

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
HCT-00-CR-SC-0098 OF 2017

5 **UGANDA ----- PROSECUTOR**

VERSUS

NSUBUGA BEN ----- ACCUSED

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

10 This ruling arises out of a submission of no case to answer, made by Counsel for the Accused person Mr. Ben Turyasingura.

The Accused Nsubuga Ben, was indicted on five counts.

15 **Count 1: Aggravated Robbery contrary to Section 285 and 286 (2) of the Penal Code Act.**

20 The Prosecution case is that on 10.03.16 at Nangamba Village, Busukuma Sub county, in Wakiso District, the Accused robbed Senkubuge Sam of a motorcycle No. UEJ 467T Bajaj Box, red in color, belonging to one Eddie Nsibirwa, and immediately before or after the time of the said robbery, used a deadly weapon to wit a gun on the said Senkubuge Sam.

25 **Count 2: Aggravated Robbery contrary to Section 285 and 286 (2) of the Penal Code Act.**

30 That the said Accused person and others still at large on the same date and in the same village, robbed Mugabi Merekiad of motorcycle No UEJ 181X Bajaji red in color, belonging to the said Nsibirwa. And immediately

before or after the time of the said robbery, used a deadly weapon to wit a gun, on the said Mugabi Merekiad.

5 **Count 3: Doing grievous Harm contrary to Section 219 of the Penal Code Act.**

That on the same date at the same place, the Accused and others still at large, unlawfully did grievous harm to Musisi Tonny.

10 **Count 4: Forgery contrary to Section 342 of the Penal Code Act.**

That the Accused person and others still at large in the month of March, 2016, in Kampala District, forged log book for motorcycle UEF 871 D to UER 671 E.

15 **Count 5: Uttering a false document contrary to Section 35 of the Penal Code Act.**

20 That the Accused person and others still at large during the month of April, 2016, at Kyamuhingo Village, Nakasongola District, knowing and frequently uttered a false document to wit log book for motorcycle UEF 671E purporting it to have been signed by Uganda Revenue Authority Officials.

25 The Prosecution case is based on the testimony of seven witnesses who testified to the robbery with use of a gun on the night on question, where Tonny Musisi was shot and sustained injuries, as a result which he can no longer talk, and his understanding is limited.

30 Two motorcycles were stolen. Motorcycle UEJ 467T was recovered and Accused was implicated as one who had sold it to the person who eventually sold it to a Pastor. It was returned to the owner.

The second motorcycle UEJ 181X was not recovered.

35 Several motorcycles had been stolen and were recovered by Police at Luweero. One of the suspects is accused before court.

One of the motorcycles recovered had No. UEF 671E which did not belong to the motorcycle but the chassis number and engine number matched the motorcycle that was robbed from Senkubuge. The No. UES
5 671E was forged. The number was verified with Uganda Revenue Authority and it belonged to Martmix Co. Auto Co Ltd.

The motorcycle was recovered from one Pastor Ben, who had said he bought it from Kalyesubula and Kalyesubula said it was Accused who
10 gave him the motorcycle to sell.

Also that, Accused revealed how he gets motorcycles with his brother and log books are made and then taken for sale. – Exhibit P₉.

15 Accused did not state how he obtained the motorcycle. But that the motorcycle which he sold places him at the scene of the crime.

Motorcycle UEJ 467T Bajaj red in color was found at Luweero but the number had been changed to UEF 671 E, it was recognized from the
20 engine number and chassis number. Motorcycle found with Pastor Musiime A₇

At the close of the Prosecution case, Counsel for the Accused made a submission of no case to answer.

25 After going through the offences with which the Accused is charged, Counsel submitted that the gravest charges are Counts 1-3.

30 That while the evidence adduced shows that the crimes were committed, the Accused did not participate in the commission of the offences; as the motorcycles stolen at Nangamba, Busukuma are not connected to the Accused person.

35 The witness PW₁ did not see Accused at the scene of crime. PW₂, PW₃- did not identify the Accused or implicate him in having participated in the crime.

Counsel contended that the Accused has been on remand for three (3) years for an offence he did not commit.

5 That without any evidence implicating the Accused, no prima facie case has been made out against him and he should therefore be acquitted. The case of **Wabiro Musisi vs. Rep [1960] EA 184** – was cited in support.

10 It was prayed that he be set free and that the charge and caution statement was not put in evidence.

In reply, Counsel for the State agreed that offence had been committed, but left it to court to determine whether a prima facie case had been made out against the Accused person.

15 Upon giving the submissions of both Counsel the best consideration I can, I wish to state that the circumstances under which a submission of no case to answer may be upheld have been established by a number of decided cases.

20 The submission can be upheld where **“there has been no evidence to prove an alleged essential ingredient of the offence or where the evidence of the prosecution has been discredited in cross-examination or is so obviously unreliable that to reasonable tribunal could safely convict on it”**. – See **Brett vs. R [1957] EA 332**.

25 It has been emphasized in those cases that **“a prima facie case cannot be one that merely might possibly be thought to be sufficient to sustain a conviction; a mere scintilla of evidence cannot suffice nor can any amount of discredited evidence.”**

30 A prima facie case means one where a reasonable tribunal, properly directing its mind to the law and evidence could convict if no explanation is offered by the defence. – **Brett vs. R (Supra)** and **R vs. Shabudin Merah MB 38/63**.

5 Considering the submissions of Counsel for the defence and looking at the prosecution evidence, there is evidence that the offence was committed. That is, there was theft, use of force and a deadly weapon. The only ingredient contested by Counsel for the Accused is the participation.

10 While none of the perpetrators were identified at the scene, one of the stolen motorcycles was recovered, though be it under a different forged number. The person who sold it to the Pastor claimed to have bought it from the Accused person and hence his arrest and being charged with this offence.

15 The evidence may be circumstantial but it is trite law that circumstantial evidence is sometimes the best evidence.

For those reasons, I find that a prima facie case has been made out against the Accused person which requires that he be put on his defence.

20 The submissions as of Counsel for the Accused are accordingly overruled for those reasons.

FLAVIA SENOGA ANGLIN
JUDGE
11.07.19