THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CRIMINAL SESSION CASE No. 0085 OF 2003; HELD AT KYENJOJO

UGANDA

…….PROSECUTOR

VERSUS

1. CPT. MUNYANGONDO BENZ TUSHABE }

2. RA 166448 PTE SAMANYA HENRY } :: ACCUSED

3. BUUZA ISAAC }

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

JUDGMENT

The accused, Cpt, Munyangondo Benz Tushabe, RA 166448 Pte Samanya Henry, and Buuza Isaac; hereafter referred to as A1, A2, and A3; and collectively as the accused, have been indicted in this Court, on three counts, for the offence of aggravated robbery in contravention of sections 285 and 286(2) of the Penal Code Act. It was alleged in the first particulars of the indictment that on the 26th day of June 2002, at Kijwiga valley along Kagadi – Kyenjojo road, in the Kyenjojo District, the accused and others still at large robbed Mubiru Kiyaga David of cash Shs. 5,100,000/=, a mobile phone Sim-pack No. 077633622.

In the second count, it was alleged that on the same day and same place, the accused and others still at large robbed Edwards David of cash Shs. 80,000/=, and a mobile phone Nokia 5110, S/No. 449302/20/273717/6. In the third count, it was alleged that on the same day and place, the accused and others still at large robbed Nicholas Anthony of a mobile phone Nokia 3310 S/No. 440209-30-64722-6, security code No. 12345 Sim card No. 077656715. It was further alleged in all the three counts that immediately before, or at the time of the robbery, or immediately after the said robbery, the accused threatened to use deadly weapons, to wit, guns and a grenade on each of the respective persons robbed as stated in each of the counts.

The Court read out and explained the allegations contained in each of the three counts and their particulars to each of the accused. In their plea, the accused each stated they had understood the allegations against them; but vehemently denied involvement therein. Wherefore, the Court entered the plea of "Not Guilty" for each of them, and in respect of each of the counts of the indictment. A full blown trial then ensued in which the prosecution called six witnesses in its bid to discharge the burden which lay on it to prove the guilt of each of the accused, beyond reasonable doubt, by establishing each of the four ingredients constituting the offence of aggravated robbery as charged. These ingredients are, namely:-

(i) Theft of property.
(ii) Actual use of, or threat to use, violence during the perpetration of the theft.
(iii) Actual use of, or threat to use, a deadly weapon either immediately before, or at the time of perpetrating the theft, or immediately after perpetrating the theft.
(iv) The participation of the accused person in the perpetration of the said theft.

For proof of theft, it was the direct testimonies of PW1, PW2, and PW5, which formed the basis of the prosecution case. Both PW1 and PW5 testified that they had seen the man with the gun take PW1's phone from the truck. PW2 stated that the man with the gun took a Nokia phone and some money from him. PW5 testified that the assailants took money from him as well. PW2 saw a well built man search the Sri Lankan and take the latter's phone from the pocket. All these were not returned to the owners. PW1 and PW2 heard something being cut in the truck cabin; and PW2 heard the well built man in civilian attire shout orders to whoever was in the truck, cutting something, to '*vunja*' - meaning to break it - as the process was taking rather long. Immediately three bangs followed, and PW2 saw some people coming out of the truck with cash money in their hands; which they went away with.

PW1, PW5, and PW3 all physically checked the truck and found that the receptacle of the money safe had been broken and the money was not there. PW3 recovered a saw which he believed was what was used to cut the receptacle. PW5 did not hear any cutting in the vehicle. Mr. Muguluma, Counsel for A1, argued in his final submissions that theft had not been proved; and that it was significant that PW5 had not heard the alleged cutting in the vehicle; and yet he was lying under the truck with PW1 and others. He argued further that the last count had not been proved in the absence of evidence from the Sri Lankan from it was said the well built man had taken a phone.

This, he contended, meant there was no complainant. It is a little difficult to understand this line of argument by counsel.

PW2 did not only personally witness the well built man take the phone from the Sri Lankan, but actually translated to the Sri Lankan what was required of him. He therefore gave as direct evidence as the Sri Lankan would have, had he been available in Court. PW2's failure to hear any cutting is explained by the witness himself. He stated that he was in a state of fear; and his mind was far away. People react differently to situations or crisis. PW1 and PW5 who were positioned in different locations within the scene of the crime gave cogent evidence of their having heard the cutting. The subsequent findings by the witnesses, that the receptacle had been cut, confirmed the veracity of their testimony.

