

5

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA SITTING AT ENTEBBE CHIEF
MAGISTRATE'S COURT.

CRIMINAL CASE NO. 0278/2020

UGANDA PROSECUTION

10

VERSUS

KABANDA JACKSON ACCUSED

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

JUDGMENT

15 The accused person was indicted with the offence of Aggravated Robbery
contrary to **Sections 285** and **286(2)** of the Penal Code Act.

It is alleged that Kabanda Jackson alias Waadu, and others still at large, on the
23rd day of June 2019, at Nnakuwadde village in Wakiso District, robbed
Lukyamuzyi Dennis of two (2) mobile phones, one Nokia and the other a Tecno, a
20 19-inch Hokia television set and UGX 283,000/= (Uganda shillings two
hundred eighty-three thousand only), all items valued at UGX 963,000 (Uganda
shillings nine hundred sixty-three thousand only). That immediately before or
after the time of the said robbery, they threatened to use a deadly weapon, to wit
a panga (machete) on the said Lukyamuzyi Dennis.

25 The brief facts of the Prosecution case are that: On the 23rd day of June 2019, at
02:00 am, at Nakuwadde, Wakiso, the complainant was attacked together with
his family by people armed with knives and robbed him of two mobile phones, a
television set and cash worth UGX 283,000/=.

30 The accused denied committing the offence of Aggravated Robbery contrary to
Sections 285 and **286(2)** of the Penal Code Act and pleaded the defence of alibi.

Prosecution called three (3) witnesses in a bid to prove its case. The accused gave
unsworn evidence and called no witnesses.

At trial, the Prosecution relied on and tendered in Court the following exhibits;

35 a. Medical examination report (PF24A) of Kabanda Jackson dated 13th
September 2019.

- 5 b. Mobile phone Tecno, blue in colour.
 c. Exhibit slip.
 d. Sketch map.

Representation:

10 Chief State Attorney Kitimbo Janet appeared for State and Counsel Peruth Nshemercirwe represented the accused on state brief.

Burden of Proof:

15 It is a requirement by law that prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove his innocence as per **Article 28** of the Constitution of the Republic of Uganda, 1995, as amended and the cases of **Woolmington v. DPP 1935 at page 462** and **Uganda v. Joseph Lota, 1978 at page 269**.

20 Prosecution must prove its case beyond reasonable doubt and any doubt must be resolved in favour of the accused person. Therefore, the court must convict on the strength of the prosecution case and not on the weakness of the defence case. (**See: Ssekitoleko v. Uganda 1967 EA, page 531**).

Prosecution must prove all ingredients of the offence of Aggravated Robbery in order to sustain a conviction thereof. Therefore, prosecution must prove the following:

1. That there was theft of property belonging to another person;
- 25 2. There was use of violence;
3. There was threat or use of violence using a deadly weapon or that the perpetrators caused grievous harm to the victim or even death.
4. That it is the accused person who committed or participated in the commission of the offence.

30 **Resolution:**

1. That there was theft of property belonging to another person

In the instant case it is alleged that there was theft of mobile phones, a television set and cash. All these are things capable of being stolen.

5 According to **section 254** of the Penal Code Act theft is committed when a person fraudulently or without claim of right takes anything capable of being stolen. Therefore, for this ingredient, there must be proof for what amounts in law to an asportation, that is carrying away of the property of the complainant without his or her consent or lawful claim of right. The property stolen in this case is alleged
10 to be two mobile phones, a television set and cash.

The Tecno mobile phone was tendered in court as exhibit PEx1. However, the television set and money were never recovered.

The act of removing someone's property without his or her consent amounts to theft. The intention is to permanently deprive the owner of their properties.

15 PW1 properly identified the exhibit which was recovered from the accused person. The phone, which had cello-tape around the buttons, a blue covering (housing) was found with accused person after it was heard ringing from his pocket and was properly identified when he retrieved it from there after being ordered to do so and answer it. The accused person failed to give any explanation
20 as to how he got the said phone. He never claimed ownership in his defence and therefore there is proof and evidence that the same was stolen from the complainant, although other items were not recovered.

The same was not disputed in cross examination. So this ingredient was proved beyond reasonable doubt by the prosecution.

25 **2. Use of violence or threats**

The accused person used or threatened to use violence. For this ingredient, there must be proof of use of violence or threat to use some force to overcome the actual or perceived resistance from the victim.

Website College dictionary defines violence as; force exerted so as to injure or
30 abuse. PW1 told court that when the assailants entered his house at 2:00 am they threatened to cut him if he said anything while flashing at him with the torch. Indeed, PW1 felt threatened when court put the question to him that, "Were you scared?" He said, "I was scared and I prayed to God because I believed my life was coming to an end and, as such, allowed them to take away all those items
35 without any resistance." It is clear from this piece of evidence that there was use of violence during and after the commission of this offence.

PW1 testified that when two people entered his house, they had pangas or machetes and the accused person was one of them. That one described as having a short stature, entered the house and had a torch with which he flashed light

5 around. The same short assailant managed to disconnect the victim's subwoofer
from the television set and picked cash worth UGX286,000 (Uganda shillings
two hundred eighty-six thousand) and put it in his pocket. He also picked up the
said television set and placed it under his armpit. That the assailants were armed
10 with two (2) pangas (machetes). That when PW₁ attempted to move closer to the
accused person, he threatened to harm him. Therefore, there was violence used
in the commission of this offence by the accused person and others still on the
run.

