

In Count 3 the accused are indicted for ***Unlawful possession of Ammunitions Contrary to Section 3(1) (3)*** of the ***Firearms Act***, in that A1, A2 and A4 and others still at large on 27/5/2011 at Industrial area Ishaka town in the Bushenyi District, were found in possession of ammunitions without holding a valid firearms certificate.

All the accused persons denied the charges. The prosecution led by Ms. Sherifah Nalwanga, Learned State Attorney, adduced evidence of prosecution witnesses to prove their case. Learned Counsel, Mr. Tumwesigye Charlie, represented the accused on state brief.

Summary of facts.

The brief facts as per the DPP's "Summary of the Case" are that on 19/5/2011 at around 11:00 hours, one Nuwabaine Bruhan (PW1) received information from one Kamuleguya Ssali (PW2) that the accused persons were planning to rob him (PW1) of his money. Nuwabaine Bruhan also alerted police accordingly.

On 27/5/2011 at around 13:00 hours, the said Nuwabaine Bruhan went to Centenary Bank Ishaka branch, and withdrew Shs. 100 million which he put in a sack and handed it over to his driver Abdu Bayambana (PW3) to take to the coffee factory in a car, as Nuwabaine proceeded to the mosque for prayers.

The driver proceeded to the coffee factory, but noticed another white car trailing him. Immediately as he entered the factory compound and got out of the car, bullets were shot at his vehicle damaging it seriously. He ran for his life as the robbers removed the sack of money from the car and drove off as police, who had been alerted, gave them a chase. They managed to arrest A2 and A4 on Kitagata Road. A1 was also arrested later on.

Upon arrest, the said accused persons were found in possession of guns and ammunitions (*Exhibits P2, P3 and P4 respectively*). A5 was also arrested later on and is said to have confessed to the crime as A2 and A4 had done. A3 who was the leader of

the group of robbers was also arrested, and all the accused were charged as per indictment.

Resolution.

The essential ingredients which the prosecution has the burden to prove beyond reasonable doubt in the offence of aggravated robbery are:-

- (i) Theft of property.**
- (ii) Use or threat to use actual violence.**
- (iii) Use of a deadly weapon; and**
- (iv) Participation of the accused in the crime.**

See *Uganda v Charles Komwiswa [1979] HCB 86 (CA); Robert Sabiiti v Uganda, S.C. Crim. Appeal No. 4 of 1989.*

To prove the first ingredient of theft, prosecution adduced the evidence of PW1, Nuwabaine Bruhan, who testified that he withdrew Shs. 100 million from Centenary Bank, Ishaka branch, on 27/5/2011 meant for his coffee business at the factory. He put it in his car for his driver, PW3 Abdu Bayambana, to deliver to the coffee factory.

PW3, Abdu Bayambana, also testified that when PW1 gave him a white sack containing money, he took it to the factory in motor vehicle registration No. UAK 113P, and that this was the usual practice. That upon reaching the factory, a white vehicle which had been trailing him from the bank caught up with him at the factory. As he got out the car, a hail of bullets was fired at the car. He ran away and the robbers took the sack of money and drove off.

PW8, D/AIP Kamanyire, also corroborated the evidence as it relates to the element of theft of the money. He testified that he recovered a bank statement from Centenary Bank - Ishaka branch, under a court order (*Exhibit P10*) which shows that the account in the names of Nuwabaine Bruhan was on 27/5/2011 debited with the amounts of Shs. 100 million. It is particularly this money which was stolen by the robbers.

PW6 D/AIP Onume Geoffrey, a police officer who led the chase and arrested the robbers after they abandoned their vehicle and ran into the bush, testified that the money which was taken was never recovered, but that some of the suspects ran away and have never been apprehended, and that they could have made away with the money.

The defence contended that the element of theft was not proved because no money was ever recovered, and that only a white sack (*Exhibit P9*) containing exercise books (*Exhibit P8*) was recovered from the car by police. Further, that no person would withdraw such a huge amount of money and move it without providing security after being alerted that robbers were planning to rob him.