The legal position in Uganda, as stated by the Supreme Court in ***Sula Kasiira vs Uganda S.C. Crim. Appeal No. 20 of 1993,*** regarding what the crime of theft is, stands as follows:-

> *"There must be what amounts in law to an asportation (that is carrying away) of the goods of the complainant without his consent… The removal, however short the distance maybe, from one position to another upon the owner's premises is sufficient asportation… "*

In all the removal and taking away of the various items from the victims of the attack herein, no consent was sought from them. The items, which were never recovered at all, were taken by forcible means. Theft as an ingredient of the offence charged, contrary to the contention of defence counsel, has clearly been proved to the standard required by law.

On the allegation of use of violence in the perpetration of the theft, PW1 PW2, and PW5 adduced direct evidence. They all testified about the man with the gun hitting the victims repeatedly with the butt of the gun. PW1 stated that the man pulled him with his collar and threw him down. PW1 stated that the man in civilian clothes, and holding a grenade, ordered the victims to go under the truck otherwise he was going to burn them. PW2 stated that he was kicked on the side of his stomach. PW5 stated that it was the man with the grenade who pushed him under the truck. The witnesses to the robbery all testified to having been seriously assaulted by the attackers. All this was evidence of direct use as well as the threat to use violence on the victims of the robbery. They were all meant to further the thieving enterprise which was the purpose of the attack by the

assailants. I am satisfied that this ingredient too, the prosecution has established beyond reasonable doubt.

Before the close of the prosecution case the DPP entered a nolle prosequi with regard to A2 and A3. They were accordingly discharged; thus leaving A1 alone to face the trial. After the close of the case for both sides; and when State Counsel was making his final submissions, he applied to amend the indictment by including a grenade as a deadly weapon used or threatened to be used together with the guns on the victims. Defence Counsel gave a spirited objection to this late amendment. He urged Court to disallow it on the grounds that while the law allows for amendment of an indictment at any stage of the trial, prior to the delivery of judgment, to do so in this particular case would occasion grave injustice to the accused. He submitted that the indictment read to the accused, and to which he had pleaded and prepared his defence, had not included a grenade as a deadly weapon used.

State Counsel however pointed out that although that was the case, the accused had in fact been aware of the allegation of use of grenade six years before the trial when, in 2003, he was committed to the High Court; and the Summary of the Case he was availed had expressly stated that a grenade was used in the course of the robbery. Further to this, the issue of the grenade had been extensively canvassed in the course of the trial both by the state and Defence counsels; hence no miscarriage of justice would result at all from the amendment.

Section 50 of the Trial on Indictments Act, so far as it is relevant to this matter provides as follows:

"50. Orders for alteration of indictment.

> *(2) Where before a trial upon indictment or at any stage of the trial it is made to appear to the High Court that the indictment is defective or otherwise requires amendment, the court may make such an order for the alteration of the indictment (by way of its amendment or by substitution or addition of a new count) as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required alterations cannot be made without injustice; except that no alteration to an indictment shall be permitted by the court to charge the accused person with an offence*

which, in the opinion of the court, is not disclosed by the evidence set out in the summary of evidence prepared under section 168 of the Magistrates Courts Act."

In ***Uganda v. Mushraf Akhtar, [1964] E.A. 89***, the appellate Court, agreeing with trial Court which had declined to exercise its discretion to amend the charge after the close of evidence, held that an amendment to the charge as contemplated had not been borne out by the issues at the trial; hence, the accused would not have had the opportunity to make his defence to any such charge. Further, since the amendment sought would have entailed a major reconstruction of the charge, by formulating two counts of theft of different sums of money, stolen on different dates, the property of an organisation different from the person originally specified in the charge, to permit a reconstruction of the charge of such magnitude, particularly when that discretionary power may be exercised only in cases where it is clear that no injustice to an accused person will result, would have been improper.

