

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA

HCT-06-CR-SC-0076 OF 2013

UGANDA..... PROSECUTOR

VERSUS

KAKEMBO UMAR.....ACCUSED

RULING

BEFORE: Hon. Lady Justice Margaret Tibulya.

This is a ruling on a submission of no case to answer. The accused stands with aggravated robbery contrary to section 285 and 286(2) of the Penal Code Act. It was alleged that on the 28th of November 2011 at Kagulukiro village he robbed **MUTAGUBYA SABAYI** of his motor cycle Reg No. UDG 285.S Bajaj Boxer valued at 2,000,000/=, cash 100,000/= and a Nokia mobile phone 2300 worth 100,000/= all valued at 2,200,000/= and at the time or immediately before or immediately after threatened to use a deadly weapon to wit a gun to the said **MUTAGUBYA SABAYI**.

The brief facts that in the night of 28th of November 2011 around 7:20 pm at Kagulukiro, the complainant who was riding a motor cycle met a man who was staggering in the road as if he was drunk. When he tried to dodge him, the man pushed the motor cycle. The victim and the person he was carrying fell with it. Immediately another man emerged from the bush. He had a gun. The armed man assaulted the person the complainant had been carrying on the motor cycle (Pw2) **Sserwadda Yusuf**. The motor cycle, 100,000/= and the victims mobile phone were taken. His legs and hands were tied and he was left in the bush. He did not identify the attackers, but the accused's size is the same as the robber who had emerged from the bush. (Pw2) **Sserwadda Yusuf** did not identify the attackers as well.

The accused was charged on the basis of the evidence that his size is the same as that of the robber the witnesses had seen. 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 defense.

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 proven by the evidence of the complainant. The only issue is whether there is sufficient evidence that the accused participated in the robbery.

None of the witnesses saw the accused during the robbery. The contention that the accused's size is the same as that of one of the robbers is no evidence at all. 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 up-hold 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