

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

**HCT-06-CR-SC-0076 OF 2013**

**UGANDA..... PROSECUTOR**

**VERSUS**

**MUTEBI SULAIMAN.....ACCUSED**

**BEFORE: Hon. Lady Justice Margaret Tibulya.**

**JUDGMENT**

The accused stands with aggravated robbery contrary to section 285 and 286(2) of the Penal Code Act. It was alleged that on the 1st of March 2012 at Kizungu zone in Masaka Municipality he robbed **Ssebulime Godfrey** a motor cycle **Reg No. UDT 084X** Bajaj Boxer red in color valued at 2,650,000/= and at the time or immediately before or immediately after the robbery he used a deadly weapons to wit an iron bar on the said **Ssebulime Godfrey**.

The brief facts of the case are that on 2<sup>nd</sup> March 2012 at 4:00p.m Pw2 (**SPC Francis Kavuma**) was asked by Motorcycle operators of Bulege trading center to go and apprehend suspected motorcycle thieves. He got there three men one of whom is the accused before the court. The three men were searched and found with a bag containing an empty water bottle which was smelling of petrol, a ladies wig and Vaseline. One of the men explained that the items belonged to his sister in law.

They were taken to Bigasa police station. Through interrogation it was established that the suspects had spent the night at one Mutaawe's, but that one of them called Lubega was a known thief who no longer lived in that village.

Pw3 (**SPC Ponsiano Katongole**) talked to Mrs Mutaawe and she revealed that the accused had been with a motor cycle whose whereabouts she did not reveal. Pw3 over-heard ring her husband telling him to remove the motor cycle which the accused had left. He went to the home of the father of Mutaawe and got the father coming from the coffee shamba. He saw

motor cycle tyre marks going through the coffee shamba. He followed the marks and got motor cycle **Reg.No UDT 084X** parked near a thicket. It was taken to the police station.

**D/Sgt Mbabazi Julius (Pw1)** recorded a statement from the complainant one **Kazibwe Farouk** who told him that a man who was putting on a long over coat and a wig and had disguised himself as a woman had hired him to take him to Kizungu. When they got to the destination two other men who were armed with iron bars and knives emerged from nearby. They grabbed and tied him and rode off with the motor cycle. When the person he had taken removed the wig he realised he was a man.

Pw1 went to Bukomansimbi police station and the complainant identified his motor cycle. One of the three men, **Sseruyange Joseph**, was the one who had hired the complainant and had been putting a wig. On interrogation the suspects admitted having stolen the motor cycle.

In his defence the accused said that he had gone for burial and on his way back he found two men at the taxi stage. Like him, the men were going to Nyendo. They agreed to hire one motor cycle to take them to Nyendo. While still there a certain man asked them where they were coming from. He told him that he was coming from Kyaziiza where he had gone for a burial. The man took them to the police station since boda cyclists were suspecting them to be thieves.

### **BURDEN AND STANDARD OF PROOF**

The prosecution bears the burden of proving the guilt of the accused person, and this, beyond reasonable doubt. The burden does not shift except in a few exceptions. This case does not fall in the exceptions. **Woolmington vs. DPP (1935) AC 462, 481 & 482** which has been quoted with approval in **Tuwamoi vs. Uganda EACA 1967 P.84 at Page 97 and in Uganda vs. Joseph Tole 1978 HMB P 269.**

### **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.

### **THEFT OF PROPERTY.**

The complainant did not testify. There is there is no evidence relating to the circumstances of the theft of the motor cycle. The ingredient of theft was not proved.

### **THE USE OR THREAT TO USE A DEADLY WEAPON DURING IMMEDIATELY BEFORE OR IMMEDIATELY AFTER THE THEFT OR ROBBERY OR CAUSING DEATH OR GRIEVOUS HARM.**

There is no evidence about what happened during the robbery. This ingredient was not proved as well.

### **PARTICIPATION OF THE ACCUSED.**

The accused denied participation in the robbery, saying that he met the other two men who are not in court at a stage. But pw2 and 3's evidence that all three men told him that they were coming from one Mutawe's was not challenged. The accused's evidence in which he disassociates himself from the other two men is an afterthought, and I reject it. The effect of Pw3's (**SPC Ponsiano Katongole**) evidence was that information from the accused led to the recovery of the motor cycle. This is sufficient to incriminate him in the theft of the motor cycle, but since the complainant did not testify about how or whether the motor cycle was stolen, there is no basis for convicting the accused.

In agreement with the gentlemen assessors I find that there no evidence that the accused stole the motor cycle. He is therefore acquitted of the offence of robbery. He should be discharged forthwith.

**Margaret Tibulya**

**Judge**

**19<sup>th</sup> May 2016**