In ***R. v. Nyamitare s/o Kachumita [1957] E.A. 281***, the particulars in the charge of murder had not included the word *'murdered…'*; and the accused had sought to have it quashed. The trial Court – McKISACK, C.J. declined to quash the indictment; and instead allowed it to be amended, saying at p. 281 (F - G) as follows:

"The test is whether the amendment can be made 'without injustice,' having regard to the merits of the case. The authorities cited in ***ARCHBOLD*** *(33rd Edn.), at p. 54, show that an amendment may not properly be made where it alters the substance of the offence charged."*

I overruled the objection by the learned Defence Counsel; and granted the amendment, for the reasons ably advanced by State Counsel. The key phrases in the cited provisions of the Trial on Indictments Act are: *"as the court thinks necessary to meet the circumstances of the case";* and empowers it to disallow an application seeking an amendment when: *"having regard to the merits of the case, the required alterations cannot be made without injustice."* I am satisfied that the amendment sought would not embarrass or occasion any injustice at all to the accused, as his Counsel had meticulously dealt with the issue of the grenade in the course of his cross examining the prosecution witnesses.

Regarding the use of a deadly weapon, in the execution of the theft, the witnesses who were, at different times, ambushed at the scene testified that they were stopped and harassed by two gun men; and a third person who was holding a grenade in his hand. This robbery was committed in the year 2002; prior to the enactment of The Penal Code (Amendment) Act; No. 8 of 2007, which altered the provision of the Penal Code with regard to the definition of the phrase *'deadly weapon'*. The former provision 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.*

The witnesses alleged that guns were used on them in the instant case. In fact PW2 had even specifically named the guns as SMG (sub machine gun). It was a legal requirement at the time that a weapon or instrument, alleged to have been used at a robbery such as this, could only pass the test of being a gun if it was either fired at the time of the robbery; or was later recovered, tested and verified as capable of discharging ammunition. The reason behind this position is clear when one appreciates that it is in the cartridge that there is danger when it explodes. Without ammunition that discharges, a gun would be no different from a walking stick. Section 1 of the Explosives Act (Cap 298 Laws of Uganda – Revised Edn) describes explosives to mean, inter alia, every substance which is used with a view to produce a practical effect by explosion.

Section 1 of the Firearms Act (Cap 299, Laws of Uganda), defines ammunition to include grenades, bombs and cartridges, amongst other things. One only needs to pull out the firing or safety pin of a grenade; and the explosion that would result would have the most deadly and devastating effect. The evidence before me is that the guns in issue were not fired. Further, PW4 exhibited guns allegedly belonging to the accused and his escort; and which was delivered to him, together with the accused, at the Fort Portal Police Station a year after the event. There is absolutely no nexus between these guns and the ones used in the robbery. Even if there had been any nexus, the guns delivered to the witness were however not tested so as to establish that they were functional. Therefore there was no proof that what the witnesses described as guns were actually guns, for the purpose of the law; hence no deadly weapon called a gun was proved to have been used in the course of the robbery.

However the three prosecution witnesses, who were victims at the scene; - PW1, PW2, and PW3 - all testified that the man in civilian attire was holding a grenade. PW1 was emphatic that the device was definitely a grenade. He stated as follows:

> *"I knew it was a grenade. I have seen weapons during Obote, Amin, Tito Lutwa, Museveni and know what a grenade is"*.

PW5 for his part stated that he was certain it was a grenade; because he had grown up in a Prisons barracks. The Police statement recorded by PW1 a day after the event does not mention a grenade. Counsel for the accused made capital out of this discrepancy; arguing that the mention of a grenade in Court was an afterthought, as the witness could not have omitted such an important aspect of the attack had it truly been so. Confronted with his police statement, PW1 was manifestly surprised that the statement did not mention a grenade. Either the witness did not mention a grenade to the recording officer the following day, or it was the officer who missed it out. Be it as it may, PW6 who was the O.C. CID of Kyenjojo, to whom PW1 had reported on the very day of the event, stated quite firmly that in his first information to Police, PW1 had definitely stated that the man in civilian attire had a grenade.

Nevertheless in view of the fact that PW1 mentioned the grenade in his first report to police, minutes only after the event, failure to mention the same in his statement a day later was not fatal. His testimony regarding the grenade was sufficiently corroborated by PW2 and PW3. What however remains a bone of contention is whether or not what the witnesses claimed was a grenade was indeed such a thing. Second, if it was so, then whether it was a deadly weapon within the meaning of that phrase at the time. Unlike a gun, which requires that a bullet be inserted into the chamber before it can be activated for offensive purpose, the grenade is an explosive device whose deadly nature, unlike in the case of a gun, is intrinsic to it.

