

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0076 OF 2013

UGANDA..... PROSECUTOR

VERSUS

BYABAGAMBI YOASI.....ACCUSED

RULING

BEFORE: Hon. Lady Justice Margaret Tibulya.

This is a ruling on a submission of no case to answer. The accused stands charged with aggravated robbery contrary to section 285 and 286(2) of the Penal Code Act. It was alleged that on the 22nd of April 2012 at Kyalugaba trading centre he robbed **Luyinda Vincent** of his mobile phone and 260,000/= and at the time or immediately before or immediately after threatened to use a deadly weapon to wit a gun and a panga to shoot and cut the said **Luyinda Vincent** and others.

The brief facts that in the night of 22nd of April 2012 thieves attacked Kyalugaba trading centre. The complainant, Luyinda Vincent was in his bar when three armed men went to his place. Two of the men remained outside while one of them entered the bar and demanded for money. Luyinda gave him the money. He was ordered to get out of the bar which he did. He was taken at the place where other victims had been gathered, and told to lie down. As he bent to lie down he took note of the robber who had entered his bar, a short brown man. In the bar there had been a hurricane lamp. The robber had been wearing a cap, but his face was not covered.

The next morning he reported the incident to the police. After two to three weeks the police called him to identify someone who had been arrested and was under custody and confirm whether he was one of the thugs who had robbed him the fateful night. When he went to the police station, the accused who was in the cell alone was shown to him. The complainant

recognised him as the man who had entered his bar the fateful night and robbed him of his money and phone.

The accused was charged with these offences. At the close of the prosecution case Counsel for the accused submitted that the state had not adduced sufficient evidence to warrant the accused to make a defence.

A submission of no case to answer will be upheld inter-alia when a major ingredient of the offence has not been proved.

THE INGREDIENTS FOR AGGRAVATED ROBBERY.

1. Theft of property,
2. use or threat to use a deadly weapon during immediately before or immediately after the theft or robbery or causing death or grievous harm,
3. Participation of the accused.

There is no doubt that theft of property and the use or threat to use a deadly weapon during immediately before or immediately after the theft or robbery were proved by the evidence of the complainant. The only issue is whether there is sufficient evidence that the accused participated in the robbery.

The sole identifying witness said that he saw the accused during the robbery and noted him to have been a short brown man, and that when he went to the police station he was shown the man and he confirmed that he was one of the robbers.

IDENTIFICATION

In **LUTWAMA DAVID Vs.UGANDA (Criminal Appeal No.4 of 2003)**, the law relating to the identification evidence of a single witness as stated in **TOMASI OMUKONO VS. UGANDA 1977 HCB 61. AND ABDUDAALLH NABULERE VS UGANDA CRIM APPEAL 9/1979** was restated. It is that:

1. Identification of an accused can be proved by the testimony of a single witness, but,
2. there is need for testing with the greatest care the evidence of such a witness regarding identification, especially when the conditions favouring correct identification are difficult.
3. In such case there is need for other evidence pointing to guilt from which it can be reasonably concluded that the evidence of identification can safely be accepted as free from the possibility of error.

In this case the conditions were very difficult. There was only a hurricane lamp, and the victim did not know the accused before. The attacker was putting on a cap, and the evidence is that the witness got the opportunity to look at his face once as he was bending in response from an order from the intruder. The need for corroboration is high, and unfortunately there is no corroborative evidence at all.

What happened at the police station is very interesting. The police called the victim to identify his attacker but only opened the police cells where only the accused was. In those circumstances the victim had only to say that the accused was his attacker. The identification evidence is wanting.

I did not find evidence to ground a decision to require the accused to make his defence. There is no evidence placing him at the scene for purposes of committing the offence. I accordingly uphold the submission of no case to answer and acquit the accused of the offence of aggravated robbery. He be discharged forth-with.

Court; Ruling read in open court.

Margaret Tibulya

Judge

27th April 2016

