



**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**

**HIGH COURT CRIMINAL SESSION NO. 0074 OF 2011**

**UGANDA ::**

**PROSECUTOR**

**VERSUS**

**AGONZA WILLIAM ::: ACCUSED**

**BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON - RESIDENT  
JUDGE**

**JUDGMENT**

The accused herein is indicted for Aggravated Robbery contrary to section 285 & 286 (2) of the Penal Code Act. It is alleged on the 25<sup>th</sup> day of May 2010 at Kiryabenju village in Kibaale District, you robbed one Kasungwa Richard of a mobile phone Nokia model 1200 and cash worth shs. 100,000/= all valued at 180,000/= and at or immediately before or after the said robbery you used a deadly weapon say a panga on one Kasungwa Richard. He pleaded not guilty hence this trial.

Brief the prosecution case is that on that day, the complainant and his colleague were on their way to their place of work when they came across the accused who grabbed the complainant's phone claiming it resembled that of John. The accused went back to his house and the attempts of the complainant to get back his phone were rebuffed by the accused who threatened him with a panga. He threatened him with a panga. The matter was reported to the LCI vice chairperson and subsequently the

police. The accused was arrested and charged. He gave his defence on oath at the trial.

He denied stealing the complainant's phone and attributed the charges to a grudge he had with the LCI vice chairperson over a piece of land.

The burden of proof in criminal case is upon the prosecution to prove the case beyond reasonable doubt. This burden does not shift to the accused. The ingredients of the offence of aggravated robbery are as follows;

1. Theft of property
2. Possession of a deadly weapon or causing death or grievous harm
3. Participation of the accused

The complainant Kasungwa Richard (PW2) testified that he together with Mugume William (PW3) were on their way to work when the accused grabbed his phone claiming it resembled that of John his friend. Mugume William confirmed that they came across the accused who struggled with PW2 over the phone. The complainant demanded for his phone but the accused refused to hand it over. During cross examination Kasungwa (PW2) admitted telling the police while making a statement that he had just bought the phone that day from Kagadi that day. He reiterated the same thing in re-examination. He was however contradicted by Mugume who told court that he had the said phone before that day. To me this contradiction is minor and did not affect the credibility of the two witnesses. The primary issue is whether PW2 had a mobile phone at the

time it was allegedly grabbed from him and not when he acquired the same.

Related to the above is the evidence of Nsungwa Nastanzia (PW4), the vice chairperson LCI, Kiryabyenju village to whom Kasungwa (PW2) reported the incident. The said witness informed court she summoned the accused following the complaint by PW2 and asked him about the phone. He admitted having got the said phone from PW2 and showed it to the vice chairperson saying it belonged to John. The vice chairperson's evidence was refuted by the accused in his sworn testimony. The accused stated Nsungwa's testimony was tainted with ill motives, on account of a dispute over a plot of land which was resolved by the residents but left PW4 unhappy.

Nsungwa denied ever having a land dispute with the accused. I am inclined to accept Nsungwa's denial considering that she is not the complainant in this case and having observed her on the stand, she struck me as a truthful witness whose testimony was not driven by ill-will. She clearly did not impress me as one giving a fabricated story. Having considered the evidence as a whole, I come to the finding that the complainant had a phone that day and it was grabbed from him. The ingredient of theft is therefore proved.

On participation, there is ample evidence to show that the accused is known to Kasungwa and Mugume. The accused himself confirmed so. The incidence occurred in broad day light and the accused admitted that

he took the phone from Kasungwa before the vice chairperson. The issue of mistaken identification does not arise in my view. Despite certain drawbacks in the evidence of the prosecution eyewitnesses, on the whole I found them credible and do believe their evidence that it was the accused who grabbed the complainant's phone. I therefore hold the ingredient of participation is proved as well.

On the last ingredient, Kasungwa informed court the accused pulled out a panga and threatened to cut him when he demanded for his phone. In cross examination he revealed that the accused did not have the panga at the time he grabbed his phone. According to Kasungwa and Mugume the incident occurred at about 8:00 Am. Mugume William also told court that after the incidence he continued to their work place and was shortly followed by Kasungwa. At about 2:00pm after work the two passed by the accused's home and Kasungwa again demanded for his phone. Mugume went on to say at this juncture the accused emerged from the house pulled a panga from his trousers and chased Kasungwa.

From the evidence of the two eyewitnesses, it is evident the accused did not have a panga at the time he grabbed the phone. There is also no evidence that the accused caused grievous harm to Kasungwa. The gravamen of the offence of aggravated robbery is that the offender was in possession of a deadly weapon or caused death or grievous harm to the victim, or causing the death of the victim at or immediately before or after the said robbery. On the fact of this case, it cannot be said the brandishing of the panga some 6 hours after the grabbing of the phone

amounted to possession of a deadly weapon at or immediately before or after the robbery. I would therefore hold this ingredient has not been approved.

In their divergent opinions, both assessors were of the view the prosecution had not proved the accused used a deadly weapon to steal the complainant's phone. Mr. Kiiza Ephraim advised me to find the accused guilty of simple robbery while Mr. Kiirya Simon advised that he be found guilty of theft.

From the evidence, it emerged that the accused applied some force of violence to grab the phone from the complainant. Kasungwa stated that the accused grabbed him before he took away his phone. This was corroborated by Mugume William who testified he witnesses the accused and Kasungwa struggling. Under section 285 of the Penal Code Act, the offence of simple robbery is committed when the offender at or immediately before or after the time of stealing the property, he or she uses or threatens to use actual violence to the victim in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen.

In the circumstances, I would agree with Mr. Kiiza Ephraim that the evidence discloses the offence of simple robbery. In the result and for the reasons above stated, I find the prosecution has not proved the accused was in possession of a deadly weapon or caused grievous harm to Kasungwa at the time he stole his phone. He is accordingly acquitted of the offence of aggravated robbery. I however do find him guilty of simple

robbery contrary to section 285 and 286 (1) (b) of the Penal Code Act and do convict him of the said offence.

**SIGNED**  
**BYABAKAMA MUGENYI SIMON**  
**RESIDENT JUDGE**  
**23<sup>RD</sup> OCTOBER 2013**