

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**HCT-03-CR-SC-0284-2018**

**UGANDA** ..... **PROSECUTOR**

**VERSUS**

<b>1. Yowiyambe moses</b> <b>2. Komaketch Samuel</b> <b>3. Olum Moris</b> <b>4. Rwothomia Gilbert</b> <b>5. Odong Samson</b>	}	..... <b>ACCUSED</b>
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**BEFORE: THE MR. JUSTICE MICHAEL ELUBU**

**RULING**

The accused persons **Yowiyambe moses**, , and **Komaketch Samuel, Olum Moris, Rwothomia Gilbert Odong Samson** are all indicted on one Count of Aggravated Robbery c/ss 285 and 286 (2) of the **Penal Code Act**. It is alleged that the accused persons with other at large on the 1<sup>st</sup> day of February 2018 at William Street in Central Division in Kampala District robbed one Kintu Tadeo of cash UgX 2,000,000/- and immediately before during or immediately after the robbery used a deadly weapon to wit a knife on the said Tadeo Kintu.

All accused persons pleaded not guilty to the indictment. The prosecution then called three witnesses to prove its case.

The evidence is that at about 10.00 am to 11.00 am on the 1<sup>st</sup> of February 2018 **Kintu Tadeo, PW 1**, who works with the Uganda National Action on Disability went to The Equity Bank branch found near Nebbi Park on William Street, Central Division in Kampala District. That he was driven by the Organisation driver and dropped off near the Bank. He went into the bank and withdrew UgX 4,000,000. That he placed a bundle of UgX 2,000,000 in each of the breast pockets in his Jacket/Blazer. As was plain for the Court to see, Kintu was physically disabled and walked with the aid of two crutches.

When Kintu left the bank and was manoeuvring his way back to the parked car, he was surrounded by 6 or 7 men. That three were directly in front of him close enough to reach into his jacket. The others stood behind him. That one pulled a sword out of his trouser and told him to keep quiet and not make an alarm or they would stab him. That it looked like a knife with a black handle and a sharp end. He became very frightened. One then reached into his Blazer pocket and removed one bundle of UgX 2,000,000/-. He produced a copy of the Account Bank statmmetn to show that he withdrew 4,290,000/- on that day.

The incident, in his estimation, took between 45 seconds to a minute.

That he was able to recognise A2, Komaketch Samuel and A4 Rwothomio Gilbert as part of the gang which surrounded him that day. It was A2 who told him not to make an alarm. Kintu stated that he concentrated on looking at A2's face as he was robbed. A4 blocked his exit. That he made an alarm and the group fled with the money which he has never recovered. His alarm attracted one Ocama Godfrey, PW2 the defence secretary who had witnessed what happened and ran towards him. Kintu then reported the matter to Police.

PW 2 on the hand stated that he saw what happened from a distance. That he saw A4 **Rwothomia Gilbert** and A5 **Odong Samson** as part of a gang which surrounded the victim and robbed him. It was his evidence that he was standing just opposite where they were and had a clear line of sight about 30 meters away.

After calling the investigating officer the prosecution rested and submission on a no case to answer was made by the defence.

S. 73(1) of the **Trial on Indictments Act** provides,

*When the evidence of the witnesses for the prosecution has been concluded,..., the court, if it considers that there is no sufficient evidence that the accused ... committed the offence, shall, after hearing the advocates for the prosecution and for the defence, record a finding of not guilty.*

The court is in essence required to make a finding whether a prima facie case is made out against the accused persons.

A definition of a prima facie case was given in the celebrated case of **Ramanlal T. Bhatt v R (1957) E.A 332 at 335**, as follows:

*'It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.'*

In **Kato Kajubi V Ug Cr App 39/2010** the Court of appeal cited with approval the following holding,

*it has been held that the test of a prima facie case is objective and that a prima facie case is made out if a reasonable tribunal might convict on the evidence so far adduced. Although the court is not required at this stage to decide whether the evidence is worth of credit or whether if believed is weighty enough to prove the case conclusively, a mere scintilla of evidence can never be enough nor any amount of worthless discredited evidence. But it must be emphasised that a prima facie case does not mean a case proved beyond reasonable doubt; Wibiro v R. (1960) E.A. 184.*

The offence of aggravated robbery is provided for in Section 285 and 286 (2) of **The Penal Code Act**. The sections state:

## Section 285

Any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits the felony termed robbery.

## Section 286 (2)

Notwithstanding subsection (1) (b), where at the time of, or immediately before, or immediately after the time of the robbery, an offender uses or threatens to use a deadly weapon or causes death or grievous harm to any person, such offender and any other person jointly concerned in committing such robbery shall, on conviction by the High Court, be sentenced to death.

The essential elements of the offence of Aggravated robbery are:

1. theft of property;
2. use of; or threat to use violence;
3. use of a deadly weapon; and
4. the participation of the accused.

(See Walakira Abbass & 2 O'rs Vs. Uganda S.C. Cr. Appeal No. 25 of 2005).

In this case the victim produced proof that he withdrew 4,290,000/- from the Organisation bank account in Equity Bank on the 1<sup>st</sup> of February 2018. He stated that he had then put the money in his Jacket pockets from where it was taken and has never been recovered to date. I find that the first element of theft stands.

Regarding violence and deadly weapon under S. 286 (3) of **the Penal Code Act** “deadly weapon” includes any instrument made or adapted for stabbing or cutting which when used for offensive purposes is likely to cause death. From the description of the weapon given by Kintu - PW 1, it would appear at this stage that it properly fits the description of a deadly weapon. The witness states that he was very scared during the event. The threat made to use the deadly weapon on him elicited the fear of deathly violence in the victim.

Lastly the participation.

There has been no evidence whatsoever produced against A1 Yowiyambe Moses or A3 Olum Maurice.

A2 and A4 are named by the Victim as the persons he recognised in the attack.

A5 is pinned by PW 2, Ocama Godfrey, as one of the persons he saw participate in the robbery. These persons state it was day light and they were close enough to properly identify the culprits. PW 2 adds that he was well acquainted with both A4 and A5.

If therefore this Court was required to make a final finding of guilt at this stage, it would convict A2, A4 and A5.

I therefore find that a prima facie case has been made out against A2 **Komaketch Samuel, A4 Rwothomia Gilbert and A5 Odong Samson.**

A1 Yowiyambe Moses and A3 Olum Maurice are hereby acquitted.

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**Michael Elubu**

**Judge**

**28.2.2022**