

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**CRIMINAL SESSION CASE NO.38 OF 2012**  
**(Arising from Criminal Case No. MAK- CO-3250 of 2012)**

**UGANDA :: PROSECUTION**

**VERSUS**

**1. ACEMA PATRICK**  
**2. OKUONZI PETER**  
**3. MUHANGUZI AMBROSE**  
**4. SSEBURO BENON** } :::::::::::::::::::::::::::::::::::::: **ACCUSED PERSONS**

**JUDGMENT BY HON.MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction.**

The prosecution was represented by Mr. Mazige, Senior State Attorney, working with the Directorate of Public Prosecutions. Whereas, the accused persons were represented by Mr. Okwalinga Moses from Legal Aid Project of Uganda Law Society.

The Assessors in this Court were:

- i. Ms. Muhairwe Judith.
- ii. Ms. Kisakye Flavia

**2. Facts of the case**

**2.1 Indictment**

The accused persons were indicted with Aggravated Robbery Contrary to Section 285 and 286 (2) of the Penal Code Act.

**2.2 Particulars of the offence**

On 21<sup>st</sup> day of July, 2012 at Munyonyo Zone, Makindye Division in Kampala District, the four (4) accused persons and others still at large robbed Wei Wen Zhong, Liang Ling Tung, Ling Chen Wel, Ling Chen Fung and Xie Shui You of US\$ 3,500, Ug. Shs. 8,500,000/=, 15,000/= Kenya Shillings, 1800 Chinese Yan, 3 mobile phones, bag containing identity card of Xie Shui You, and immediately before or immediately after the time of the said robbery used a deadly weapon to wit guns to the said complainants.

### **2.3 Ingredients of the offence charged.**

- i. Theft of property.
- ii. During the incident a deadly weapon was used or violence was used.
- iii. Participation of the accused in the commission of the offence.

## **3. Consideration of the case.**

### **3.1 Burden of proof**

It is important to note that in all criminal cases except a few statutory offences, the prosecution bears a burden of proof, that is, to prove the case against each accused beyond reasonable doubt. The standard of proof is proof beyond reasonable doubt. The burden of proof does not shift to the accused person to prove his/her innocence. The burden of proof, to prove the case against the accused always rests on the prosecution. See the cases of WOOLMINGTON –VS- DPP [1935] AC 462 AND Section 101 of the Evidence Act, Cap. 6, which states that: “Whoever, desires any Court to give judgment as to any legal right or liability dependant on the existence of facts, which he/she asserts must prove that those facts exist.”

3.2 In the instant case, the prosecution must prove each ingredient of the charged offence against each accused person beyond reasonable doubt.

3.3 In order to prove its case against each accused person, the prosecution adduced evidence from the following witnesses:-

- i. Liang Tung, PW1.
- ii. Wei Wen Zhong, PW2.
- iii. No.39421, CPL Nsereko Richard.
- iv. No.40310 CPL Okoth James.
- v. No. 36427 D/CPL Okwe Denis, and
- vi. D/AIP Titus Namonyo Okanya who recorded a Charge and Caution Statements from Acema Patrick and Okuonzi Peter.

### **3.4 Defences**

Each accused person gave evidence not on oath, and called no other witnesses to give evidence in his/their support. However it is maintained that the accused person is in criminal law not expected to prove himself/herself innocent. The burden of proof always rests on the prosecution. When the accused is put on defence, he/she is expected to give evidence that will create doubt in the prosecution case.

### **3.5 Submissions by the parties.**

3.5.1 At the end of the defence case, the prosecutor, Mr. Hamuza Muzige, Senior State Attorney, in his submissions, evaluated the entire evidence on record and submitted that the prosecution proved its case against each accused. He prayed to Court that each accused be found guilty and be convicted as charged.

3.5.2 In his submissions in reply to the prosecutor's submissions, Mr. Okwalinga Moses, submitted that the prosecution miserably failed to discharge its duty of the burden of proof. He, too, evaluated the entire evidence on record and came to the conclusion that each accused person is not guilty of the charged offence. He prayed to Court to acquit each accused of the charged offence.

### **3.6 The Assessors' opinion**

In the Assessors' opinion, the two assessors analysed the entire evidence on record as they were guided by the Trial Judge during the summing up notes to the Assessors. The two Assessors advised Court to convict A1, A2, and A3 of the charged offence, and to acquit A4 of the same charged offence.

