THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CRIMINAL SESSION CASE No. 0044 OF 2004

UGANDA …….. PROSECUTOR

VERSUS

BWAMBALE SAMSON …….. ACCUSED

BEFORE: - THE HONOURABLE MR. JUSTICE CHIGAMOY OWINY – DOLLO

JUDGMENT

The accused, Bwambale Samson, stands indicted for the offence of aggravated robbery, in contravention of sections 285 and 286(2) of the Penal Code Act. The particulars of the offence, as laid out in the indictment, is that on the 30th day of January 2003, at Nyakasura, Kabarole District, the accused robbed one Aliganyira Tadeo of motor cycle registration number UDC 592 P, Yamaha make; and that at, or immediately before, or immediately after, the said robbery, the accused used a deadly weapon, to wit, a knife, on the said Aliganyira Tadeo.

The indictment was read out and explained to the accused who responded that he had understood the charge; but firmly denied it, thereby necessitating the conduct of a trial. The offence of aggravated robbery comprises four ingredients; each of which the prosecution must prove beyond reasonable doubt, before this Court can find the accused guilty. These ingredients are:-

(i) The occurrence of theft of property.

(ii) The use of violence in furtherance of the theft.

(iii) Actual use, or threat to use a deadly weapon either at, or immediately before, or immediately after the theft; or that death, or grievous harm, was caused.

(iv) The participation of the accused in the theft; and in the manner set out in (ii) and (iii) herein above.

The prosecution, in its endeavour to discharge its aforesaid obligation under the law, adduced evidence from two witnesses; namely:

(i) Aliganyira Tadeo – PW1, a boda boda rider from whom the motor cycle was allegedly robbed;

(ii) Chibichabo Bwambale - PW2, an LC1 Chairperson of Nyakatokore Zone, Karago parish, Bukuku Sub County, Kabarole District; the place of residence of the accused.

Regarding the ingredient of theft, it was the testimony of PW1 that on the fateful evening of 30th day of January 2003, at around 7.40 p.m. the accused, whom he knew as a motor cycle mechanic based at Kisenyi, in Fort Portal Town, hired him from the Kisenyi boda boda stage to take him (the accused) to Canon Apollo College; a distance of some two miles outside town. He further testified that it was when they reached the Nyakasura School swimming pool, that the accused caused him – PW1, to stop; alleging that he (the accused) had dropped his cap.

PW1 further testified that he turned the motor cycle round, moved closer approaching the accused, and focused the motor cycle headlight on him so as to provide light to enable him locate the fallen cap. Instead, and without uttering a word, the accused attacked PW1 with a knife and stabbed him on his upper lip; whereupon a fight ensued between the two, during which PW1 managed to disarm the accused and fling the assault knife into the bush. The two fought on, and in the course of which the accused overpowered and strangled PW1 unconscious. After sometime PW1 regained consciousness and noticed that the accused was no longer there; and also realised that his motorcycle was nowhere to be seen.

He proceeded to his home, and reported to one Byakagaba who called one Baguma who, in turn, reportedly, promptly called Mugabo the owner of the motor cycle; and informed him of the misfortune that had befallen PW1. Mugabo came to the home of PW1 that very night in a car; and, in the company of PW1, Baguma, Byakagaba, and one Daudi, went to the scene of the alleged robbery, wherefrom they recovered a side mirror for the motor cycle, the knife PW1 had allegedly thrown in the bush in the course of his struggle with the accused, and also a stone contained in a polythene bag which the accused had carried, and which PW1 had, at that time, mistaken for a piece of bread. The party then took PW1 to Fort Portal Hospital where he was treated, and discharged the following morning.

PW2 - the Chairperson L.C.1 of Nyakatokore village, for his part, stated that two police officers whose names he did not know, but whom he recognised as coming from the nearby police post,

called on him at his home on the 8th of February 2003; seeking his involvement in the search for a motor cycle number plate; registration number UDC 592 P. These police officers briefed him that a motor cycle had been robbed along Nyakasura road, but had been recovered, and was now with the police. And that they suspected the accused to be in possession of the number plate of that motor cycle. He led the police officers - together with a Gombolola Internal Security Officer (GISO), and an L.C. official of a neighbouring village, to the house of the accused.

