

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT NEBBI
CRIMINAL SESSIONS CASE No. 0057 OF 2015

UGANDA **PROSECUTOR**

5 **VERSUS**

**1. OCAKACON FRED }
2. WATHUM RICHARD } ACCUSED**

Before Hon. Justice Stephen Mubiru

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SENTENCE AND REASONS FOR SENTENCE

When this case came up on 5th April, 2018, for plea, the two accused were jointly indicted with one count of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act*. They both pleaded
15 not guilty and hearing of the case commenced on 11th April, 2018. The evidence of one witness was admitted at the preliminary hearing. Two more witnesses, including the complainant, testified and the case was adjourned to 20th April, 2018 for further hearing. When the case came up today for further hearing, the learned Resident Senior State Attorney prosecuting the case, Mr. Muzige Amuza applied for and was granted leave to amend the indictment.

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In the amended indictment, both accused were jointly charged with two counts. In count One, they were accused of the offence of Theft c/s 254 and 261 of *The Penal Code Act*. It was alleged that the two of them between 6th and 7th September, 2015 at Rwanga village in Nebbi District, stole four and a half nets valued at shs. 450,000/= the property of Botha Robert. In the second
25 Count they were accused of the offence of Threatening violence c/s 81 of *The Penal Code Act*. It was alleged that the two of them on 7th September, 2015 at Rwanga village in Nebbi District, with intent to intimidate or annoy, threatened to injure Obotha Robert with a knife. When the amended indictment was read to them, each of them pleaded guilty to each of the two counts.

30 The learned Resident Senior State Attorney then narrated the following facts of the case; between 6th and 7th September, 2015 at the shores of lake Albert at Rwanga village, the complainant cast his nets at around 8.30 pm. When he came back to retrieve the nets later, as

they came to check on their nets, 4 and a half of the nets had been stolen. The complainant and his colleague began a search for the nets in the night until day break the following morning when they saw the accused on another boat. They got close to the boat and saw nets in a sack. This created suspicion. They checked them and realised they were their nets which had been stolen.

5 They requested the accused to return to the shores to settle the issue. Mid way the journey, A1 pulled out a knife and threatened to injure the complainant. The complainant jumped into the water and the rope connecting the two boats was cut. The accused disappeared with their boat. The complainant reported the matter to the police and the local police who arrested the accused at Kaaal landing site. They were accordingly charged and produced in court.

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Upon ascertaining from each of the accused that the facts as stated were correct, each of them was convicted on his own plea of guilty for the offences of Theft c/s 254 and 261 of *The Penal Code Act* and Threatening violence c/s 81 of *The Penal Code Act* respectively.

15 Although he had no previous record of conviction against any of the two convicts the learned State Attorney prayed for a deterrent sentence. In response, the learned defence counsel Mr. Pirwoth Michael prayed for lenient sentences on grounds that; the law requires that the value of the property stolen should be considered, the impact of the offence on the victim and the community, any aggravating or mitigating factors, and antecedents. They have pleaded guilty
20 and have no previous record. They are remorseful. A1 Ocakaon Fred is a married man with two young children he needs to look after and he has been the sole bread winner in the family. He needs to have time with the family and look after his wife. A2 Wathum Richard was married and had a child but the wife died at delivery leaving the child. He is a widower and has to look after the child. This can be achieved if given an opportunity to rejoin the community and look after
25 their families. I have been approached by the complainant who informed me that he and the relatives of the accused met and reconciled and have compensated him for the lost nets. The impact on the victim has been minimised. The complainant is a happy man who would like to have the accused released. They have also undertaken to remain law abiding if given an opportunity to go back. They are remorseful and once given an opportunity they will go back and
30 keep law and order. the stay on remand had taught them a sufficient lesson. They have been on remand for a period of two and half years. The offence of threatening violence carries a

maximum of four years. Both offences are triable by a magistrate and are bailable. In the circumstances, he suggested that the period of two years and six months is sufficient punishment. He prayed that they be sentenced to a caution. They are capable of reform and will become useful and respectable citizens of the country.

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In his *allocutus*, A1 Ocakaon Fred stated that he wants to go and look after his home where he has school going children. He has learnt a lesson. He intended to cut the rope not to stab. On his part, A2 Wathum Richard stated that the two years he has spent on remand have taught him a lot. They admitted the offence on arrest but at police they were told that they had robbed and that is why they initially pleaded not guilty. He prayed for community service instead. In his victim impact statement, the complainant stated that two days after he had testified in court, the family of the two accused paid him the compensation which he had sought from the two convicts. He had thus forgiven them.

15 The maximum punishment for the offence of theft under section 261 of *The penal Code Act* is ten years' imprisonment whereas that for the offence of Threatening violence c/s 81 of *The Penal Code Act* is four years' imprisonment. Some of the factors to be considered by a trial court at sentencing are outlined in Regulations 5 and 6 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* and they include; the character and antecedents of the convict, including any other offences admitted by him or her whether or not he or she has been convicted of such offences, denunciation (public criticism) of the unlawful conduct, deterrence to the offender and to others of a similar mind, protection of the public, rehabilitation of the offender, and reparation (make amends) for harm done to victims or to the community while promoting a sense of responsibility in offenders.

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I have considered the current sentencing practice for this offence. In *Shaban Mugabi v. Uganda C.A Criminal Appeal No.12 of 1995*, the Court of Appeal set aside a sentence of 12 months' imprisonment and substituted it with one of 7 months' imprisonment for a convict who had pleaded guilty to a charge of theft of shs. 1,500,000/= and was also a first offender. In *Magara v. Uganda C.A. Criminal Appeal No. 146 of 2009*, the Court of Appeal upheld a sentence of seven years' imprisonment for the offence of theft.

Taking into account both the aggravating and mitigating factors presented to court, I consider a term of four years and seven months' imprisonment in respect of count one and one year's imprisonment in respect of count two as appropriate punishment for each of the convicts. It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, is to the effect that the court should "deduct" the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. Both having been charged on 10th September, 2015 and kept in custody since then (two years and seven months), I hereby take into account and set off the period each of them has already spent on remand. I would therefore have sentenced each of them to a term of imprisonment of two years' imprisonment.

However, under section 3 (1) of *The Community Service Act, Cap 115*, where a person is convicted of a minor offence (one for which the court may pass a sentence of not more than two years' imprisonment), the court may, instead of sentencing that person to prison, make a community service order. Having considered the circumstances of the case, character and antecedents of each of the convicts, the fact that there has been a process of reconciliation between them and the complainant, and the fact that each of them consents to a community service order, I consider this to be an appropriate case for making such an order. Although there has been restitution, I consider that the manner in which the offences were committed requires some punitive sentence. Instead of sentencing each of the convicts to two years' imprisonment on count I and one year's imprisonment on Count two, which sentences would have run concurrently, each of the convicts is hereby sentenced to three months' community service at Panyimur health Centre, for a minimum of three hours a day. Having been convicted and sentenced on their own plea of guilty, each of the convicts is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Nebbi this 20th day of April, 2018.

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Stephen Mubiru
Judge
20th April, 2018.

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