

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**CRIMINAL SESSION CASE NO. 32 OF 2013**  
**(Arising from Case No. NAK/00/AA/062/2012)**

**UGANDA :::PROSECUTION**

**VERSUS**

**1. BWANIKA HARUNA** }  
**2. KALEMA MOSES** } :::**ACCUSED PERSONS**

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

**1. Introduction.**

The two accused persons are represented by Mr. Senkeezi Stephen from Senkeezi, Saali Advocates & Legal Consultants. Whereas the prosecution was represented by Mr. Muzige Amuza, Senior State Attorney, working with the Directorate of Public Prosecutions.

The two assessors in this case are Ms. Muhairwe Judith and Mr. Wasibi Joseph.

**2. Indictment**

2.1 The two accused persons stand charged with aggravated robbery Contrary to Sections 285 and 286 (2) of the Penal Code Act.

**2.2 Particulars of offence.**

The particulars of the charged offence are that on 12<sup>th</sup> day of April 2012 at Kayanja, Rubaga Division in the Kampala District, Bwanika Haruna and Kalema Moses robbed Wambuzi Peter Ezekiel of a laptop, hard drive, flash disk, mobile phone, text book, DVD

and one set of head phones and at or immediately before or immediately after the time of the robbery used a deadly weapon to wit: an iron bar on the said Wambuzi Peter Ezekiel.

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

- i. Theft of property.
- ii. The use of violence.
- iii. Participation of the accused in the Commission of the offence.

In the case of **Yowana Serunkuma –vs-Uganda SCCA No. 8 of 1989.**

The accused covered the complainant with a blanket, put a knife on her throat and threatened to kill her if she raised an alarm.

It was held that the actions were of the offence of robbery has 2 (two) elements:-

- i. Theft.
- ii. The use of violence.

Further, ingredients of the offence of robbery are well set out in Section 285 of the Penal Code Act, Cap 120.

It is important to note at this point in time that in all criminal cases except in a few statutory offences, the burden of proof to prove the charged offence against the accused is upon the prosecution. The standard of proof is proof beyond reasonable doubt. This burden of proof does not shift to the accused to prove his/her innocence. His burden of proof always rests on the prosecution. **See William –VS- Uganda [1976] HCB 304; Woolmington -Vs- DPP [1935] AC 462.**

Consequently, where there are more than two accused the law requires that the prosecution proves the charge against each an individual accused separately and beyond reasonable doubt.

Again, where the accused are jointly charged the prosecution must either prove common intention as provided under Section 22 of the Penal Code Act or that each accused is a

principal offender within the meaning of Section 21 of the Penal Code Act, See the case of **Komwiswa –vs- Uganda [1979] HCB 86.**

**3. Resolving this case by the Court.**

To prove its case against each accused beyond reasonable doubt, the prosecution adduced evidence from 4 (four) prosecution witnesses:-

- 1) Wambuzi Peter Ezekiel, PW1, the complainant.
  - 2) Rwigyema Ivan Vandame, PW2.
  - 3) No.34060 D/CPL Nanfuka Jannet – the investigating Officer.
4. D/AIP Odyek Bernard, who conducted the identification parade in respect of the accused persons.

In defence each accused person summarily gave evidence not on oath. Each accused person denied the charge in total. They called no other witness to testify on their behalf.

Counsel for the prosecution and the defence, respectively, addressed Court in their final submissions. Their respective submissions certainly shall help Court, together with the entire evidence on Court record and the joint assessors' opinion to reach a just decision.

My duty as the Trial Judge is to evaluate the evidence on Court record as a whole, subject the same to strict scrutiny and make conclusions on every ingredient of the offence charged.

**On the ingredient of theft.**

PW1, Wambuzi Peter Ezekiel, the complainant gave evidence that his laptop, hard drive, flash disk, mobile phone, text book, DVD, and one set of headphones were stolen from him on 12<sup>th</sup> April 2012. His evidence was corroborated by the evidence of PW2, PW3 and PW4. Indeed, the properties were valuable. The items stolen were never recovered. They were moved away by some people from PW1 with the intention to permanently deprive the owner of his property. In cross-examination by the defence Counsel as far as

this ingredient theft is concerned, the prosecution witnesses' evidence was never challenged.

On the other hand, in defence, each accused person did not mention anything about the said items. Each accused person did not dispute that the said items were stolen.

Wherefore, I am in agreement with the assessors and I hold that this first ingredient of theft was proved by the prosecution beyond reasonable doubt.

**On the second ingredient of the use of violence**

PW1 gave evidence that the attackers hit him hard on the head with a hard metal to wit: iron bar. The iron bar created and caused a big impact on PW1. He gave evidence that when he was hit on the head with the said iron bar, he fell down and became unconscious instantly. He was admitted for six (6) days in hospital. He was operated on and his jaw was deformed to date.

The medical report, PF3 (Exh.P1) showing the extent of the grievous harm that was sustained by the complainant, Exh P1, was exhibited in Court by the consent of both parties under Section 66 of the Trial on Indictment Act, Cap.23. Again, in their defence, each accused person never disputed the fact that there was use of violence during the robbery.