There was no one at home, save for children; and so, exercising his official authority, he allowed the police to open the house; and upon doing so, the search party found the said motor cycle number plate inside, lying at the very entrance to the house. The following day PW2 called on the accused and confronted him about the number plate. The accused denied knowledge of the motor cycle, and of the number plate reportedly found in his house. PW2 took the accused and handed him over to police. Defence counsel put it to him in cross examination that he PW2 had, together with the police, planted the motorcycle number plate in the house of the accused. PW2 vehemently refuted this; stressing that being a leader, he could not commit such a pointless act.

Even if PW1 is established to be a credible witness, and I will advert to this later in this judgment, his testimony provides nothing more than circumstantial evidence regarding the accused being the person who committed the theft of the motor cycle in issue. The motorcycle disappeared when PW1 had been rendered unconscious by the accused. In the circumstance then, he could not offer any direct evidence as to who took the motor cycle. It is noteworthy that at no time in their violent struggle that evening did his assailant demand for, or attempt to seize the motor cycle. If anything, the assailant attacked PW1 without uttering a word.

Nonetheless, here, there is every justification in making a strong inference that it was PW1's assailant who took away the motor cycle after overpowering the owner – PW1. This would be a reasonable conclusion to make in the circumstance, as it was PW1's testimony that although their fight had been noisy, no one had responded. What remains for the Court, on looking at all the circumstances of the case, is to determine whether or not PW1 is credible, with regard to the alleged events leading to the loss of the motor cycle.

On the ingredient of use of violence as alleged, it is again the direct evidence of PW1 alone that is available. He gave a detailed narrative on how he was attacked and assaulted with a knife; how he wrestled and struggled with his assailant, in the course of which the assailant strangled and

overpowered him, and rendered him unconscious. This account of the attack and the subsequent struggle, if proved true, is an unmistakably clear manifestation of violence having been applied in furtherance of the commission of the theft.

As for the ingredient of threat to use, or actual use of a deadly weapon in the commission of the robbery, it is still the direct evidence of PW1 that is relevant. According to him, his assailant actually used a knife with which he stabbed PW1 on the upper lip; and in the course of the struggle between the two antagonists the knife cut PW1 in the palm. PW1 described the knife which, upon recovery, had been handed over to police, though not produced in Court, as the type made by local blacksmiths; and estimated it to measure about three quarters of a foot in length.

When this robbery was allegedly committed, in 2003, the Penal Code Act, in the provision applicable then, had defined the phrase 'deadly weapon' as follows:-

S. 273 (3). *In sub section (2), "deadly weapon" includes any instrument made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death.*

A knife, of whatever description, is certainly adapted for stabbing or cutting; and when used for offensive purposes, it is certainly likely to cause death. I hold the view that once it is established that the instrument used in an attack on a victim is a knife, it is pointless to go further to describe its length, design, or shape; because a knife by its intrinsic nature is adapted for cutting or stabbing, and by that adaptation it is likely to cause death when used for offensive purposes. Proof of use of a knife, therefore, suffices to prove the element regarding the use of deadly weapon. In any case, the assertion in this case was that the knife did cut PW1 on his upper lip, and palm.

On the issue of participation of the accused in the robbery, it is the credibility of PW1 which, in a number of aspects, is the principal determinant. First, is whether the conditions were favourable enough for him to identify the person he alleges hired him that evening. Second, whether generally he is reliable in his account of what he asserts happened that evening. Third, and in the light of the fact that there is only circumstantial evidence, albeit it irresistibly pointing to the accused as the culpable person in the theft of the motor cycle, whether this establishes the case against the accused to the standard required by law.

The testimony of PW1 is that he had known the accused quite well as a mechanic in Kisenyi, the place where PW1 himself operated his boda boda transport business. The accused gave evidence corroborating this testimony that he was a motor cycle mechanic based in Kisenyi; and stated that he had known PW1 for a period of two months, prior to his arrest, as someone working in Kisenyi. PW1 testified that the accused hired him at 7.40 in the evening when there was moonlight; and that between the time the accused hired him and when he collapsed unconscious in the course of fighting, he had had sufficient time together with the accused.

For his part, the accused gave sworn testimony and unreservedly denied the allegations labelled against him in the indictment, and in the evidence adduced by the prosecution witnesses. He testified that the first time he heard of the theft of the motor cycle in issue was when his relatives informed him that PW2 had broken into his house with the police while he was away. He took up the matter with PW2 and when the latter told him of the theft of the motor cycle, and the discovery of the number plate, he categorically denied any involvement in the matter.