Anybody who lived in Uganda during the rule of Idi Amin, and as well during the regimes that followed, including the present one, with the endless internal wars this country has gone through, can convincingly attest to the notoriety of the widespread public and open use of arms and ammunition in this country. I will readily take judicial notice of this fact. In Court, the witnesses seemed surprised that they could be doubted as to their understanding of what indeed a grenade was. No serious cross examination or any at all, was exerted on the witnesses so as to test their veracity and reliability in their testimonies that the device in issue was a grenade. I am persuaded

that the device the man in civilian attire was holding was a grenade. That said, the question that remains is whether it was used or threatened to be used in the course of the robbery.

The evidence on record is that at no time did this man with the grenade attempt to, or actually used the grenade. Even when he threatened to burn the victims and the truck if they did not follow his orders, he did not intimate that he would use the grenade. Unlike now when the test of deadliness of a weapon would include the fear it would instil in the victim; and it would not matter whether it was a real weapon or an imitation thereof, the rules at the time of this incident were stricter. There needed to be proof that there was either an attempt to, or actual use of the weapon in the course of the robbery. This was however not the case here. The grenade was perpetually in the possession of the accused; but he never applied it in the manner required above, or at all. I therefore resolve the matter in the negative that the grenade, a deadly weapon, was not used in the course of the robbery; and therefore this ingredient was not proved beyond reasonable doubt.

As for the participation of A1 in the robbery, PW1 and PW5 adduced direct evidence of identification. What came out of the examination in chief and in cross examination of PW1, PW2, PW5, was that the incident took place somewhere between 5 to 6.30 p.m. when it was still daytime. PW1 identified A1 from the dock as the Benz who with others robbed them as charged. PW1 had physically known A1 since 2001 from Kasese when PW5 had pointed out A1 to him. PW1 had already read about him and seen his photos in the newspapers as a rebel before knowing him physically in Kasese. Both PW1 and PW5 attested to the fact that A1 was a prominent person who used to ride a motorcycle and frequented military officers' mess; and was very well known in the area.

PW1 testified further that he had identified Benz at the scene of the attack, in the process of being pulled by his collar, and pushed down by the gunman. He saw Benz clearly from only four metres away; and Benz was coming towards him and the other victims, holding a grenade. Benz ordered them to go under the truck and threatened to burn them. Benz had a cap on his head, and was putting on a T-shirt. He was putting on transparent glasses which allowed PW1 to see his eyes. He saw Benz for sometime; it was not a twink of an eye. Even when he was down, being beaten, he still glanced and saw Benz holding a grenade.

PW5, for his part, testified that it was Benz (A1) who had forced them to go under the truck. He had known Benz first from Fort Portal much earlier than PW1; and this was after the Kichwamba Technical College had been burnt, and A1 was said to have been amongst the people who had burnt the College. A1 had been prominent in Fort Portal. Later when PW5 relocated to Kasese he continued to see A1 active both in Kasese and Kilembe. When this robbery took place he had already known A1 for a period of two years. At the scene of the crime Benz was putting on a white T-shirt, and had a grenade in his hand. PW5 however could not remember if A1 had a cap on; and did not mind about the glasses; then he stated that he never saw A1 with glasses. He never saw any of the attackers putting on sun goggles.

PW5 further testified that A1 threatened to burn them together with the truck. A1pulled PW5 out from under the truck and demanded to be told where the money was. PW5 saw him clearly also this time. After the departure of the robbers, PW1 asked him (PW5) if he had recognised anyone amongst the robbers and PW5 responded that he had identified Benz. PW1 agreed with PW5; stating that he had also recognised Benz; and that he had heard and recognised Benz' voice. PW5 stated that PW1 had by way of emphasis remarked that:-

> *"He is the one. I have even heard his voice".* In serious cross examination PW5 stated that: *"It was Benz who pulled me out of from underneath the truck when they were asking for the phone. It was Benz who threatened to burn us if we tried to run away. He was the one who pushed me under the truck. He was the one putting on a T-shirt, and holding a grenade."*

PW2 describes the one who ordered them to lie down and surrender all that they had, as a well built man. PW3 stated that PW1 reported the matter to police instantly that evening and named Benz whom he said he had known from Kasese, as one of the attackers; and that he had a grenade. PW3 stated further PW5 also corroborated the account by PW1 that very evening; and that PW2 also talked of a well built man who had a grenade.