After appraising the whole, it is evident that money to the tune of Shs. 100 million was stolen. There is credible documentary and oral evidence directly proving that money was withdrawn from the bank and was stolen by the robbers from the car at the coffee factory. The fact that only exercise books were recovered on searching the car used by the robbers could not rule out the theft of the money. Importantly, it is noted that some of the suspects escaped and have never been apprehended. This could, *inter alia*, explain the failure to recover the money.

Since the money which was withdrawn was taken by robbers and it has never been recovered, it follows that there was theft of money belonging to Nuwabaine Bruhan, with intent to deprive the owner of it. The prosecution has proved this ingredient beyond reasonable doubt.

Regarding the ingredient of use of violence, prosecution relied on evidence of PW3, Abdu Bayambana, who testified that as he got out the car at the coffee factory, bullets were fired at the car seriously damaging it. PW5 D/IP. Byamugisha, a police officer who visited scene, testified that he found a RAV 4 vehicle which was badly damaged by bullet parked at the coffee factory. In addition, when the robbers were chased by

police towards Kitagata Road, evidence is that they turned in the opposite direction and drove while exchanging gun fire with the police.

In *Uganda v Mawa alias Matua [1992-1993] HCB 65*, it was held that in order to prove aggravated robbery prosecution must, *inter alia*, prove use or threat to use violence at or immediately before or immediately after the theft. In the instant case, prosecution's evidence vividly demonstrates that the robbers first fired bullets and hit the car and then took away the sack of money. Firing a gun to scare away or subdue any would – be resistance is on “all fours” use of actual violence. Based on the evidence, it would follow that violence was used to commit the theft of the money, and this ingredient has been proved beyond reasonable doubt.

On the ingredient of the use of a deadly weapon, PW6, D/AIP Onume Geoffrey, testified that on their arrest A1 and A2 led the policemen to the spot where they had abandoned (hidden) one of the guns used in the robbery, and an SMG Rifle (*Exhibit P2*) was recovered together with a magazine with fifteen bullets. There is uncontroverted prosecution evidence of PW3 and PW2 that guns were fired during the robbery. The Officer –in - Charge of the Kitagata Police who intercepted the robbers and joined the chase also testified that an SMG riffle with bullets was recovered from the robbers.

It is now well established that once a gun is fired during the course of a robbery it is deemed to be a deadly weapon. See *P.C Ben Mulwani & Another v Uganda, S.C.Crim. App. No. 3/93*. In addition, a gun by definition under provisions of *Section 264(3)(a)(i) PCA* is a deadly weapon in that it is adopted for shooting. This essential ingredient was duly established by prosecution beyond reasonable doubt.

To prove the ingredient of the participation of the accused, the prosecution relied mainly on evidence of PW2, Kamulegeya Ssali. He testified that A1 whom he knew as “Yonasani” approached him with a proposal that they rob Nuwabaine Bruhan his boss, of his money. That on 18/5/2011, A1 brought with him A2 also known as “Murefu”,

and A4 whose name PW2 was not familiar with. They met in Ishaka town and planned on how to go about the robbery. A1 also promised to show PW2 their group leader.

Further, that the group comprising of A1, A2, A4 and A5, others not in court, again met at *Hotsprings Hotel*, also in Ishaka town, from where they discussed further details of the planned robbery. All of them entered and drove their car *Reg. No. UDG 722C* to *DESIRE Supermarket* in Ishaka town, from where A1 beacons A3, Bangi Mayer, their group leader. A3 approached the car and was briefed on how Kamulegeya Ssali, who was with them in the car, would help them execute the robbery.

A3 and A1 boarded a motor - cycle and followed the car in which PW2 was with other members of the group and they drove up to a place called Katarumwa near Nyarwanya playground. They finalized details on how to go about the planned robbery of money *en route* from the bank to the factory. Kamulegeya, who was an employee at the factory, was assigned the role of monitoring when and how the money would be brought to the factory and he alerts the other group members who would then strike and rob the cash.