As pointed out herein above, this case turns principally on the credibility of PW1 with regard to the incident of that evening. This covers his evidence of identification of the person who he alleges assaulted him that fateful evening; and what, if anything, really transpired on that occasion. The evidence of PW1, naming the accused as the person he interacted with that evening, being that of a single identifying witness, requires to be tested with great care so as to avoid the possibility of error or mistaken identity on his part.

In treating evidence of identification such as this, the law is that it is the inculpatory facts of identification adduced by the victim of the criminal act, which offers the best evidence - see ***Badru Mwindu vs Uganda; C. A. Crim. Appeal No. 1 of 1997.*** The conditions under which PW1 was hired – the moon light and later the head-lamp light, the prior knowledge of the accused, and the length of time the two spent together that evening – were favourable for proper identification on the authority of ***Isaya Bikumu vs Uganda; S. C. Crim. Appeal No. 24 of 1989***; and would have minimised the possibility of any mistake or error in such identification.

If PW1 is believed, this would be one of those instances where, on the authority of ***Abudalla Nabulere & Others vs. Uganda, C. A. Crim. Appeal No. 9 of 1978 [1979] H.C.B. 77,*** it would, after exercising the necessary caution, be safe for Court to convict even though no other evidence

is adduced to support the correctness of identification. This leads me to the issue of the credibility of PW1 with regard to his account of the event of that evening. In the first place, when he regained consciousness and went home, he reported his ordeal and misfortune to one Byakagaba. He however did not name anyone as being responsible for the robbery.

Later, after confirming that indeed the motor cycle was lost, Mugabo the owner of the motor cycle and PW1 proceeded to Kasese, as it was a transit point for motor cycles being ferried to Congo. And in Kasese, they charged some boda boda riders with the responsibility to look out for the motor cycle. The disturbing aspect of this testimony is that nowhere in his report, either to Byakagaba, or to Mugabo the owner of the motor cycle, does PW1 name the accused, or, say, give a description fitting the accused, as his assailant and robber.

At Kasese, the two instruct some boda - boda operators to look out for the motor cycle. No mention or description of the accused is made. PW1 knew the accused and also where the accused worked; but strikingly, there is no evidence adduced to show that this work place was either the first place of call, or was ever a place of call at all for PW1 and Mugabo the owner of the motor cycle. And yet this would have been irresistibly the most logical thing to do in the circumstance.

PW1 testified that he reported the matter to police the same day of the alleged robbery. Given his narration of the events as they unfolded that night, this is unlikely. Around midnight of that night he and those people he had reported to first, were still at the scene of the alleged robbery; after which he was taken to hospital and was detained until the following day when he was discharged. So, apart from his word on the matter, there is no evidence at all that PW1 reported his ordeal of that night to the police.

The police, in their brief to PW2, did not name the accused as the assailant of PW1; something they would not have failed to do, had it been that PW1 had named the accused to them as his assailant. This is what PW2 in his testimony said the police told him when they called on him, in his capacity as Chairperson LC1, seeking his authority and participation:-

> *"They told me that a motor cycle was robbed along Nyakasura road; that the motor cycle was Reg. No. UDC 592 P. They did not tell me what the make was. They told me that they had patrolled and recovered the motor cycle, and that it was at the police; but that they got*

it when it was number less. They were suspecting the number plate to be in my area of Nyakatokore. The person in whose home they suspected this to be was the accused. "

The evidence above supports the contention that PW1 could not have informed the police that it was the accused who had in fact robbed him of the motor cycle that fateful evening. Otherwise it would make no sense that the police do not state that the person named in the robbery is the accused, but instead use the passive expression that the motorcycle 'was stolen' at Nyakasura. And yet when it comes to the number plate, the police expressly name the accused as the person being regarded with suspicion.

It is thus not without justification, or far fetched, to conclude that PW1, as a matter of fact, did not know the identity of the person who assailed him and took off with the motor cycle; if in deed such a thing ever happened. Consequently, he could not have named the accused to the police; just as he, certainly, did not name anyone to the first group of people he reported the robbery to, and with whom he went back that very night to the scene of the scuffle. No wonder then that the testimony of PW1 was the subject of a relentless and virulent scathing attack by Mr Rukanyangira, learned defence counsel.

