanilla was worth 8,000,000/= . In answer to court and the assessors, the witness said that 665some of the recovered vanilla, about 10KG,was returned to him; that the vanilla that was stolen was not yet ready for harvest, so he only got 60,000/= out of the recovered Vanilla. **PW2 Kule Colonel Kitugu** testified that at around 11:00pm, P.W.1 made an alarm saying that a thief had entered his garden. PW2 was in own garden guarding his Vanilla in the same area separated by a road.PW2 came 670running to help him. PW2 found P.W.1 getting hold of the accused and he helped and they arrested the accused. He had harvested Vanilla and placed it in his jacket. He had harvested the vanilla from PW1's garden.They took the accused together with the Vanilla. The vanilla was around 22 KGs. In cross examination the witness said that he saw the Vanilla; that it came from the garden of PW1; that he also saw 675where it was harvested from in the morning that the Vanilla was recovered and taken to police. **PW3 No 25455SGT Bwambale Chris** who at the time was the Officer in Charge at Harugale Police Station in Bundibugyo District testified that on 4/8/2018 at 23:00 hours, PW1 came and reported that he had arrested a person in his Vanilla garden. They went to the garden. They found the person tied with 680banana fibers. They recovered vanilla beans. They returned in the morning to the scene and found Vanilla beans scattered all over the garden. They photographed the suspect with the Vanilla beans and other exhibits and exhibited them. **PW4 Kahamba Rashid** a Photographer testified that early in the morning, he was invited to the police station. They brought the suspect out of cells to the reception. 685They brought the items - vanilla, a Jacket and panga. He took and later printed the

photos of the suspect and the items (Prosecution Exhibit PE2) and gave them to the police. The vanilla was a half of a basin in quantity. **PW5 No 32643 D/CPL Muwanga Samson** testified that he participated in the investigations. Among the exhibits he received were young Vanilla beans that were later handed back to the complainant,

I invite you to advise me as to whether there was theft of the property of the victim based on the evidence on record.

ii. Use of violence or threat of use of violence during the theft

The prosecution was further required to prove that during the commission of that theft, the assailants used or threatened to use violence. For this ingredient, there must be proof of the use or threat of use of some force to overcome the actual or perceived resistance of the victim.

PW1 Nyamachwaga Elisha Bandanga testified that when he saw the accused harvesting his Vanilla, the accused was holding a panga in his right hand and using the left hand to harvest the vanilla. That the accused started running when the witness made an alarm. He was assisted by those who responded to the alarm and they arrested the accused. In cross examination the witness stated that he first saw the accused, when the accused had reached close to him. He had reached about 2½ meters from the witness. Then the witness flashed a torch at the accused. The accused first continued advancing towards the witness. That it was the alarm that the witness made that made the accused ran away; that the witness threw a spear at him when he was running about 10 meters away. He stated that he missed the accused; that he threw the spear again and missed the accused again. **PW2 Kule Colonel Kitugu** testified that when he came running to help PW1, the accused had

harvested Vanilla and placed it in his coat and he was holding a panga. **PW3 No 25455SGT Bwambale Chris** testified that they recovered a panga at the scene where the complainant met the accused. **PW4 Kahamba Rashid** testified that among the exhibits he photographed was a panga. **PW5 No 32643 D/CPL Muwanga Samson** said that among the exhibits he received in the case was a panga; the witness tendered the panga as Prosecution Exhibit PE1.

What do you make of the evidence following evidence? that the perpetrator was armed with a panga; that when the complainant flashed a torch at the perpetrator, he first continued advancing towards the complainant; that it was only when the complainant made an alarm that the perpetrator ran away. Do you think there was use of violence or threat of use of violence during the theft? I invite you to advise me accordingly.

iii. Possession of a deadly weapon during the theft

The prosecution was further required to prove that immediately before, during or immediately after the said robbery, the assailants had a deadly weapon in their possession. The prosecution is required to prove that immediately before, during or immediately after the said theft, the assailants had a deadly weapon in their possession. A '*deadly weapon*' is defined to include any instrument made or adopted to... stabbing or any imitation of such instrument which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person, that it is likely to cause death or grievous harm. The position of the law is that as much as possible, the weapon of attack should be exhibited in Court, and where it is not, it should be explicitly described. The

description is required in assisting the court determine whether the said instrument
740 or weapon was leather or not.

PW1 Nyamachwaga Elisha Bandanga testified that when he saw the accused harvesting his Vanilla, he was holding a panga in his right hand and using the left hand to harvest the vanilla. That the accused started running when the witness
745 made an alarm. He was assisted by those who responded to the alarm and they arrested the accused. In cross examination the witness stated that he first saw the accused, when the accused had reached close to him. He had reached about 2½ meters from the witness. Then the witness flashed a torch at the accused. The accused first continued advancing towards the witness. That it was the alarm that
750 the witness made that made the accused ran; that the witness threw a spear at him when he was running about 10 meters away. He stated that he missed the accused; that he threw the spear again and missed the accused again. **PW2 Kule Colonel Kitugu** testified that when he came running to help PW1, the accused had harvested Vanilla and placed it in his coat and he was holding a panga. **PW3 No**
755 **25455SGT Bwambale Chris** testified that they recovered a panga at the scene where the complainant met the accused. **PW4 Kahamba Rashid** testified that among the exhibits he photographed was a panga. **PW5 No 32643 D/CPL Muwanga Samson** said that among the exhibits he received in the case was a panga.

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You need to be satisfied that the evidence available proves the ingredient beyond reasonable doubt and advise me on the same. Do you think there was possession of a deadly weapon during the theft? I invite you to advise me accordingly.

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iv. Participation of the accused in the theft.

The last ingredient that was required to be proved is that the accused participated in committing the offence for which he is indicted. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of 770crime as the perpetrator of the offence.

