

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
CRIMINAL SESSION CASE NO.0043 OF 2017

UGANDA ..... PROSECUTION

VERSUS

A1. BAZIBU MOSES

A2. MONGE ISAAC

A3. MUDULI HAKIM

A4. BILLY ENOCK

A5. SEKITO YUSUF

A6. NENE SWALIQUE ANGOLERE ASIRAF ..... ACCUSED

*Before: Hon. Justice Byaruhanga Jesse Rugyema*

**JUDGMENT**

- [1] The 6 Accused persons; **Bazibu Moses** (A1), **Monge Isaac** (A2), **Muduli Hakim**(A3), **Billy Enock**(A4), **Sekito Yusuf**(A5) and **Nene Swalique Angolere Asiraf**(A6) were indicted of the offence of **Aggravated Robbery C/ss 285 & 286(2),(3)(a)(i) PCA**. It is alleged that on the 29/6/2016 at Kisanja village in the Masindi district, the 6 accused persons robbed **Odongo Walter** of his property to wit; **Ugx 6,700,000/=**, Driving permit, shoes, Itel mobile phone, 2 shirts and at or immediately before or after the said robbery, used a deadly weapon to wit a pistol on the said **Odongo Walter**.
- [2] The accused persons pleaded not guilty to the indictment. **Nene Swalique Angolere Asiraf** (A6) who was a juvenile at the time escaped from prison (Remand Home), **A5** was acquitted in the course of the trial when the complainant/victim absolved him of participation in the commission of the offence.
- [3] The prosecution case is that on the morning of 29/6/2016 around 9:00am, the complainant/victim **Odongo Walter** (PW1) left Centenary Bank Masindi where he had gone to withdraw money for school fees of his children and for purchase of land. After withdrawing the money

amounting to **shs.6, 500,000/=**, he footed from the Bank to the Taxi stage which is near Masindi police station for his travel back home to Kigumba. Before reaching the taxi stage, the accused persons who were in a premio car approached him from behind and stopped beside him. They asked him his place of destination and he revealed to them that he was going to Kigumba. The driver he identified as **A3** told him that they were charging him **shs.6, 000/=** as they opened the door of the car for him to enter. He entered and found 3 more persons inside the car whom he identified as **A1, A2, and A5**.

- [4] On the way, when they reached Kabalega S.S, the driver of the car raised the window glasses of the car, this is when he realised that the glasses were all tainted black. When he inquired as to what was happening, **A1** told him that for them, they wanted money. The complainant/victim at first mistook the demand for money to refer to the transport charge of shs.6,000/= until when they started placing their hands in his pockets as some of them embarked on boxing him while others were securing a rope and they tied him by the neck. **A1** placed a pistol on him with threats of imminent death. They tied his legs, arms and blind folded him. They searched his body and took a total sum of **ugx 6,700,000/=** which was a sum of the **ugx 6,500,000/=** he had withdrawn from Centenary Bank and **ugx 200,000/=** he had come with from his home.
- [5] When he lost his senses because of the torture, the assailants dropped him in the bush and drove off. He was however later able to get himself up and used his tied up hands to push the cloth that had been tied around his face downwards and was able to see. He walked to the murram road; Masindi-Kigumba and was eventually rescued by a boda boda rider who brought him to Masindi police where he was referred to Masindi Hospital for medication.
- [6] It was on the 21/7/2016 that he was alerted of strange people who appeared at **Kingstone Guest house, Bweyale**. He rushed there. He was able on sight, to recall and identify the assailants **A1, A2, A3, and A4** as the people who robbed him. He immediately alerted police which came and picked them up and eventually charged them with the instant offence.
- [7] In their unsworn statements, the accused persons denied the prosecution allegations. They stated that they were on their way to Arua

for business and other petty jobs but their car, a Premio got a mechanical problem and they booked at **Kingstone Guest house, Bweyale** where police at the instance of the complainant/victim came and picked them and eventually charged them with the instant offence.

- [8] It is an established principle of law that in criminal cases, the burden of proof is upon the prosecution to prove the guilt of the accused person(s) beyond all reasonable doubt. The burden never shifts to the defence except in a few exceptional cases provided for by law; **Woolmington Vs DPP (1935) A.C 462, Oketh Okale Vs R(1965) E.A 555**. It is also the law that a conviction should not be based on the weakness of the case as put up by defence but it must be based on the strength of the prosecution case; **Uganda Vs Oloya S/o Yovan Oweka [1970] HCB 6**.
- [9] Where there is more than one accused person as in the present case, the participation of each and every one has to be proved. An accused has no burden to prove his or her innocence.
- [10] For the charge of Aggravated Robbery to be sustained against the accused persons, the following ingredients of the offence have to be proved beyond reasonable doubt.
1. Theft of property
  2. Use of force, violence or threat to use force or violence at the time the theft occurred.
  3. Possession or use of a deadly weapon or that there was grievous harm or death occasioned to the victim.
  4. That the accused persons participated in the commission of the offence; **See R Vs Shendley [1970] Crim. L.R 49 C.A & Gilbert Vs R (1972) E.A 51**.