In ***Uganda vs Bosco Okello alias Anyanya, (H.C. Crim. Sess. Case No. 143 of 1991), [1992 - 1993] H.C.B. 68,*** Court held that where a witness fails to name his or her assailant at the first instance, this failure to do so seriously affects the credibility of that witness. In the case of ***Frank Ndahebe vs Uganda, S. C. Crim Appeal No. 2 of 1993***, where the eye witness had failed to name the attackers to the people who had answered the alarm, and to the authorities, the Court held that this weakened the evidence of identification; and in the absence of any other evidence connecting the appellant with the offence, the stringent test requisite for proof of identification had not been met.

The rationale here is that it is more persuasive to name one's attacker at the earliest opportunity, so that it is not held with suspicion as having been done as an after thought; possibly driven by some other factor or ulterior motive. In ***Rex vs. Shaban bin Donaldi (1940) 7 E.A.C.A. 60,*** and cited with approval by the Supreme Court of Uganda in the case of ***Bogere Moses & Anor. vs Uganda; S. C. Crim. Appeal No 1 of 1997***, the Eastern Africa Court of Appeal stated that:-

"We desire to add that in cases like this, and indeed in almost every case in which an immediate report has been made to the police by someone who is subsequently called as a

witness, evidence of details of such report (save such portions of it as may be inadmissible as being hearsay or the like) should always be given at the trial. Such evidence usually proves most valuable, sometimes as corroboration of the evidence of the witness under section 157 of the Evidence Act, and sometimes as showing that what he now swears is an afterthought, or that he is now purporting to identify a person whom he really did not recognise at the time, or an article which is not really his."

In the ***Bogere case (supra),*** the Supreme Court of Uganda pointed out that the Tanganyika Evidence Act whose provision was referred to in the ***Shaban bin Donaldi*** case (supra), is similar to section 155 of our Evidence Act which is worded as follows:-

"In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved."

In ***Kella vs Republic [1967] E. A. 809*** at p. 813, Court reaffirmed the need for upholding the practice elucidated above; and observed that:-

"The desirability for this practice would apply with special force to a case of this nature where the decision depends upon the identification of the accused person some two and a half years after the incident happened. The police must in their investigation have taken statements from both the principal witnesses Halima and Jerevasio.

In her evidence Hallima states that she gave the statement the following day naming the two appellants. If this statement had been produced and she had in fact identified both appellants by name the day after the incident, this would have considerably strengthened her testimony; but if this portion of her evidence was untrue, then it would have the opposite effect and have made her testimony of little value."

The corpus of authorities, cited above, on the need to adduce evidence in the possession of the police, is notably relevant to, and is virtually on all fours with the matter now under consideration by this Court. Had the evidence of the investigating police officers been adduced by the prosecution, there would have been very little need for any further ado in determining the credibility of PW1, and the identity of the person who robbed him. The matter would have been

resolved one way or the other on the evidence. It would have been such evidence which could have explained the police holding the accused under suspicion, and the justification for carrying out the search in his house.

As has been pointed out in the case of ***Kasaija s/o Tibagwa vs R. (1952) 19 E.A.C.A. 268,*** and cited with approval in the case of ***Kamudini Mukama vs Uganda, S. C. Crim. Appeal No. 36 of 1995***, the law is that where the evidence of an arresting witness is relevant, the prosecution should call that witness; otherwise failure to do so may create doubt in the prosecution case. The present case is one such situation where the evidence of the police would have shed crucial light on the circumstantial evidence adduced in Court by PW1, as to who might have taken the motor cycle that evening from him.

The evidence adduced by PW1 regarding the identity of his assailant is therefore unreliable; and on its own is not sufficient to prove the case against the accused. It is therefore imperative to look for such other evidence as would connect the accused with the alleged theft of the motorcycle. Such evidence, herein, is the circumstance of the recovery of the number plate. Since the motor cycle had been stolen only a week from the date of the recovery of the number plate, the accused was found in possession of recently stolen property.

Even where reliance cannot be placed on the evidence of identification, conviction can nevertheless still be founded on the evidence of the accused being found in possession of that property. The test of the doctrine of recent possession as set out in ***Yowana Sserunkuma vs Uganda, S. C. Crim. Appeal No. 8 of 1989,*** is that:-

> *"When a person is found in recent possession of stolen property, and can not give a <u>reasonable</u> explanation as to how he came into such possession, the inference is that either that person is the thief or receiver of that property…*
>
> *Being found in recent possession of stolen property is a species of circumstantial proof; and as is well known in cases of circumstantial evidence, if an innocent hypothesis is as possible as a guilty hypothesis, then the prosecution has failed to prove its case beyond reasonable doubt. A reasonable explanation leaves open the possibility of an innocent explanation, even if the court is not convinced of its truth. To reject an explanation as false, there must be specific evidence that on some point or points it is actually proved false."*