### **3.7 Consideration of the case by Court**

As stated hereinabove in this judgment, the accused persons are indicted with aggravated robbery Contrary to Sections 285 and 286 of the Penal Code Act. The ingredients of the offence charged are well set out. In their respective submissions each party's Counsel considered each ingredient of the accused offence alongside the evidence adduced by each party. My duty in this case is to determine whether the prosecution adduced evidence that proved each ingredient of the charged offence beyond reasonable doubt against the accused persons.

On the 1<sup>st</sup> ingredient theft of property.

Counsel for the defence/accused submitted that the prosecution never proved the ingredient of theft of property beyond reasonable doubt. The items allegedly stolen from the complainants were put in the indictment. The indictment was read and explained to each accused in English and Luganda languages, and each accused person denied the charge. In defence apart from denying the charged offence, no evidence in defence was led from each accused person to negative the prosecution evidence that the property named in the indictment were never stolen. All the five (5) prosecution witnesses testified that the items in the indictment were stolen from the complainants. The money stolen from the complainants were recovered from A2, Okuonzi Peter, and A3, Muhanguzi Ambrose. The money stolen and the three (3) mobile phones were exhibited in Court. In cross-

examination, each prosecution witness never contradicted themselves. Each prosecution witness evidence was never challenged in cross-examination.

To amount to theft, the following ingredients of the offence theft Contrary to Section 254 (1) of the Penal Code Act have to be proved by the prosecution:

- i. There was taking of property from one place to another with intention to permanently deprive the owner of the property, which is called aspiration.
- ii. That property is capable of being stolen.
- iii. The participation of the accused persons.

From the evidence on record, the exhibits, that is, the money in various currencies and the three (3) mobile phones, are properties capable of being stolen. A2 and A3 were arrested in as certain corner with the said money and the mobile phones within the compound of the complainants. A2 and A3 by the time of their arrest had already moved the said exhibits from the complainants and taken out of their house. There was, thus, asportation of the said properties. And the accused had deprived the owners of their properties.

From the evidence on record and the law cited, I am in agreement with the assessors and the prosecutor that the ingredients of theft of property were proved by the prosecution beyond reasonable doubt.

On the 2<sup>nd</sup> ingredient: Use of the deadly weapon immediately before, during and after the robbery or use of violence during the robbery.

Mr. Okwalinga Moses, Counsel for the accused argued that the prosecution never exhibited the alleged guns in evidence. That, therefore, the prosecution failed to prove to the required standard that a gun which is a deadly weapon was used in the alleged robbery. In his submissions, Counsel for the prosecution, Mr. Hamuza Muzige, Senior State Attorney, submitted that the prosecution proved this 2<sup>nd</sup>

ingredient beyond reasonable doubt. The two Assessors in their joint opinion stated that the prosecution proved this ingredient beyond reasonable doubt.

I have considered the evidence of PW1, PW2, PW3, PW4 and PW5, whose evidence is that two guns were recovered from the scene of crime. And that, that was after the exchange of gun fire. The two guns were recovered from A2 and A3 who were arrested inside the perimeter wall of the scene of crime. There is evidence on record that there was exchange of fire from the robbers who were inside the perimeter wall and the police officers who came to rescue the complainant from the robbery. There is also evidence that the recovered guns were sent to the ballistic experts for examination.

It is settled law that once a gun is fired during the course of the robbery, it is deemed to be a deadly weapon. **See the case of PC Ben Mulwani and Another –Vs- Uganda, SCCA No.3 of 1992.**

Further, PW1 and PW2 testified that they were tied and that by the time of the robbery the assailants had a knife, two guns and that they were threatening then to give the assailants money. There was use of violence in that regard by the assailants. It is also important to note that in cross-examination, the prosecution evidence on this 2<sup>nd</sup> ingredient of the charged offence was never challenged. In defence, each accused person denied involvement in the robbery. Each accused's evidence in defence never created any doubt in the prosecution case.

Therefore, I am in agreement with the Assessors and Counsel for the prosecution that the prosecution proved this 2<sup>nd</sup> ingredient of the offence charged beyond reasonable doubt.

**On the 3<sup>rd</sup> ingredient:** Participation of each accused in the commission of the charged offence.

In this instant case, there are four accused persons. The Court has to establish participation of each accused in the commission of the charged offence.

From the evidence on record, the accused persons are jointly charged. Under Section 19 (1) and (2) of the Penal Code Act, such persons can be referred to as principal offenders. And that under Section 20 of the Penal Code Act, the accused persons are joint offenders in the prosecution of common purpose. They are deemed to have common intention to commit the charged offence. Each of them is deemed to have committed the offence.