In the result therefore, and in agreement with the assessors, I hold that there was use of violence on the complainant during the robbery on 12<sup>th</sup> April, 2012. Therefore, the prosecution proved this second ingredient of the offence charged beyond reasonable doubt.

**On the third ingredient of Participation of each accused.**

PW1 gave evidence that A1, Bwanika Haruna, hit him with a hard metal. A2, Kalema Moses also joined A1 and stated beating him. Their actions imply that the accused had common intention and are covered under Section 22 of the Penal Code Act. And that

each accused individually participated in the beating of PW1. Thus each accused is a principal offender and covered under Section 21 of the Penal Code Act.

PW1 further gave evidence that when he gained conscious his properties, earlier stated hereinabove in his judgment, were missing. A1 and A2 were no longer at the scene, but they were arrested the following day by the Police on the information provided by PW2.

PW1 in his evidence testified that he properly identified A1 and A2 on that date of 12<sup>th</sup> April 2012. On the issue of whether there was proper identification or not, in the case of Uganda –vs-George Wilson Simbwa, SCCA No.37 of 1995, it was held that; circumstances to be taken into account include:-

- i. Nature of light.
- ii. Knowledge over the accused by the victim before the commission of the offence.
- iii. Length of time the victim took to observe the accused.
- iv. Opportunity of the victim to see the accused.
- v. The distance between the assailant and the witness.

In the instant case, PW1 testified that A1 came walking in a zig-zage manner, he was putting on a red T-shirt sleeveless with a figure 20 written on the front part using white colours. That A1 had an object in his right hand. PW1 had a chance to ask what A1 wanted from him. That at that moment, A2 also came walking in a limping manner. PW1 described A1 as a well built, dark skinned and shorter than A2. PW1 gave evidence that A1 had a round face.

PW1 further in his evidence stated that A2 was brown and had visible bones on the face. That he had a chance to look at him before he was struck by A1. That A2 was taller than A1.

That A2 was wearing a blue T-shirt and jean trousers. That he identified A1 and A2 by using the strong and direct electricity light about 15 metres from the Church and from the new, structures that were being constructed nearby the scene of crime.

PW2 in his testimony confirmed the same, that there was light at the scene of crime. PW3, the investigating Officer also testified that there was light from the unfinished buildings and the Church. A sketch plan of the scene of crime was put in evidence for the prosecution and marked Exh P4 (Point B showing unfinished buildings with electricity lights, and light from the Church -10 paces from the scene of crime).

Again PW2 testified that he had known the two accused for more than two (2) years before the commission of this offence. That on 12<sup>th</sup> April 2012 he met the accused persons at the scene of crime and that they asked him money. That PW2 when he came back thirty (30) minutes later, he met the accused carrying a laptop bag. That when he reached the Church he was told by the night watchmen that PW1 was robbed of a laptop and a bag.

That the following day, PW2 shared information with one Mubiru, who told him that the accused (A1 and A2) were selling a laptop around Kibuye round about. That PW2 tipped the police and that A1 and A2 were arrested. PW2 confirmed to Court that him and the two accused persons are friends and he had no grudge against each of them.

The prosecution also adduced evidence of the identification parade (Exh.P5) during which PW1 managed to identify A1 and A2 from the group of about 12 (twelve) volunteers. PW1 used the same descriptions on each accused he stated in his evidence to identify each accused.

It is noted that in cross-examination, the defence failed to challenge the prosecution witnesses' evidence in examination in Chief. In defence, each accused person gave evidence not on oath. Each accused's evidence did not create any doubt in the prosecution case. The evidence of PW1 and PW2 squarely put each accused at the scene of crime. Each accused failed to give a defence to the charged offence. It is also important to note that failure by the defence Counsel to challenge witnesses and documents in cross-examination should not allow Counsel to complain in his final submissions or on appeal. See the case of **Tindibwihura Mbale –vs-Uganda SCCA No.9 of 1987.**

In the premises, and in agreement with the assessors, I hold that the prosecution has proved the ingredient of participation of each accused person in the said robbery beyond reasonable doubt.

**5. Conclusion**

In closing, considering the prosecution evidence on record, the submissions by both Counsel my analysis of the whole evidence on Court record and the law applicable as cited hereinabove in this judgment and in agreement with the assessors' opinion, I hold that the prosecution proved this offence of robbery Contrary to Sections 285 and 286(2) of the Penal Code Act against each accused beyond reasonable doubt.

Each accused person is found guilty of the charged offence and convicted of the same charged offence.

Dated at Kampala this 10<sup>th</sup> day of November,2015.

**Joseph Murangira**  
**Judge**

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**:::ACCUSED**

**PERSONS**

**REPRESENTATION**

10/11/2015

Mr. Bwiso Charles, Senior State Attorney holding brief for Mr. Amuza Muzige Senior State Attorney for state.

Mr. Amuza Muzige Senior State Attorney for state reappears.

Mr. Senkeezi Stephen for the accused.

The 2 accused are in Court.

The case is coming up for judgment and we are ready to proceed.

The 2 assessors are in Court.

Ms. Kakunguru Margaret the Clerk is in Court.

**Court:** Mitigation and sentence shall be on 12/11/2015 at 9:00 a.m.

The convicts are remanded till then.

**Joseph Murangira**

**Judge.**