PW1 Nyamuchwaga Elisha Bandanga the complainant testified that he knew the accused as Muhindo Godfrey a resident of Kasulenge Village. On 4/8/2018 he arrested the accused in his (complainant's) garden. He had stolen the complaint's 775Vanilla. The time was 11:00 p.m. He was in the garden guarding his Vanilla. He saw the accused harvesting the Vanilla. He used a torch. He ran after the accused while making an alarm. People came in response to alarm. They arrested the accused. They also found him with Vanilla. The vanilla was in a Jacket wrapped in his waist and in his trousers pockets. Then the police took him to the police station 780together with the items. In cross examination, the witness stated that he knew the accused; that he used to see the accused in their village of Kasulenge; that there is another village between his village and that of the witness, called Kihokwo. In further cross examination, the witness said that he first saw the accused in the garden when the accused had reached near the witness; that the witness saw the 785accused first; that he flashed a torch and saw him; that when he flashed a torch, the accused first continued in the direction of the witness; that when he flashed, the accused was about 2½meters from the witness. **PW2Kule Colonel Kitugu** testified that he too knew the accused as a village mate and fellow farmer. At around 11:00pm, P.W.1 made an alarm. He was calling saying a thief had entered 790his garden. He came running to help him. He found P.W.1 getting hold of the accused and I helped and they arrested the accused. He had harvested Vanilla and placed it in his jacket. They tied him. They ran to the police to come and assist

them. The police responded and came immediately. They took the accused to police. **PW3 No 25455 SGT Bwambale Chris** at 23:00 hours the complainant 795 came to the police station and reported that he had arrested a person in his Vanilla garden and tried him up. They went to the garden and found the person tied with banana fibers. They recovered vanilla beans. They Police took him to the station. **DW1 Muhindo Godfrey** the accused in his unsworn statement testified denied the offence. He testified that on 4/8/2018 he was coming from burial when he met 800 people that he did not know; that they hit his head with a stick and he fell down. That they hit his ear with a stone; that from then, he did not know what followed until the next morning when he found himself at police; that to date he is still in prison and does not know what he did. **DW2 MASIKA HARRIET** testified that the accused was his neighbor. That on the 4/8/2018 she was sleeping. The time was 805 11pm. She heard noise outside and went there and found police officers outside, waking up the relatives of the accused. That she asked them what had happened; that they told her that Muhindo is dead, that two men had reported to police that he had been caught stealing. That she went along with the police together with other neighbors. That at the police the accused was shown to them; that he was bleeping 810 around the face, the neck was swollen, the eyes were swollen. That they went back home; that the next morning, they went back to the police; that at about 8:00am the complainant and others left and returned with a half basin of vanilla. That then, the O/C ordered for the accused to be brought out and he was photographed together with the vanilla, a panga, jacket and some herbs all brought out from the office. In 815 cross examination by the prosecution, the witness accepted that the complainant had vanilla gardens; that that night he was not with the accused; that she would not know if the accused went to the complainant's garden; and that she would not know whether or not the accused stole the complainant's Vanilla.

820I should warn you that this being an offence involving a single identifying witness of an incident that took place at night, corroboration is required as a matter of practice. Such identification evidence should be considered with caution.

The court must approach PW1's evidence with caution and must be satisfied that 825PW1 was not mistaken and that his evidence is free from any possibility of error. Where identification is made under difficult conditions then the court should look for "**other evidence**" to corroborate the identification. This is because a witness may be honest and convincing but mistaken in regard to identification.

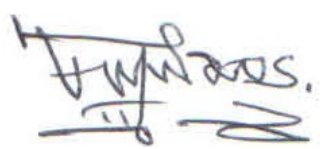
830Corroboration means additional independent evidence connecting the accused to the crime. There is need to find other independent evidence to prove not only that the offence occurred but also that it was committed by the accused. Corroboration may be in the form of direct or circumstantial evidence or expert evidence. You can however advise me to proceed to rely on the evidence of a single identifying 835witness even without corroboration, if you are satisfied that the witness was truthful and there is no possibility of error in the identification of the accused. That is, if you are satisfied that the evidence of PW2 the complainant was truthful and that there is no possibility of error in the identification of the accused, then you can advise me to act on her evidence, even if that evidence is not corroborated.

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You should address the evidence as a whole and consider factors like: whether the conditions under which the identification was made were favourable; the length of time the witness observed the assailant; the distance between the witness and the assailant; familiarity of the witness with the assailant; and the quality of light 845available.

Consider all the evidence as a whole. **PW1 Nyamuchwaga Elisha Bandanga** the complainant testified that he knew the accused very well and he was able to identify him with the aid of torchlight as they were close to each other. **PW2 Kule** **Colonel Kitugu** who responded to the alarm of PW1 and helped him to arrest the accused also knew the accused very well. **PW3 No 25455 SGT Bwambale Chris** found the accused already arrested and tied with banana fibers. **DW2 Masika Harriet** said that she heard noise outside and went there and found police officers outside; they told her that two men had reported to police that the accused had been caught stealing. The evidence of the accused is a mere denial. Consider all the evidence of PW1, PW2, PW3 and DW2 taken together as well as the defence of the accused. Was the accused caught red handed in the act of stealing the complainant's Vanilla or not? Are you satisfied or not, that PW1, PW2 and PW3 were truthful witnesses and that there is no possibility of error in the identification of the accused?

You should advise me whether or not, in your opinion, the prosecution has proved the participation of the accused in the commission of the beyond reasonable doubt. In the end, you should advise me whether or not, in your opinion, the prosecution has proved the case of aggravated robbery against the accused beyond reasonable doubt and advise me whether to convict or acquit him.



Vincent Wagona

JUDGE
9/3/2022