### **1. Theft of property**

- [11] The complainant/victim **Odong Walter** (PW1) testified that he fell into the hands of the assailants at around 9:00-11am when he left Centenary Bank Masindi where he had gone to withdraw money for school fees of his children and for purchase of land. The assailants made him enter their vehicle upon them telling him that they were to drive him to his place of destination, Kigumba. On the way, they tortured him and tied him with ropes as they extracted money from him. They forcefully stole

from him a total of **Ugx 6,700,000/=** and then dropped him in the bush along Masindi-Kigumba road.

- [12] The complainant's evidence was not challenged at all by the defence. His Centenary Bank statement of withdraw of **ugx 6,500,000/=** on the fateful day of 29/6/2016 was admitted under **S.66 TIA** as an agreed fact, (**P.Exh.3**). His additional **ugx 200,000/=** he had come with from home to the bank was also taken.
- [13] In the premises, I find that the 1<sup>st</sup> ingredient of the offence was proved by the prosecution beyond reasonable doubt.

## **2. Use of force, violence or threatened use of violence**

- [14] Again, the complainant/victim **Odongo Walter** testified how the assailants tortured him by boxing him and placing a pistol on him with threats of imminent death as they demanded and ransacked him for money. They tied him with ropes and blind folded him. Though the pistol was never recovered and therefore was not exhibited, the rope used to tie the victim was found on him upon rescue and was admitted in evidence as an agreed fact under **S.66 TIA**. The exhibit slip of the rope is **P.Exh.2**. As a result of the robbery, the victim sustained injuries on the left eye caused by a hard object as per **P.F3** form (filled upon the victim being medically examined at Masindi hospital) where he was referred to by police. It was also admitted as an agreed fact as per **P.Exh.1**. The totality of the above connote use of force and violence during the theft.
- [15] I have no reasons not to believe the complainant/victim's evidence on this aspect and as a result, I find this 2<sup>nd</sup> ingredient of the offence proved by the prosecution beyond reasonable doubt.

## **3. Use or possession of a deadly weapon**

- [16] As already observed, though the complainant/victim stated that the assailants were armed with a pistol, it was neither recovered nor exhibited. The offence was however committed during broad day light, signifying that the victim was able to see and know whatever took place inside the assailants' car. The victim was seated in the vehicle amidst the assailants. According to **P.F3 (P.Exh.1)** upon which the victim was

medically examined, he sustained ***“chemosis sub conjunctival haemorrhage of the left eye”*** i.e, the swelling of the eye after being hit by a hard object and also sustained other soft injuries. Even if proof of the pistol may lack, there is evidence that the victim sustained injuries/bodily harm suggestive of use of a deadly weapon.

As per case law has established,

*“there is no burden on the prosecution to prove the nature of the weapon used in inflicting the harm...”*;

**Uganda Vs Komakech Tony alias, Munu & 2 Ors, H.C.Crim. Case No.131/2014** cited in **Uganda Vs Muhanga Simon Kamaizi & Anor, H.C.Crim. Case No. 456/2018 [2021] UGHC 17** apply to robbery. Besides, this ingredient of the offence was never contested by the defence.

- [17] In the premises, I have no hesitation to find that this ingredient of the offence has also been proved beyond reasonable doubt.

#### **4. Participation of the accused persons in the commission of the offence**

- [18] As already observed, the offence was committed during broad day light i.e, between 9:00am-11:00am. Conditions for correct identification were therefore favourable. When the complainant/victim entered the assailant’s vehicle, it his evidence that he first talked to **A3**, the driver who lured him to enter the car on the understanding that he was going to be driven to Kigumba, his destination at a charge of ugx 6,000/=. By the time he entered the vehicle, all the glass windows were down. There was therefore sufficient light. The assailants first engaged him in a talk regarding scarcity of money in the country but later, they raised the tainted glasses as they embarked on torturing the victim. Naturally, tainted glasses do not create darkness in the vehicle. The glass taint only obscures the occupants of the vehicle. The victim therefore had sufficient time to see and note the mid appearance of his tormentors. He described them thus;

*“A1 as a brown boy who was putting on a white T-shirt that had a collar. A3 who was the driver had long sleeved red/brown shirt. In addition he had a cap on. The people who were beating me had black t-shirts. Their heads were well shaved.”*

