

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL SESSION CASE NO. 094 OF 2012**

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**UGANDA.....PROSECUTOR**

**VERSUS**

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**A1: OKUKU GODFREY**

**A2: AKAKI OTIM RUTH.....ACCUSED**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**JUDGMENT**

The Accused stands charged with the offence of Aggravated robbery, contrary to sections 285 and 286 (2) of the Penal Code Act. It is alleged that on 7/11/2011 at Babu Patel - Walukuba within Jinja District, the accused - AKAKI OTIM RUTH, robbed Kunya Samuel of Shs.50,000/- and immediately before, he threatened to kill the said Kunya with a knife, and immediately after the said robbery, the Accused grievously injured those who tried to arrest him.

The Accused denied the charges in the Indictment and hence the case had to be heard in full.

It is the duty of the prosecution to prove the charges beyond reasonable doubt. The burden to do so rests on the said prosecution and does not shift.

The Accused has no duty to prove his innocence.

The prosecution must prove the following ingredients in a charge of Aggravated Robbery.

- 1- Use or threat of use of deadly weapon.
- 5 2- Use or threat of use of grievous harm, before, during or after the said robbery.
- 3- Theft.
- 4- Participation of the accused.

10 Prosecution produced a total of 5 witnesses while the accused made a sworn statement and raised the defence of alibi.

**Proof of Ingredient No.1:**

15 PW5 testified that on the material day at around 3.00am 2 people entered his house and one of them put a knife on his neck and demanded for money. The knife was described by the witness.

20 PW1 and Mbazira Richard and PW3 also saw the knife later as they tried to arrest the assailant.

The assailant used the knife to inflict injuries on Mbazira and Balidawa who in fact lost his arm as a result. The knife was exhibited as P.Exhibit 1.

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**Ingredient No.2-Use of threats and grievous harm before or after the Robbery:**

This is borne out by the evidence of Kunya (PW5), Moses Balidawa and Mbazira Richard who were victims of the injuries inflicted by the Robber. PW3 saw the said witnesses being stabbed by the assailant.

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**Ingredient No.3-Theft and violence or threat to use violence:**

This is supported by the evidence of PW5 whose evidence is that the robber who put him at knife point also stole Shs.50,000/- from him before he ran out. He then used violence on Mbazira and Balidawa to resist arrest.

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**Ingredient No.4 -Participation and Identification:**

PW5 Henry Kunya says he saw the Accused with the assistance of the security light, putting the knife on his neck. When his wife switched on the light so as to see the shirt which had money in it, he was able to see the accused clearly.

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The Accused then ran out of the house and dogs started barking.

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Kunya, PW1, PW2 and PW3 all ran to the site where the dogs were and on flashing their torches, they saw the Accused in an effort to have him arrested, he stabbed Mbazira and Balidawa and then he ran away.

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Later when he was rescued from a mob and brought to Hospital, the witnesses saw him as they were on the same Ward and immediately recognised him as the person that had injured them and robbed Kunya.

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Various authorities have laid down the way Courts can satisfy themselves that there has been proper identification. To determine whether there were favourable conditions for proper identification the following should be looked at;

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- Whether there was sufficient light.
- The duration of the incident to enable the close observation of the assailant by the witness
- The closeness or proximity.

- Familiarity with the assailant by the witness -See **Nabulere Vrs. Uganda; Criminal Appeal No. 9/1978 and Bogere Moses & Another Vrs. Uganda.**

5 In the instant case, PW5 saw the accused first with the assistance of the security light and later with the light switched on by his wife.

10 When the assailant ran away and was traced by PW1, PW2, PW3 and PW5, the assailant was clearly seen with the assistance of the torches the witnesses were carrying. When he was finally brought to the Hospital, he was easily identified by the 4 witnesses. I am satisfied that there was no mistaken identity.

15 The Accused's defence is that of alibi. That on the material day he was working in a factory at Buikwe and an explosion occurred which injured him.

20 He was assisted to the Hospital and after treatment, he was arrested.

25 The law is that once an Accused person raises an alibi, he does not have to prove it. On the contrary, the prosecution has the duty to disprove the said alibi. Refer to: **Cpl. Wasswa & Another Vrs. Uganda SC Criminal Appeal 49/99.**

30 However, the prosecution's evidence is that the accused was rescued from a mob that suspected him to be a thief and when he was brought to Hospital to be treated for injuries sustained during the lynching by the mob, he was easily identified as the person who had attacked PW5, PW1, PW2 and PW3.

As against the above evidence, the alibi raised by the accused lacks any credibility. I am satisfied that the Accused was properly placed at the scene of crime.

5 The Assessors came to a similar finding stating categorically that no other person other than the Accused was at the scene of crime. He was properly identified.

10 I accordingly find that the charges have been proved beyond reasonable doubt.

I find the accused guilty of the offence of Aggravated Robbery c/s 285 and 286 (2) P.C.A and convict him accordingly.

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**Godfrey Namundi**  
**Judge**  
**12/11/2013**

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12/11/2013:

25 Accused in Court

Prosecutor: Kitimbo

Defence counsel: Kiiza

Court: Judgment read and explained.

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**Godfrey Namundi**  
**Judge**  
**12/11/2013**

Prosecutor: The convict has a criminal record under CRB 3116/2012 and is serving a 7 year sentence. The offence carries a maximum sentence of death. He has taken Court through a full trial wasting time and resources. A deterrent sentence is called for.

Kiiza in mitigation: The convict's dad was killed by Kony. He has 9 siblings to look after. He has a wife and children. He has been on remand for 4 years. He should be given a lenient sentence. We suggest 10 years.

**Sentence:** I have considered the circumstances of the offence and the way it was committed. The maximum sentence for this offence is Death. However, I consider the submission that he has a family. I will accordingly give him a lenient sentence as suggested by the defence. He is sentenced to serve 10 years imprisonment.

**Godfrey Namundi**  
**Judge**  
**12/11/2013**