Counsel for the prosecution Mr. Hamuza Muzige, Senior State Attorney in his submissions, he submitted that each accused person was put at the scene of crime. And that each accused person committed the charged offence that the prosecution proved its case against each accused person beyond reasonable doubt. The two assessors in their joint opinion stated that the prosecution proved its case beyond reasonable doubt against A1, A2 and A3. That is, A1, A2 and A3 participated in the commission of the charged offence. The assessors further, stated that the prosecution never proved its case against A4, Sseburo Benon. They advised Court to convict A1, A2 and A3 of the charged offence, and acquit A4 of the same charged offence.

Counsel for the accused submitted that the prosecution failed totally to prove participation of each accused person in the commission of the charged offence. To come to this conclusion, Counsel for the accused, too, evaluated the entire evidence on record.

On A1, Acema Patrick, it is true that he was found outside the gate at 9:00p.m the place where robbery was being committed inside the perimeter wall Counsel for the accused argued that A1 was not put at the scene of crime. In his defence he denied the offence in total. He denied making a Charge and Caution Statement (Exh. PW1 (b)). In his evidence not on oath, he gave evidence that he was

tortured and forced to sign on a document which was already prepared by PW6. I have evaluated A1's defence; I hasten to add that such evidence is a mere denial.

In a ruling in a Trial within a Trial, the Court found that Acema Patrick (A1) voluntarily made a Charge and Caution Statement. Accordingly to police Form 24 in respect of A1 which was admitted in evidence by consent of the parties under Section 66 (1) of the Trial on indictments Act, Cap 23, the said medical report (Exh.P1) shows that A1 had no injuries on his body. There were no signs of torture on his body. And was found mentally normal. Therefore, his allegations that he was terribly tortured are farfetched. His defence is unbelievable.

PW3 testified that he arrested A1 at the gate of the scene of crime at around 9:00p.m. That he was dressed in half security uniform (trouser) and half Civilian (Shirt). That on seeing them A1 attempted to ran away, but that he was arrested. That on his arrest A1 had a bag which contained a pair of pliers, screw-driver, and also a knife, which are all instruments which can be used in house breaking.

PW6 gave evidence that A1 made a charge and Caution statement, wherein A1 admitted to him that his role was of guarding and watching mission while A2 (Okuonzi and others) were inside the Chinese's house robbing. That the A1 in his Charge and Caution Statement admitted being partly to the robbery together with A2 and others. In his Charge and Caution Statement he narrated his participation in the commission of the charged offence. The A1's Charge and Caution Statement is corroborative of the prosecution evidence on Court that record, that A1 is a principal offender ad that he is deemed to have committed the offence (See Sections 19 (1) and (2) and 20 of the Penal Code Act.)

A1 is brought at the scene of crime by virtue of his admissions in a Charge and Caution Statement; being arrested at the scene of crime as the main gate of the perimeter wall of the Chinese's house is part of the scene of crime, the time of his



arrest was on the same date, month and year at 9:00p.m., and his attempt to run away was not the conduct of an innocent person. The A1 made admissions to PW6, which admissions PW6 put in writing in a form of a Charge and Caution Statement and are admissible as against the maker (A1). **See Sections 16 and 17 of the Evidence Act, Cap. 6 and the case of Anyanga –VS- R [1968] EA 239.**

In the result and in agreement with the assessors, I hold that the prosecution proved the participation of the accused (A1) in the commission of robbery as charged, beyond reasonable doubt.

As for A2, Okuonzi Peter's participation. In defence A2 gave evidence not on oath. He denied the charged offence in total. In his evidence he alleged that this charge is charged with is a frame up. He denied making a Charge and Caution Statement [Exh.PW1 (a)]. That he was seriously tortured and that he was forced to sign on the document which was already prepared and written by PW6. He said that his Charge and Caution statement was obtained forcefully and under duress.

On the issue of a Charge and Caution Statement, during the hearing, the accused denied making a Charge and Caution Statement as was being testified by PW6. At that stage a Trial within a Trial was conducted. In the ruling of the Court, it was established that the Charged and Caution Statement was voluntarily made to PW6 by A2. According to Police Form 24 in respect of A2 (Exh.P2), the said medical report shows that A2 had no injuries on his body and that he was mentally normal. Therefore, the allegation of serious torture raised by A2 in his defence farfetched.