- [19] Indeed, when the assailants surfaced at **Kingstone Guest House, Bweyale** on the **21/7/2016**, he recognized them and was able to immediately identify each of them and alerted police. Whereas the incident occurred on the **29/6/2016**, they surfaced on the **21/7/2016** after about 3 weeks, a period of which the appearance of the assailants must have still been lingering in his memory.
- [21] The accused persons claim that they were merely on their way to Arua when their vehicle got a mechanical problem and had retreated at **Kingstone Guest House** for a night but to be arrested by police at the instance of the complainant/victim are valid and true but could not account for their movements and location on the date of the incident, the **29/6/2016** when they were identified by the victim as the people who robbed him. The accused persons were strangers at **Kingstone Guest House** as they claimed but as **A1** conceded during cross examination by court, there were other strangers at the Guest House but none were pointed at by the complainant and were arrested by police. **A2** also in cross examination by court acknowledged that immediately they came out of the vehicle going to Kingstone lodges, he saw the complainant look at them critically.
- [22] The above clearly confirm that the complainant/victim/**PW1** properly and positively identified the assailants on the **29/6/2016** when he was robbed during broad day light. **PW1** was very consistent in his testimony, right away from the time he was robbed up to when he sighted the assailants at **Kingstone Guest House, Bweyale** and was able to recognize each of them. I find the identification of the witness (**PW1**) as being free from any mistake or error; **Roria Vs R (1967) E.A 583**. It is reliable and I am satisfied that it is safe to rely on it alone. There is no particular number of witnesses required for the proof of any fact, **Section 133 of the Evidence Act**.
- [23] The complainant's consistency, firmness and ingenuity in identifying the assailants was demonstrated in court when he ruled out **A5** and the juvenile **Swalique Angolere** as being part of the assailants who robbed him but focused on **A1, A2, A3** and **A4**. In the premises, I find that **A1, A2, A3, and A4** were among the assailants who robbed the complainant on the day of **29/6/2016**.

[24] In agreement with the lady and Gentleman assessors, I find that the prosecution through the sole identifying witness **PW1** was able to identify the assailants at the time of the robbery on the 29/06/2016 and he was at the same time able to recognize them upon confrontation at **Kingstone Guest House, Bweyale** after 3 weeks of the incident. The prosecution proved beyond reasonable doubt that **A1, A2, A3** and **A4** participated in the commission of the offence and I convict each accordingly.

Signed, dated and delivered at Masindi this 7<sup>th</sup> day of **October, 2022**.

**Byaruhanga Jesse Ruggyema**  
**JUDGE.**

**7/10/22**

5 accused persons present save for A5 & A6

Ms. Akello Florence for state

Ms. Ajok & Ms. Twesiime for defence

Mr. Thembo: Clerk

**Court:** Judgment delivered in the presence of the above

**State:** The accused persons are 1<sup>st</sup> offenders. They all hail from Mbale region but came to terrorize the Banyoro of Masindi. They badly assaulted the victim. He was assaulted to unconsciousness. He was thrown into the bush to die. Society must be protected against robbers of the accused persons' kind. The victim lost money and other items though prosecution did not emphasize them through the victim. In the premises, I pray for a deterrent sentence of 35 years; See **Ochowun Morris, H.C.Crim. Case No.56/17**.

**Ms. Twesiime:** I pray for a sentence less than 20 years so as to give room for reconciliation. The accused persons are 1<sup>st</sup> offenders who regret the offence. All are in their productive age bracket and therefore have room for reform.

## SENTENCE

- [1] In this case, all the accused persons/convicts hail from Mbale as per their respective defence statements. They were indeed here in Masindi terrorizing the people of Bunyoro. Even on their arrest, they were at **Kingstone Guest House, Bweyale**, Kiryandongo in Bunyoro circle. **A1** is aged 39 years, **A2** is aged **31** years, **A3** is aged 28 years while **A4** is aged 30 years. They are all in their productive ages and therefore are capable of reforming and can contribute to the economic development of their respective families and society at large. They therefore do not deserve a long custodial sentence but deserve a deterrent sentence so that the other would be mobile robbers learn from this sentence.
- [2] In the premises, I sentence each of the accused persons to **25years Imprisonment**. However, considering the **6 years and 1 month** they have spent on remand, **each** is to **serve 18 years and 11 months**. They shall jointly refund or compensate the complainant Shs.6.7m they robbed from him in accordance with **Section 126 TIA**.
- [3] Again each of the convict shall report to **Old Kampala police station** once a month for a period of **5 months** as a form of supervision in accordance with **Section 124 TIA**.

Right of Appeal explained.

**Byaruhanga Jesse Rugyema**  
**JUDGE.**  
**7/10/22**