The evidence herein on which the participation of A1 is based, being that of identification I am under duty to approach it in keeping with the warning sounded, and the rules laid down, in ***Roria vs. Republic [1967] E.A. 583;*** namely that proof of offence charged, basing it entirely on evidence of identification is a cause for unease. The reason for this is that there is greater danger of convicting an innocent person on such evidence, than is the case with other forms of evidence. It cautioned that while even the evidence of a single identifying witness can suffice to found a

conviction, it is less safe to do so than is the case with multiple identification witnesses; and therefore, the Court is under duty to satisfy itself that in all the circumstances of the case, it is safe to act on such evidence of identification.

The rule enunciated above was followed by the Supreme Court of Uganda in ***Bogere Moses & Anor. vs. Uganda – S.C. Crim. Appeal No. 1 of 1997***; which cited with approval, the case of ***Nabulere vs. Uganda – Crim. Appeal No. 9 of 1978; [1979] H.C.B. 77***, in which the Court had clarified that the need for the exercise of care arises both in situations where the correctness of disputed identification depends wholly or substantially on the testimony of a single or multiple identification witnesses; and that the Court must warn itself and the assessors of the special need for caution before arriving at a conviction founded on such evidence. The Court expressed wariness over such evidence, and stated that:

> *"The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, and that even a number of such witnesses can all be mistaken. The Judge should then examine closely the circumstances in which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger. ……*
> *When the quality is good, as for example, when the identification is made after a long period of observation or in satisfactory conditions by a person who knew the accused before, a Court can safely convict even though there is no other evidence to support the identification evidence, provided the Court adequately warns itself of the special need for caution."*

In ***George William Kalyesubula vs. Uganda – S.C. Crim. Appeal No. 16 of 1997*****,** the Supreme Court of Uganda further upheld this position, citing with approval the ***Roria*** case (supra), and ***Abdulla bin Wendo & Another v. R (1953) 20 E.A.C.A 166;*** reiterating the need for testing, with the greatest care, identification evidence; especially when such identification was made under difficult and unfavourable conditions. The Court then advised that:

"In such circumstances what is needed is other evidence pointing to guilt from which it can reasonably be concluded that the evidence of identification can safely be accepted as free from the possibility of error."

In ***Moses Kasana vs. Uganda – C.A. Crim. Appeal No. 12 of 1981; [1992-93] H.C.B. 47***, a decision which was cited with approval in the ***Bogere*** case (supra), the Court emphasised that where conditions favouring correct identification are poor, there is need to look for other evidence, direct or circumstantial to allay any doubt in the mind of the trial Court of any case of mistaken identity; and that this evidence may, amongst others, consist of naming the assailants to those who answered the alarm, and of fabricated alibi. In ***Yowana Sserunkuma vs. Uganda, S.C. Cr. Appeal No. 8 of 1989,*** the Court further explained that it is trite law that the evidence of a single identifying witness at night may be accepted, but only after the most careful scrutiny; and that:

*The court should also look for other evidence to confirm that the identification is not mistaken. (See **Abdullah bin Wendo vs. R. (1953) 20 E.A.C.A. 166 at 168; Roria vs. R. [1967] E.A. 583**). A careful scrutiny is not the same thing as an elaborate justification accepting dubious evidence. A careful scrutiny means, for example, comparing a first report with evidence in court; really testing the effect of light – what type it was, where it was, and how illuminated the scene. Questioning the time, and why the witness did not see the clothing of the accused."*

The Supreme Court of Uganda pointed out in ***Isaya Bikumu vs. Uganda; S.C. Crim. Appeal No. 24 of 1989,*** and ***Remigious Kiwanuka vs. Uganda S.C. Crim Appeal No. 41 of 1995,*** that where the crime complained of is committed during broad day light, by someone fully known to the witness, the conditions for proper identification would be favourable. As this case is based on evidence of identification, the Court is guided by the case of ***Badru Mwindu vs. Uganda; C.A. Crim. Appeal No. 1 of 1997,*** which is authority for the proposition that the inculpatory evidence of identification adduced by the victim of the criminal act is the best evidence.