From the evidence of PW1, PW2, PW3, PW4 and PW5, A2 was arrested immediately after committing the robbery and after the exchange of gun fire with them (A2 and A3). That A2 and A3 were found in a corner, where A2 threw

down the gun and surrendered to them. A2 and A3 were arrested from the scene of crime. That A2 and A3 were the ones who had the two (2) guns.

Further, PW1 – PW5 testified that upon the arrest of A2 and A3, they recovered some sums of money from their stockings and that A2 and A3 were attempting to jump over the fence but that they failed. Again A2 made a Charge and Caution Statement wherein he admitted participating in the robbery of the complainants.

It should be noted that this particular case where A2 and A3 were arrested red-handed at the scene of crime. The prosecution witnesses gave direct evidence as against A2 and A3. At the scene of crime there was sufficient light from the compound and inside the house and that upon arrest of A2 and A3, the prosecution witnesses saw the prosecution witnesses saw them clearly. There is no error or mistaken identity that the persons (A2 and A3) who were arrested at the scene of crime were none other than the two accused persons. Certainly, therefore, A2's and A3's evidence in their respective defences are just mere denials.

Wherefore, in agreement with the Assessors and Counsel for the prosecution, I hold that the prosecution proved beyond reasonable doubt the 3<sup>rd</sup> ingredient of the offence charged against A2 and A3.

On the part of A4, Ssebuho Benon, Counsel for the defence, Mr. Okwalings Moses, submitted that the prosecution never brought any evidence against A4 to put him at the scene of crime. That he was found by the boda boda riders above 200 meters from the scene of crime, with a wound on his right through. He prayed that A4 be acquitted of the charged offence. The two assessors in their joint opinion stated that the prosecution failed to prove the charged offence against A4. They advised Court to acquit A4 of the charged offence.

From the evidence of PW1, PW2, PW3, PW4 and PW5, there was exchange of gun fire within the compound of the scene of crime. They testified that shortly after arresting A1, A2 and A3, A4 was brought at the scene of crime by the boda boda riders who said that they arrested A4 when he was trying to escape. A4 had a fresh wound which was bleeding, on the right thigh. That he, too, was arrested and made him join his group of robbers. In a Charge and Caution Statements A1 and A2 mention a one Nick was part of the gang who robbed the Chinese of their property.

A1 and A2 in their respective Charge and Caution Statements stated immediately after their arrest Nick was also brought by the boda boda riders at the scene of crime with a wound bleeding on the right thigh. From such statements, the one they were calling Nick is certainly A4, Sseburo Benon. There is also unchallenged prosecution evidence that there was exchange of gun fire. That gun fire must have resulted into the wounding of A4 on his right thigh. There is evidence that the security guard one Atama at the Chinese's residence escaped. Thus, Circumstances point to the fact that A4 was also at the scene of crime, and escaped alongside the said security guard who knew the escape routes within the fence that formed part of the perimeter wall. It is also evidence that A4 was arrested by the boda boda riders immediately the gun-shots ceased, and A4 was brought to the scene of crime. I considered A4's evidence in defence, and find his evidence to be a mere denial of the charged offence. A4's evidence in defence never created any doubts in the prosecution case. Therefore, in agreement with Counsel for the prosecution, I hold that A4 participated in the robbery as charged. And that as such the prosecution proved this 3<sup>rd</sup> ingredient of the charged offence against A4 beyond reasonable doubt.

#### **4. Conclusion.**

In closing, considering the entire evidence on Court record, the law and the authorities cited hereinabove in this judgment, the submissions by both Counsel for the parties and the joint opinion by the assessors, I find each accused person

guilty of the charged offence of aggravated robbery Contrary to Sections 285 and 286 (2) of the Penal Code Act. Each accused person is accordingly convicted as charged.

Dated at Kampala this 3<sup>rd</sup> day of December, 2015.

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**Joseph Murangira**  
**Judge.**

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**CRIMINAL SESSION CASE NO.38 OF 2012**  
**(Arising from Criminal Case No. MAK- CO-3250 of 2012)**  
**UGANDA ::**  
**PROSECUTION**

**VERSUS**

**1. ACEMA PATRICK**

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**2. OKUONZI PETER**

**3. MUHANGUZI AMBROSE**

**4. SSEBURO BENON PERSONS ::::::::::::::::::::::::::::::ACCUSED**

**SENTENCING**

Mr. Okwalinga Moses for the convicts.