Kamulegeya instead informed his boss Nuwabaine, who in turn alerted the police. PW2 further took his boss around town in a car identifying to him the members of the gang that planned the robbery. Kamulegeya (PW2) then informed A1 that money would be brought on a Friday, the 27/5/2011. A1 then took PW2 to the *Desire Supermarket* where A3, the group leader, assured PW2 that his share of the proceeds from the robbery would be picked from him (A3) at the supermarket after the execution of the robbery. Shortly after, around 1:00 pm, PW2 heard gun shots and later found his boss' car damaged with bullet holes and deflated rear tyres.

The accused gave evidence in their defence. A1, Mbeine Nathan testified (as DW1) that he is a *Boda boda* (commercial motorcycle) operator in Ishaka town and that he did not know any of his co-accused, whom he said he only met in court. That on 27/5/2011 he got a passenger destined for Kashenyi, but just before reaching there, he was stopped by men in company of Kamulegeya and he was arrested and taken to Ishaka Police

Station. DW1 also stated that in 2010 he conflicted with Kamulegaya over an affair with a certain woman only known as “Grade” in Ishaka town, and Kamulegeya promised to do something to him. DW1 believed that a grudge developed to the extent that after his (A1’s) arrest Kamulegeya almost stabbed him with a knife. DW1 denied ever being involved in the robbery.

A2, Sande Edison *alias* Sanziro, testifying as DW2, stated that he was a driver prying Kabwohe-Ishaka-Mbarara route, and he only came to meet all the other co-accused at Mbarara Police Rapid Response Unit (RRU) Offices. That on 27/5/2011 at 11:00 am he was at Kabwohe and never left that place. He only took a passenger to Kitagata in his car *Reg. No. UAK 0254*, and that on his way back he found a road - block and four people armed with guns stopped and arrested him. They searched his car but did not recover anything. He denied ever participating in the robbery.

A4, Katsigaire Pastori, also called “Gadaffi”, testifying as DW4, stated that he was a *matooke* seller staying at Bwayegamba Cell in the Sheema District. He also testified that he had never known any of the co-accused before the case, and only met them at RRU Mbarara Police station; and A5 for first time at Kireka RRU Headquarters. DW4 denied any knowledge of the complainant (PW1) or Kamulegeya (PW2). Further, that on 27/05/2011 at about 11:00 am he was going to Kitagata when the *Boda boda* he was travelling on developed mechanical problems. As he walked on the road he was arrested by armed people travelling in a car. He was taken to RRU Offices – Mbarara, and later transferred to Kireka RRU offices. DW4 stated that he had never seen any of the co-accused before except at Kireka RRU. He denied ever participating in the robbery.

A5, Nyonyintono Salim (DW5) denied any knowledge of the robbery, and stated that that he never knew any of the co-accused until this case came up, when he met them at RRU - Kireka. That on 27/05/2011 he was in a taxi from Kitagata when he was shot at by unknown people, and he lost consciousness. He only regained his senses at hospital

at Mbarara. He was taken to RRU Kireka, but denied ever having a gun or being part of the robbery group.

DW3, Bangi Mayers, testifying as DW3, also denied ever committing the robbery. He stated that he only came to know A1, A2 and A4 at Mbarara Police Station, and only saw A5 on 28/8/2011 at Kireka RRU when they were being brought back to Bushenyi Police Station. He also tried to show possibility of a frame up or grudge that one time PW2 wanted to hire a hall from him for election campaign purposes, but DW3 refused. PW2 threatened that he would force DW3 out of Ishaka town if his candidate wins. DW3 stated that he used to see Nuwabaine Bruhani (PW1) but did not know him very well. DW3 further denied ever holding any meeting with PW2 or any of the co-accused to plan the robbery.

DW3 went on to state that on 27/5/2011 he was at his shop *Desire Supermarket* when a group of people in the company of PW2 attacked and beat him up and looted his supermarket. They bundled him into a wating car and first took him to the coffee factory, and then to police at Ishaka. He was treated for the injuries at *BB Medical Centre* in Ishaka town and further at Mbarara hospital. The following day he reported the matter to Ishaaka Police concerning the previous day's attack on him. He was then arrested and came to know that he was on a robbery charge on 5/9/2011 after a series of detentions in several police holding centres at Mbarara, Kireka RRU and Makindye military barracks.

