

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
SITTING AT ENTEBBE
CRIMINAL SESSION CASE NO. 173 OF 2012
CRIMINAL CASE NO. 027 OF 2011
CRB NO. 378 OF 2011

UGANDA ::
::::: PROSECUTION

VERSUS

KALEGA
GEORGE ::
: ACCUSED

Before: HON JUSTICE WILSON MUSENE MASALU

RULING

The accused, Kalega George William was indicted for Aggravated Robbery C/S. 285 and 286(2) of the Penal Code Act. The particulars were that the accused, on the 14th day of May, 2011 at Nakiwogo village in Wakiso District, armed with a knife, robbed Tumwebaze Richard of a gun, serial No. 64885 and immediately before or after the robbery used a deadly weapon to wit a knife on the said Tumwebaze Richard.

At the hearing, the prosecution called 3 witnesses, with the complainant, Tumwebaze Richard as PW1. His testimony was that the accused attacked him on 14th day of May, 2011 at mid night while he was on duty at Nakiwogo. He testified that the accused jumped a fence into the compound and that he put accused at gun point. However, that the accused was on his knees and kept on moving towards him.

PW1 added that he wanted to shoot but the bullets did not come out, and that the gun was faulty. PW1 added that accused grabbed him as another person entered the compound. And that they all held him as accused pulled out a knife from his pocket and wanted to cut his neck but he pulled away.

PW1 added that he then kicked the accused and ran for his dear life as the accused and another person opened the gate and took off. PW1 then told Court how his bosses arrived and how he made a statement at police that accused was putting on a white trouser and a red shirt. He added that the following day, he saw accused standing outside his house and by the time he informed his bosses and the guards came, accused had left. However PW1 testified that he saw the clothes accused was putting on, on the night of attack on the hanger line as they traced for accused in vain.

Later on, PW1 added that accused was arrested by one Farouk as he was removing the clothes which were tendered in this Court as exhibits. However, when it came to cross examination of the witness PW1, this Court found very many grave and glaring contradictions, not only in the testimony of PW1, but the other witnesses, PW2 and PW3.

In the first instance, this Court was surprised when PW1 stated under cross examination that he did not know the street number or the plot he was assigned to guard. The question was whether PW1 was a properly trained and credible guard, to the extent that he did not know where he was guarding. To make the prosecution case doubtful was when PW1 stated that when he put accused at gun point, he thought the gun was working but when he pressed the trigger, the bullets could not come out.

This Court was left wondering how a trained guard could report on duty without checking whether the gun was functioning or not. And when the witness was asked about the three statements he

made at police he denied one of the statements dated 14th day of May, 2011. He told court that whereas the signature on the statement was his, the statement was not his. This Court again wondered how PW1, a trained guard could sign a statement which was not his. That was a grave contradiction in the prosecution case. PW1 even went further and stated.

“If I stated at the police that it was 2nd attacker who had a knife, then it was wrongfully recorded”.

That was a contradiction in the prosecution case because PW1 had testified in Court that it was the accused who pulled out the knife and wanted to cut his throat or neck. And that was the basis of the present charge of Aggravated Robbery. So was it the accused or the 2nd attacker who was armed with the knife. In any case, neither the knife nor the alleged robbed gun was recovered. And on the statements PW1 made at police, he testified in. Re-examination that the statements were never read back to him and he was just told to sign. That cast a lot of doubts in the credibility of testimony of PW1. To make matters worse, whereas PW1 told this Court that there was razor wire on top of the perimeter wall or fence which accused jumped without being hurt, or injured, the same PW1 during Re-examination stated that there was a gap where someone could jump as they checked the following morning.

PW2, Nyende Farouk, a Security Personnel of Ultimate Security Company testified during cross- examination by defence Counsel that he did not believe the information that someone with a knife could steal a gun. He added:-

“I cannot tell whether Tumwebaze stole the gun and put up a fake story”.

That was indeed a grave contradiction going to the very root of the prosecution case. It was an indication that the prosecution

witnesses were not sure or clear about their own case. And during cross- examination by Court, PW2 stated that the gun stolen was a greener gun and was functioning, could fire, shoot and kill. PW2 added:-

“The armory man does not hand over non- functioning guns to the guards.”

This Court finds the above statement by PW2 as a fundamental contradiction with what PW1 had earlier told Court that the gun robbed was faulty and when he fired at accused, the bullet could not come out.

To crown the grave contradictions and inconsistencies in the prosecution case, PW3, NO. 39648 D/W/C Khakasa Christine’s testimony was that when she visited the scene at Nakiwogo, she found the place abandoned and there were no residents. She added that whereas the victim (PW1) told her the attackers jumped over the fence, there was nothing peculiar where they jumped. That was contrary to PW1’s testimony that there was a gap in the wall where the attackers used. And whereas PW1 and PW2 had testified that the gun robbed was a greener gun, PW3’s testimony was that it was AK47. The question hanging therefore is what type of gun was robbed?

And further whereas PW3 testified that the accused denied the clothes were his, she admitted that she made no investigations about the clothes exhibited and did not even try them on the accused to see whether they fitted the accused or not. Failure to carry out any investigation about the exhibited clothes or to call any neighbor of the accused to confirm that the clothes belonged to the accused left the prosecution case hanging and dealt a great blow to the same.

This is because there thousands of white Trousers and Red Shirts owned by different people in Uganda. And that reminds me of the

arrest of the Kaunda suit of Joseph Kony during the L.R.A rebellion or war in the North which was claimed as a success which Kony himself has to date never been arrested. Be that as it may, the final blow in the prosecution case was when PW3 stated during Cross- examination by Defence Counsel that the finishing of the fence had no Razor wire at all and that she could not expect anyone to jump over that fence which was 7 meters high without being hurt.

PW3 concluded that there was no ladder at the scene and no Razor wire on the fence. That was a very grave contradiction with what PW1 had told court. In the premises, this Court finds and holds that the prosecution case has been punctured by many holes, so much so that it is full of contradictions and inconsistencies which are major and cannot therefore stand.

In the classical case of **Bhatt Vs. Republic [1957] E.A 332**, it was held that where a reasonable tribunal properly directing its mind to the evidence and the law would not proceed to convict, if accused decided to offer no evidence at the close of the prosecution case, then there is no case to answer. With respect, that is indeed the finding of this Court as far as the present case is concerned.

The conclusion of this Court is that considering the evidence on record and the grave contradictions and inconsistencies outlined, and the relevant principles of the law, there is no case to answer made out against the accused.

I accordingly find the accused person not guilty and do hereby acquit him under the provisions of S.73(1) of the Trial on indictment Act.

Signed by:

**WILSON MASALU MUSENE
JUDGE**

5/01/2014;

Accused present

Mbaine for state

Sarah Awello for accused

Assessors present

Betty Lunkuse, Court Clerk present

COURT;

Ruling read out in open Court.

Signed by:

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**WILSON MASALU MUSENE
JUDGE**