In the instant case before me, the incident complained of took place in broad daylight; and A1 was already, as seen above, fully known to PW1 and PW5. Therefore, the conditions obtaining favoured correct identification. The possibility of error or mistaken identity by the two witnesses would, in the circumstances, be minimal if not altogether nonexistent. This therefore does not fall

under the category of cases envisaged in the ***Moses Kasana***, and ***Bogere*** cases (supra), as requiring supportive evidence before any conviction can be founded on. Had evidence in support been necessary, then the immediate naming of A1 to the police minutes only after the event would have furnished such evidence. The practice, as pointed out in the ***Abudalla Nabulere*** case (supra), is that the rule for proof of identification need not be tight. Here the Court said as follows:-

> *"If a more stringent rule were to be imposed by the courts, for example if corroboration were required in every case of identification, affronts to justice would frequently occur and the maintenance of law and order greatly hampered."*

In his unsworn testimony, A1 set up an alibi stating that on that material day of the robbery he was in fact in Kasese. The accused was under no duty to prove his alibi, as this would have amounted to shifting the burden of proof away from the prosecution. Nevertheless, it serves the interest of the accused to throw doubt in the prosecution evidence; and thereby expose it as having failed to prove the case against the accused beyond reasonable doubt. The accused in fact strengthened the evidence of identification by the prosecution witnesses as discussed above. He stated that indeed he was a prominent person in the whole of the Western and Central Uganda; following his mobilisation programmes conducted both in physical rallies, and radio programmes. It made the claim by the witnesses that they knew the accused fully well quite credible.

He attributed his ordeal herein to a design by the authorities who blamed him for not doing enough to lure the ADF insurgents out of the bush. I must say that for the reasons detailed herein above, I find the defence of alibi and his fear that he is a victim of a frame up, unconvincing; and must be rejected as untrue. The prosecution witnesses have been truthful and reliable; and have placed him at the scene of the crime. There is no indication that he witnesses were instruments of the State against the accused. The prosecution has proved beyond reasonable doubt that A1 was not only a participant, but a central figure in the robbery which, as I have found, took place that fateful evening. However owing to the fact that the evidence on record does not establish the vital ingredient of use of deadly weapon, I find the accused not guilty of the offence of aggravated robbery as charged. I therefore acquit him of that charge.

Instead, I follow the decision of Sir UDO UDOMA, C.J. *in* ***Funo & Ors. vs. Uganda; H.C. Crim. Appeals Nos. 62 – 69 of 1967; [1967] E.A. 632;*** in which, due to the fact that the evidence adduced had not proved the guilt of the accused for the offence of robbery as charged, but had proved a lesser offence; the learned C.J. had instead convicted the accused of the minor cognate offence of theft, instead of that of robbery. The learned C.J. observed as follows, that:

> *"Under common law on a charge of burglary and stealing goods, if no burglary is proved; or of robbery, if the property is not taken from the person by violence or putting in fear, the prisoner may be convicted of a simple larcency. Indeed in indictment for robbery the prisoner may be convicted either of the robbery, or stealing from the person, or of simple larcency."*

At the time the learned C.J. dealt with that case, section 180 of the Criminal Procedure Code, which was then the applicable law, provided as follows:

> *"180: When a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he may be convicted of a minor offence although he was not charged with it."*

In view of this provision, the learned C.J. then convicted the accused instead of the minor cognate offence of theft, rather than robbery; and accordingly passed a corresponding sentence. As for the instant case before me, section 87 of the Trial on Indictments Act (Cap 23) is textually worded in exactly the same language as that of section 180 of the Criminal Procedure Code cited herein above; and empowers this Court to find an accused guilty of a minor cognate offence where the facts of the case so permit. In the premise then, it is my finding that the prosecution has proved, beyond any reasonable doubt, the commission by the accused of the minor cognate offence of simple robbery in contravention of sections 285, and 286 (1), of The Penal Code Act; with regard to each of the three counts in the indictment. I therefore, accordingly, convict him of that offence.

Chigamoy Owiny – Dollo

JUDGE

12/06/2009