

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

CRIMINAL CASE NO. 266 OF 2011

5

UGANDA.....PROSECUTOR

VERSUS

10 **MUZENZE MOSES.....ACCUSED**

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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The Accused, MUSENZE MOSES is charged with Aggravated Robbery contrary to Sections 285 and 286 (2) of the penal Code Act.

20 The particulars are that on 12/7/2011 at Kabembe village in Jinja District the Accused robbed Owino George of his motorcycle, Reg. No. UDK 052 F and at or immediately after the said Robbery used a deadly weapon to wit a panga on the said Owino George.

25 The Prosecution contends George Owino the complainant was the owner of motorcycle UDK 052K. On 18/7/2011 he packed the

said motorcycle along the way in his sugarcane plantation and went into the said plantation to do some work.

5 When he came back he found the motorcycle missing, so he followed its tyre marks. He met the Accused emerging from the sugarcane shamba and suspected that he knew something about the said disappearance.

10 When he accosted the Accused, instead the Accused pushed him and tried to run away. The complainant made an alarm and his worker one Masaba came to the scene, Masaba had a panga which the Accused grabbed and swung it cutting and injuring the complainant. Both the complainant and Masaba overpowered the
15 Accused and he led them to where the motorcycle was in the sugar plantation from which he had emerged. Thereafter the accused ran away from them leaving behind his shirt, trousers, cap and mobile phone. He was later arrested and charged after the complainant reported to the police.

20 The Accused denied the charges and raised an alibi that he was in a different place on the material day and time doing his work.

It is the duty of the prosecution to prove the charges against the Accused and the required standard is beyond reasonable doubt.
25 The Accused does not have to prove his innocence. **Ref: Woolmington Vrs. DPP (1935) AC 462.**

In a case of Aggravated Robbery, the following ingredients must be proved:

30 1. Theft.

2. Use of threats or violence.
3. Use of a deadly weapon.
4. Participation of the Accused.

5 **Ingredient No.1 - Theft:**

PWI Owino George's evidence is that he left his motorcycle on the path, when he came back, he found it gone and he followed the tyre marks. He found the Accused who he knows very well emerging from the sugarcane plantation. The witness told the
10 Accused to assist him look for the motorcycle. As they moved, the Accused then instead started fighting the witness who shouted calling out for his worker one Masaba who came to his assistance.

15 The Accused grabbed a panga from Masaba and tried to attack the witness, ending up cutting him.

The two overpowered the Accused who agreed to take them to where the motorcycle was. As they fought with him, his phone
20 fell down while his clothes came off. He took them where the motorcycle was but as they were talking, the Accused ran away leaving his clothes behind which were exhibited.

Much as PW1 is the only eye witness who testified, his evidence
25 was not shaken on cross-examination and was consistent.

Masaba, the other eye witness has since left his job and cannot be traced.

30 The evidence of the disappearance of the motorcycle, coupled with the conduct of the suspect who ran away leaving his clothes and phone lead to the conclusion that there was indeed theft. I

find that the ingredient of theft has been proved beyond reasonable doubt.

Ingredient No.2 - Use of threats and or violence:

5 As with ingredient No.1, it is only PW1 Owino who was the eye witness. His evidence is that the thief grabbed a panga from Masaba who had come to assist and attacked them with it. He in the process cut PW1 on the hand for which he was later treated.

10 The injury Owino sustained was treated by PW5- Dr. Joseph Katende who filled PF.3. He reported that he examined PW1 on 18/7/2011, and found that he had a cut on his left arm inflicted by a sharp object - either a knife or panga. It was three days old. The PF.3 was exhibited as P.Ex.10.

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I find that on the available evidence, use of violence has been proved beyond reasonable doubt.

Ingredient No.3- use of a deadly weapon:

20 PW1 stated that the accused grabbed a panga from Masaba and cut the witness with it. The said panga was also found at the scene by PW2 Byekwaso who PW1 described it. The same was exhibited as P.Ex.4.

