

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT-01-CR-SC-0187 OF 2014.**

**UGANDA.....PROSECUTOR**

**VERSUS**

**KAZUNGU ABIUS & ANOR.....ACCUSED**

**RULING.**

**BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE.**

The two accused persons were indicted with the offence of Aggravated Robbery C/S 285 and 286 (2) of the Penal Code Act.

The particulars were that the two accused on the night of 19/2/2014, at Kahunge Trading Centre, being armed with a knife, robbed Isingoma Ainebyona of cash UGX 3,070,000/=.

The prosecution called evidence of two witnesses and closed their case pre-maturely when the third and last witness failed to turn up.

PW1 was D/Inspector Nuwe Henry, who carried out the identification parade in respect of Kazungu Abius, A1. According to the identification parade report, one witness, Isingoma Ainebyona identified Kazungu Abius on 6/3/2014 as the one who robbed him on 19/2/2014.

During cross-examination by counsel for the accused, PW1 stated that the witness, Isingoma Ainebyona did not identify A2, Atwine Alex although he was part of the identification parade.

PW1 stated that A1 was in the middle and A2 was on the extreme end. However, on the identification parade Form, Atwine Alex was the first, followed by Kazungu Abius. That was an inherent contradiction in the evidence of PW1 which makes his testimony unreliable. PW1 also added that A1 was not satisfied with the parade, but he did not record his answers which was not proper under the rules of identification parade. PW1 even failed to record the mode of dress and he did not record the names of other police officers who were present.

And to make the identification parade irrelevant, the 12 men on the parade were not of the same size and not similar height or age. That was the testimony of PW1 which was fundamentally wrong.

PW2, Ainebyona Isingoma, who was allegedly robbed by the two accused had stayed with A2, Atwine Alex for two days failed to identify him at the parade and instead managed to identify A1, Kazungu Abius who allegedly came the following day. And where as PW1's testimony was

that both accused persons were on the parade, PW2 during cross-examination by counsel for the accused stated that he was able to identify the accused who came later but could not identify the one he had been with because he was not at the parade. That was a direct contradiction with what PW1 stated that both accused persons were at the parade and he even wrote them on the identification parade form.

More fundamentally, whereas PW2 stated that he was robbed of 3,070,000= shillings, by the two accused he did not have the books of accounts to show that amount of money recorded. And PW2 during cross-examination admitted that the thieves did not take the books of accounts.

During clarification from Assessors, PW2 stated:-

**“The one I interacted with for 2 days is A2. A2 was not there at the parade....”**

As already noted, that was a direct contradiction with the evidence of PW1 who stated that both accused were on the parade. All in all, given the wrong procedure followed by PW1 in carrying out the identification parade, and the sharp contradictions in the evidence of PW1 and PW2 as to whether both accused persons were on the parade or not, and as there was no evidence by way of records to confirm that UGX 3,070,000= was stolen from Ainebyona, I find and hold that there is no prima facie case made out against the accused.

I accordingly, enter pleas of not guilty and acquit them under S. 73 (1) of the T.I.A.

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**WILSON MASALU MUSENE**  
**JUDGE.**

4/5/2018 at 3:00 p.m.  
2 accused present  
Kateeba for accused present  
Alice Ahimbisibwe for State  
Ikiriza, court clerk present

**Court;** Ruling read out in open court

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**WILSON MASALU MUSENE**  
**JUDGE.**