The Supreme Court of Uganda, in ***Mbazira & Anor vs. Uganda; S. C. Crim. Appeal No. 7 of 2004,*** explained further on the doctrine of recent possession as follows:-

> *"The doctrine of recent possession of stolen goods is an application of the ordinary rule relating to circumstantial evidence. The fact that a person is in possession of goods soon after they are stolen raises a presumption of fact that that person was the thief or that that person received the goods knowing them to be stolen, unless there is a credible explanation of innocent possession.*
>
> *It follows that the doctrine is applicable only where the inculpatory facts, namely the possession of the stolen goods, is incompatible with innocence and incapable of explanation upon any other reasonable hypothesis than that of guilt. The court must also be sure that there are no other co-existing circumstances that weaken or destroy the inference of guilt."*

The same point of law had earlier been made in other Court decisions; namely: ***Uganda vs Stephen Mawa alias Matua, H.C. Crim. Sess. Case No. 34 of 1990; [1992 - 1993] H.C.B. 65; Andrea Obonyo vs R. [1962] E. A. 542;*** and ***Bakari s/o Abdulla vs R. (1949) 16 E.A.CA. 84.*** There is a long line of authorities reiterating the one prescription on how Courts should approach circumstantial evidence; and as the Supreme Court of Uganda spelt out in ***Byaruhanga Fodori vs Uganda, S. C. Crim. Appeal No. 18 of 2002; [2005] 1 U.L.S.R. 12*** at p. 14 :-

> *"It is trite law that where the prosecution case depends solely on circumstantial evidence, the Court must, before deciding on a conviction, find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The Court must be sure that there are no other co-existing circumstances, which weaken or destroy the inference of guilt. (See* ***S. Musoke vs. R. [1958] E.A. 715; Teper vs. R. [1952] A.C. 480****)."*

Further, as is well stated in the case of ***Tindigwihura Mbahe vs Uganda S.C. Crim Appeal No. 9 of 1987***, circumstantial evidence must be treated with caution, and narrowly examined, because evidence of this kind can easily be fabricated. It is therefore necessary that before drawing an inference of the accused's guilt from circumstantial evidence, it is necessary to ensure that there

is no other co-existing circumstances which would weaken that inference**.** In the instant case before me, the recovery of the number plate from the house of the accused was incriminating evidence.

Nevertheless, it is highly questionable what evidential value can be attached to the recovery, in view of the circumstance surrounding its recovery. There is therefore compelling need to critically examine this circumstance. First, the police came suspecting the number plate to be not just in the possession, but in the house, of the accused. Second, on the authority of PW2, they opened the door, and behold, they were vindicated; but in a disturbingly most dramatic and questionable manner as recalled by PW2:-

> *"We opened the door as there was no one at home. I am the one who authorised the police to open in my capacity as chairman. We did not even enter the house, because just as we opened the door, the number plate was at the entrance! This was number plate, registration number UDC 592 P."*

PW2 himself must have acted very innocently and was genuine in all that he did regarding this matter which the police brought to his attention. He certainly could not have been part of any mischief, as was intimated in cross examination, to plant the number plate on the accused. He justified his decision to allow the police search the house of the accused, in the latter's absence, owing to the confidence he had in the latter as someone incapable of doing such a thing; and thought the search would vindicate and exonerate the accused.

However, as he himself realised and conceded in cross examination, it had not occurred to him that somebody could have planted the number plate there. And yet this was a very real possibility. The prosecution was under duty to call the police who investigated the matter to clarify the air over their suspicion of the accused as being in possession of the stolen property. What then is the effect of failure to call the evidence of the police who investigated the matter? Our Courts have on a number of occasions adverted to the need to adduce such evidence so as to establish proof to the required standard.

In his decision, and this has since been cited with approval, Sir UDO UDOMA, C.J.; as he then was, stated in ***Rwaneka vs. Uganda [1967] E.A. 768***, at p. 771 as follows:

"Generally speaking, criminal prosecutions are matters of great concern to the state; and such trials must be completely within the control of the Police and the Director of Public Prosecutions. It is the duty of prosecutors to make certain that Police officers who had investigated and charged an accused person, do appear in Court as witnesses to testify as to the part they played and the circumstances under which they had decided to arrest and charge an accused person. Criminal prosecutions should not be treated as if they were contests between two private individuals."