DW6, Ruth Bangi, wife to A3 testified that on 27/5/2011 at around 2:00 their supermarket at Ishaka town was attacked, and looted by a group of people led by Kamulegeya. They beat up her husband and took him away. He was treated at Mbarara hospital for the injuries and that same day came back to Ishaka town. The following day her husband moved to Bushenyi to avoid mob-action because some people were baying for his life. He was subsequently arrested and charged.

After carefully appraising the evidence in its entirety, it is evident that the prosecution's version of events is plausible and believable as against that of the defence. PW2,

Kamulegeya Ssali, clearly knew all the accused before the incident. He had met with them on a number of occasions and held meetings to plan the robbery. They hatched the plan together but instead of acting on their plan PW2 passed on the information to Nuwabaine Bruhan his boss, who in turn alerted police. There was therefore no mistaken identity as to who the accused were. They were not strangers as they claimed to be in their respective defences, but well known and well knit colleagues in the crime.

In addition, on 27/5/2011, A1, A2, A4 and A5 were arrested in connection with the said robbery after a chase on Kitagata Road by police officers (PW5 and PW6) who testified that they arrested them. The same witnesses identified the accused as the very ones they chased and arrested from the bushes along Kitagata Road where they had gone into hiding. A4 had been injured in the shootout that ensued between police and robbers immediately after the robbery. This could not be just a coincidence. The evidence of accused persons which is evidently nothing but just a pack of conjured up denials pales in comparison with the strong, consistent and well corroborated evidence of prosecution witnesses.

As for A3, Desire Mayers, he was not promptly arrested with along with others, but as the master – mind of the robbery, he did not have to move in the same vehicle with other co-accused or be present at the scene of the actual robbery. That he did not move from his shop does not absolve him from the robbery in light of the credible prosecution's evidence linking him to the robbery as its master mind and the leader of the group of robbers. Further, he personally physically participated in the final meetings at Nyarwanya playground, where a common intention with the other robbers was formulated to rob Nuwabaine Bruhan.

Under **Section 22 PCA**, criminal liability is imputed under the doctrine of *common intention* and may develop in the course of events, and once established that an accused acted in concert with the others, he or she is equally culpable for the entire crime in the same measure as those others. See **Solomon Mungai & Others v R [1965] E.A 782; Uganda v Waiswa & Another [1977] HCB 299**. A3, Bangi Mayers, the proven leader

of the gang of robbers wholly and actively participated in the robbery as much as all his other co- accused beyond reasonable doubt.

As regards Count 2 and 3, there is ample well corroborated evidence, particularly of PW6 D/AIP Onume, a police officer who led the chase and arrested the A1 and A2 and A4 and later A5, that an SMG rifle was recovered from the bushes where the accused had hidden it after they abandoned the heist car. Also recovered from the car of the robbers was a magazine with fifteen bullets, an empty magazine of an AK 47 rifle, among several other items that included camouflage military uniforms, which were all exhibited in court. Possession of these items vividly demonstrates how, apart from the robbery in the instant case, the accused were an organized racket that was out to unleash further robberies and terror in the area.

The accused - apart from merely denying possession of the firearm and ammunitions – were not in possession of any certificate for the gun and ammunitions. The provisions of the *Firearms Act* under which the respective accused were charged shift the burden of proof on the accused to prove legal possession by simply availing a valid certificate. They did not discharge the statutory burden imposed on them. Accordingly, the prosecution proved its case to the required standard of the charges in count 2 and 3 respectively.

The Ladies Assessors in their joint opinion held the view that prosecution has proved the case against all the accused on all counts beyond reasonable doubt, and advised that the accused be found guilty as charged and be convicted. I entirely agree with the Assessors' assessment, and find all the accused persons guilty as charged in the respective counts and convict them.

BASHAIJA K. ANDREW

JUDGE

04/04/2013

