



**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**  
**CRIMINAL CASE NO. 0001 OF 2011**

**UGANDA :: PROSECUTOR**

**VERSUS**

**MUTAKI PAUL :: ACCUSED**

**JUDGMENT**

**BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE**

The accused Mutaki Paul and others still at large stand indicted on the offence of aggravated robbery contrary to section 285 & 286 (2) of the Penal Code Act. The state alleges that the accused together with others still at large on the 4<sup>th</sup> day of May 2010 at Kibangya Trading Centre in Masindi District you robbed one Nyombi Sam of his motorcycle Reg. No.UDN 126T and cash 50,000/=. It is further alleged in the course of robbery the accused used a deadly weapon namely a hammer against the victim Sam Nyombi. The accused denied the charge. A full trial was then conducted.

The burden of prove always lays and remains on the shoulders of the prosecution. It must prove all the ingredients of the offence beyond reasonable doubt. To discharge the burden cast upon it by the law, the prosecution called the evidence of four witnesses;

1. PW1 – Nyombi Sam
2. PW2 – Nazziwa Mary

3. PW3 – Godfrey Muwonge
4. PW4 – Detective Corporal Albert Olarker

Aggravated robbery the offence with which the accused has been charged comprised four ingredients. These are;

1. There was theft of the property of the complainant
2. Violence was used in furtherance of the offence
3. That there was actual use of deadly weapon either apart or immediately before or after the theft, or indeed death was caused
4. The accused participated in the theft in the manners set out in 2 & 3 above.

To prove the 1<sup>st</sup> ingredient, prosecution relied on the evidence of PW1 Nyombi Sam who testified during the night of 4<sup>th</sup> May 2010, at around mid night while he and his wife were sleeping in their house in Kibangya Village Kimengo Sub-county, he was suddenly hit on the head with something heavy and he lost consciousness. When he woke up he was at Masindi Hospital and he learnt at that time his motorcycle as well as cash had been stolen from his house. This evidence was corroborated by the victim's wife one Nazziwa Mary who was in bed with the victim when the attackers came. The evidence was further corroborated by PW3 Godfrey Muwonge who had a good luck of sighted the victim's motorcycle at the trading centre in Luwero. To that end I find that the 1<sup>st</sup> ingredient was proved to the standard laid down in the law.

To prove the 2<sup>nd</sup> ingredient, prosecution relied on the evidence of the complainant himself Nyombi Sam. The witness told Court he was asleep in bed when he was suddenly hit on the head by a blunt heavy object. PW2 his wife Nazziwa Mary corroborated the evidence of PW1 she took was in bed with her husband when they were attacked at around midnight

on the 4<sup>th</sup> of May 2010. The victim was admitted in hospital and treated. On the basis of this evidence I find that the 2<sup>nd</sup> ingredient of the offence namely that there was violence in the course of theft have been proved beyond reasonable doubt.

On the 3<sup>rd</sup> ingredient, prosecution again relied on the evidence of the victim PW1. He was hit on the head with a hammer, he lost consciousness. Next thing he recalls was finding himself in hospital at around 9:00am in the morning. His wife corroborates this testimony. She too was hit on the head. When she woke up there was blood all over the house, a man holding a hammer and a torch was standing over them. She made an alarm. The man told her to keep quiet. On the evidence of these two witnesses, I find that the 3<sup>rd</sup> ingredient namely the use of a deadly weapon has also been proved beyond reasonable doubt.

On the 4<sup>th</sup> ingredient of the participation of the accused, there is no direct evidence. All witnesses in this case were unable to place the accused at the scene of crime and to positively identify him as a participant in the violent robbery that occurred in the night of 4<sup>th</sup> May 2010. The evidence on record is entirely circumstantial. This evidence is to be found in the testimony of Muwonge Godfrey PW3. This witness while on a business trip in Luwero Township on the 10<sup>th</sup> May 2010 saw and immediately identified his friend Nyombi Sam's stolen motorcycle at a boda boda stage in the Township of Luwero. He recognized it by the Reg. No. UDN 126T. He was aware of the robbery that had occurred. He immediately called Sam and reported his finding. In a very courageous step he hired a boda boda himself and followed the stolen motorcycle out of town to a trading centre of Ngogolo. With the help of the good people of the area, the accused was arrested and brought to Luwero Police Station. PW1 Nyombi Sam arrived the next morning and identified the motorcycle and produced evidence of ownership.

The accused on his defence was that he had hired the motorcycle from one Godfrey in Luwero town. PW4 Detective Corporal Albert Olarker told Court that he the accused failed to take him to the Luwero stage where Godfrey was said to have been operating from. PW4 told Court that he visited the particular stage and had a conversation with the chairman of operators association who categorically told him that there was no one by the names Godfrey in his association. Further there was no motorcycle Reg. No. UDN 126T operating at their stage. The circumstantial evidence points to one except the accused person as one in the most recent possession of the stolen property. As a leader I presume participant in the crime. I am convinced that the circumstantial evidence on record is corroborated by the accused's own conduct. He failed to lead the police to the non-existent Godfrey. This last ingredient is therefore proved beyond reasonable doubt. The accused is guilty as charged and is consequently convicted.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

**09<sup>TH</sup> SEPTEMBER 2013**

## **ALLOCUTUS**

**State:** We do not have any past criminal record of the convict before you. The offence with which he has been convicted is a serious one that carries the death penalty contrary to section 286 (2) in the Penal Code Act. Theft of motorcycles is very rampant and something needs to be done to curb this trend. This particular incidence was very violent in that a hammer was used to beat one of the victims of the robbery which left him injured. People's hard earned assets need to be protected. Such people who involve themselves in grabbing other people's hard earned assets need to be kept away from the society. We pray for deterring sentence that will deter the convict from repeating such acts and for others to learn from him. We so pray.

**Defence:** The convict is 21 years old. He was 18 years at the time of arrest. While in custody he lost a father. He is left with the burden of care taking his aging mother. He is a married man with one child aged 5 years in need of his father's care and attention. The convict while in custody was engaged in football and broke his right leg. He consequently became disabled. He walks with a limp. At the time of his arrest he was gainfully engaged in painting and was one of the best painters in Ngogolo trading centre. The motorcycle that was stolen was recovered. The convict has been on remand since 21<sup>st</sup> May

2010 a period of 3 years, 3 months and 18 days. He is remorseful and undertakes to lead a law abiding life.

**Court:** Sentence will be tomorrow the 10<sup>th</sup> September 2013 at 9:00 O'clock in the morning.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

**09<sup>TH</sup> SEPTEMBER 2013**

**SENTENCE**

Not only did you set to deprive an honest hardworking man of the rewards of his hard work, but you also caused him grievous bodily harm. I sentence you to seven (7) years imprisonment.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

**10<sup>TH</sup> SEPTEMBER 2013**