In the case of ***Alfred Bumbo & Ors vs Uganda, S. C. Crim. Appeal No. 28 of 1994,*** which emphasized the need for calling evidence of the investigating police officer to prove the prosecution, the Court said:-

"While it is desirable that the evidence of a police investigating officer, and of arrest and re-arrest of an accused person by the police, should always be given when necessary, we think that where other evidence is available and proves the prosecution case to the required standard, the absence of such evidence would not, as a rule, be fatal to the conviction of an accused person.

All must depend on the circumstances of each case whether police evidence is essential, in addition, to prove the charge. In the instant case we are satisfied that the absence of police evidence did not weaken the prosecution' witnesses, and from the appellants' unsworn statements clearly indicating how and when they arrested. Other evidence also clearly proved the prosecution case. "

Clearly, the entire circumstance of the recovery of the number plate does not add up. It makes no sense that the accused would rob PW1, some one he is aware knows him very well, and who works in the same part of town - Kisenyi – like him; and yet he does not go into hiding. Further, it is highly strange that the accused, if he was the thief, who would have known that the motor cycle has been recovered, would keep the number plate of the recovered motor cycle, not only in his house which he uses daily as his living room, but, inexplicably at the very entrance of the house, which is left unlocked.

It is hard to find this conduct compatible with that of a guilty person. Instead, the further exculpatory conduct of the accused who, despite learning of the incriminating recovery of the

number plate in his house, remains calm and confronts the authorities proclaiming his innocence and bewilderment regarding the recovered number plate, other than flee into hiding; and furthermore his accompaniment of PW2 to the police, not under arrest, but of his free will and volition, irresistibly speaks volumes in his favour.

In the absence of evidence by the police or any credible witness regarding the circumstance surrounding the recovery of the stolen motor cycle, and the basis for suspecting the accused, necessitating the search of his house, and the purported discovery of the number plate therein, there is a gaping hole in the evidence of the prosecution, which at the very least, seriously weakens the prosecution case, and at most entirely destroys it.

I can only, here, repeat the words of the Supreme Court of Uganda in the case of ***Kazibwe Kassim vs Uganda, S. C. Crim. Appeal No. 1 of 2003; [2005] 1 U.L.S.R. 1*** at p.5; where the Court stated that:-

> *"In the instant case, like the case of **R. vs. Israeli – Epuku s/o Achietu (1934)1 E.A.C.A. 166,** we are of the opinion that the evidence did not reach the standard of proof requisite for cases based entirely on circumstantial evidence. We are unable to hold that the evidence contains any facts which, taken alone amounts to proof of guilt… Although there was suspicion, there was no prosecution evidence on record from which the Court could draw an inference that the accused caused the death of the deceased to justify the verdict of manslaughter."*

And, in keeping with the now settled body of authorities on how to approach circumstantial evidence, I warned the gentlemen assessors; and equally warn myself now, that where a case is grounded exclusively on circumstantial evidence, such as this one is, the inculpatory facts must point to the guilt of the accused person to the exclusion of any other reasonable hypothesis; and that there must be no co-existing circumstances that would negative the inference of guilt before conviction can be justified.

The totality of the prosecution evidence adduced in this case, vis-à-vis the conduct of the accused, as set out above, instead makes a strong case about his innocence. There is nothing inculpatory whatsoever in the conduct of the accused. There is certainly no difficulty in finding reasonable co-existing hypothesis to explain away the so called recovery of the number plate

from his house. One such hypothesis is the strong suspicion raised by the circumstance of that recovery; leading to the irresistible inference that this was a plant and frame up, on a person whose LC1 Chairman (PW2) otherwise had positive regard for; and could not believe would commit the crime of robbery he was suspected of.

I am clear in my mind that the prosecution evidence has fallen far short of passing the test set for cases based on the strength of circumstantial evidence, such as this one. There are serious doubts in the prosecution case which I am under duty to resolve in favour of the accused. In the result, and in full agreement with the gentlemen assessors, I acquit the accused of the offence charged. And unless he is being held for any other lawful purpose, he must be released forthwith.

Chigamoy Owiny – Dollo
JUDGE
02/09/2008

Ann Kabajungu for the State.
Cosma Kateeba for the accused.
Accused in Court for judgment.
Irumba Atwoki – Clerk of Court.

Judgment delivered in open Court.

Chigamoy Owiny – Dollo

JUDGE

02/09/2008