A1: Is a young man – 25 years.

Has a young family of 2 children 5 years and 3 years respectively.

He is a guardian of his siblings and the aging father.

- He has been on remand for 3½ years.
- The aggravating factors are narrated by the prosecution do not apply to him since he was outside.
- Has been engaged in reformatory activities while in prison and he has a certificate to that effect. This is a report from the Prisons Authorities.
- His malaise of participation be used as an accessory before and after a fact.

A2: Is 24 years old – he is a father of young children of abroad winner of his family.

- Looks after his elderly parents and 2 orphans of his late siblings.
- He has been on remand for 3½ years.
- He has also been engaged in reformatory activities while in the prisons.

A3: He takes care of his old and crippled mother, 2 orphans of his late siblings.

- Aged 23 years
- He has a medical condition of anthrax – which usually bothers him not.
- 1<sup>st</sup> time offender.
- Has spent 3½ years on remand.

A4: Sole bread winner of his family of 7 children who are now almost destitute.

- He is also aged 32 years and takes care of his old mother.
- He is 1<sup>st</sup> time offender and has spent 3½ years on remand.
- He has a bullet wound which had never fully healed.
- He has undertaken reformatory activities while he is in prison.

- Throughout the trial it is his prayer that he never used violence.

For all the co-accused persons. These are still people who are young men – have many years of livelihood.

- Should be given a short sentence to reform them.
- For A1 and A4 – I would propose 5 years imprisonment.
- For A2 and A3 I propose 10 years
- I so pray.

**Court:** Sentence shall be delivered on 11/12/15 at 9:00 a.m.

**Joseph Murangira**

**Judge**

**10/12/15**

**Sentence and Reasons for the sentence.**

In passing the sentence against each convict the following have been considered:-

- 1) All the mitigating factors that were submitted by both the prosecution and the defence Counsel.
- 2) The maximum sentence for the offence of aggravated robbery Contrary to Sections 285 and 256(2) of the Penal Code Act is Death.
- 3) The nature of the offence, that is A2 and A3 broke into the residence of the complainants, tortured the complainants and caused harm to them. The property which had been stolen was received from A2 and A3.
- 4) The circumstances of the offence charged, that is the manner in which it was committed; A2 and A3 used deadly weapons to wit: 2 guns and ropes to tie the complainants. The A2 and A3 inflicted grievous harm to the complainants.

- 5) The offence of aggravated robbery is prevalent in Kampala District, Kampala City and generally in the whole Country.
- 6) A1 and A4 are principal offenders. Their level of participation in commission of offence.
- 7) The convicts are young people, whose youthful ages have to be taken into consideration.
- 8) The sentence to be passed must be in proportion with the charged offence of aggravated robbery, so that the sentence passed against each convict shall reflect the justice of the case.
- 9) Each convict has been on remand for a period of 3½ years.

Wherefore, in consideration of all the abovestated factors, I would have sentenced A1 and A4 to 13½ years imprisonment. I thus deduct the period of 3 ½ year each has spent on remand. And A2 and A3 I would have sentenced them to 20 ½ years. I thus deduct the period of 3½ years each convict has spent on remand.

Accordingly, therefore, A2 is sentenced to 17 (seventeen) years imprisonment. A3 is sentenced to 17 (seventeen) years imprisonment. A1 is sentenced to 10 (ten) years imprisonment. A4 is sentenced to 10 (ten) years imprisonment.

Date at Kampala this 11<sup>th</sup> day of December, 2015.

**Joseph Murangira**  
**Judge.**

**Court:** The prosecution shall return the complainants' properties that were recovered from the convicts to the complainants, to wit: US\$ 3,500, Ug. Shs. 8,500,000/= Kenya shillings 15,000/=, 1800 Chinese yan, 3 mobile phones and a bag within 10 (ten) days from today.

Dated at Kampala this 11<sup>th</sup> day of December, 2015.

**Joseph Murangira**  
**Judge.**

**11/12/15**

Mr. Wanamama Mics Isaiah Senior State Attorney for state. I am holding a brief for Mr. Hamuza Muzzier Senior State Attorney for state.

The accused persons are in Court.

Their lawyer is absent.

The 2 Assessors are in Court.

Hajjat Nakibuuka Mariam the interpreter and Ms. Kagaso Lillian the clerk are in Court.

**Court:** Sentence is delivered to the parties in open Court.

Right of appeal is explained to the parties.

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**Joseph Murangira**

**Judge.**

**11/12/15**