25 It has been submitted for the defence that there was no use of a deadly weapon, neither was there any violence, but that the whole episode was a set up in revenge for the \accused having cut the finger of the witness as PW1 and Masaba were undressing him to coerce him to show them where the motorcycle was.

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I find this submission hard to believe as the accused had no cause to fight or even run away if he was innocent.

I find the ingredient No.3 also proved beyond reasonable doubt.

Ingredient No.4-Participation:

PW1 is the only person who saw the thief. Masaba never testified while PW2 Byekwaso only came to the scene when the thief had run away.

Court must in cases of a single identifying witness be very cautious and must warn itself as I have so cautioned myself of relying on such evidence.

However in this case, the Accused was well known to the witness PW1 as to rule out mistaken identity.

Secondly, it was broad day light so the conditions were favourable as to rule out any mistake of identity.

The clothes of the Accused were recovered from the scene which came off his body as he was struggling with PW1 and Masaba.

PW2 Byekwaso was able to identify the clothes especially the shirt which he stated he knew well as the Accused was always putting it on.

The said clothes have neither been denied during cross-examination or during the accused's defence.

PW3 - participated in arresting the Accused who was found later trying to flee the area. The same accused ran away from the scene and this is conduct that points to guilt rather than innocence. The Accused raised an alibi, first of all claiming he stays at Buwenge and yet PW1, PW2 and PW3 have all identified him as a resident of Kakira.

He claims he was at Magamaga in the morning. At 9.00am he was arrested at Kakira inspecting sugarcane at Kakira. The Accused does not have to prove his alibi, but the prosecution must provide evidence to disprove the said alibi. Ref: **Uganda**

5 **Vrs. Dusman Sabuni (1981) HCB 11.**

In the instant case, all the evidence of the Accused's clothes at the scene, his conduct by running away and the alibi that he was at Magamaga but by 9.00am he was already at Kakira where he was arrested show that the alibi is either a concoction or an afterthought.

The defence has submitted in total that the Accused has not been placed at the scene of crime and the motorcycle was never exhibited. That even the exhibits of the scene of crime and that of the Accused beside the motorcycle add no value.

I do agree that the said exhibits are useless as far as this case is concerned.

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However, the evidence on all the ingredients place the Accused at the scene of crime.

His clothes have not been denied. Infact, the defence admits that the accused was at the scene but only fought with PW1 to defend himself against being undressed.

In summing up I advised the assessors that most of the evidence against the Accused is circumstantial.

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Circumstantial evidence has been held to be the best evidence sometimes as compared to direct evidence. Ref: **Kyeyune Joseph Vrs. Uganda SCCA 49/2000.**

I have considered all the evidence in total and must disagree with the Assessors. The Accused was properly placed at the scene of crime and his alibi cannot stand.

5 I find the Accused guilty of the offence of Aggravated robbery c/ss 285 and 286 92) and convict him accordingly.

10 **Godfrey Namundi**
Judge
29/11/2013

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29/11/2013:
Accused in Court
Prosecution: Kitimbo for State
Wagira for Accused

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Court: Judgment read in open court.

25 **Godfrey Namundi**
Judge
29/11/2013

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Kitimbo: The offence attracts the maximum sentence of death. He has been unremorseful. The weapon was deadly. Robbery is rampant. The convict should be given life imprisonment.

Wagira: - He has been on remand for over 2 years.

- He should be given a lenient sentence.
- He is remorseful.
- He is a young man of a productive age and there is room for reform.
- He has dependents - a wife and 3 children
- We propose 13 years as appropriate.

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Court: **sentence**

The convict is a young man of 33 years. He has been on remand for 2 years and 4 months. The motorcycle was recovered and the complainant was not seriously injured. Much as the offence carries a maximum sentence of death, the court will consider both the aggravating and mitigating factors. The accused is sentenced to serve a term of 10 years imprisonment. Right of appeal explained.

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Godfrey Namundi
Judge
29/11/2013