This ingredient was therefore, also proved beyond reasonable doubt by the
prosecution.

15 **3. Use of a deadly weapon**

A deadly weapon is defined by **Section 286(3)** of the Penal Code Act as; any
instrument made or adopted for shooting, stabbing or cutting and any instrument
which when used for offensive purposes is likely to cause death.

20 A deadly weapon includes; "any instrument intended to render the victim of the
offence unconscious."

PW₁ and PW₂ stated that both assailants were in possession of two pangas
(machetes) when they entered the house. While the short assailant kept picking
the properties, the accused person standing in the dock, kept watching but was in
possession of a shiny panga (machete) at the entrance all through the robbery.

25 PW₁ stated that having packed the loot, the short assailant held the television set
and panga (machete) under his left armpit, put the cash in his pocket and left the
scene together with the accused person and the one who was outside keeping
guard. The evidence regarding possession of the pangas was not challenged in
cross examination and failure to tender them in (i.e. the pangas) is not fatal in
30 this case as they were well-described by the witnesses though not recovered.

In the case of **Uganda v. Katushabe**, [1988-1990] HCB page 59, cited with
approval by Lady Justice Anglin in **Uganda v. Isabirye Robert**, HCC session No. 78
of 2011, court held that failure to produce exhibits is not detrimental to
prosecution cases if prosecution witnesses saw the exhibits and adequately
35 described the same in court.

I hereby find that this ingredient was also proved beyond reasonable doubt by the
prosecution.

5 **4. Participation of the accused person:**

Evidence of a single identifying witness must be tested with the greatest care. The judge must caution himself before convicting the accused person. In reliance on the correctness of the identification, the possibility that a mistaken witness can be a convincing one, the judge should examine the circumstances in which the
10 identification came to be made, such as the length of time the accused was under observation, the distance between the accused and the witness, source of light, familiarity between the accused and the witnesses. This was so in the case of **Nabudere & 2 Others v. Uganda, C.A no. 9 of 1978** and the case of **Moses Bogere v. Uganda SCCA no. 1 of 1997**.

15 In the instant case, PW1 testified that there was sufficient light outside on the veranda that was enough for proper identification of the accused person. The bulb would shine into his house when he opened the door to his residence. He properly identified the accused person who was standing facing him, while holding the said panga (machete). He further stated that there was a close
20 distance between them, because the assailant was committing the robbery within the sitting room, where he was.

Additionally, he observed the assailants for a period between two to three minutes. These minutes were sufficient time for him to properly identify him. These conditions were good and favourable for proper identification; reducing
25 the dangers of mistaken identity.

To make matters worse, when the accused went to pick some properties from his friend's home, PW1 identified him and engaged him in a conversation, stating that his properties had also been stolen. The accused told him to go with him to search his home, if he was a suspect, but PW1 stated that he could not do so
30 without the Police. So he called two policemen who found them together. That was when the phone rang in the accused person's pocket, which he fidgeted to silence, claiming the call was useless. His refusal to pick up the ringing phone or even check who was trying to reach him proved that he knew that it was a stolen phone. When he was forced by the police officer to remove the phone from his
35 pocket, PW1 identified it as his Tecno phone, stolen seven days before. When the phone was identified as PW1's by the cello-tape on it, its make (Tecno) and colour of housing, the accused person could not explain how it came into his possession. He, however, later claimed that it belonged to one Ibra but could not lead them to the said Ibra, which means the excuse came as an after-thought.
40 Much as the phone had another sim card, this was immaterial.

5 The fact that the phone was recovered on him, it implies that the accused person
was the thief (See: **Moonlight Herbert v. Uganda HCC application No. 11 of 2008**
and **Bazira Siraj & Others v. Uganda, Supreme Court decision, regarding the**
10 **doctrine of recent possession of stolen goods.**) The fact that a person is in
possession of stolen goods soon after being stolen raises a presumption of the fact
that the person was the thief or that person received the stolen items, knowing
them to be stolen, unless there is credible explanation of innocent possession.

In evaluating the evidence adduced against the accused person, court must satisfy
itself that the evidence proves whether the found item (the phone) was stolen
during the robbery or whether it was found with the accused person(s).

15 PW1 saw two assailants inside his home including the accused person and
another describe as a short male who carried the loot, and who stood outside.
Both were holding pangas (machetes). PW2 corroborated the same, saying that
when she opened her bedroom door, she saw two people inside the house and
one standing at the entrance (both with pangas). PW3 said that he recovered the
20 phone from the accused person and that he had no grudge with the accused
person.

Indeed, after seven days, a stolen phone was found in the possession of the
accused person (Kabanda) who was one of the accused persons. He kept quiet
when asked about the phone and later claimed that it belonged to one Ibra but
25 did not take the Police to this Ibra. In his defence, he never mentioned Ibra nor
claimed ownership of the phone but only offered total denial. He did not know
where he was on the said date of the robbery (23rd of June, 2019) and claimed
that the phone exhibited was not the one found on his person. He had no grudge
with the arresting police officer; therefore, he did not give a justifiable
30 explanation and whatever he said was all a pack of lies intended to confuse this
court.

The prosecution accordingly proved this ingredient beyond reasonable doubt by
satisfying this court that indeed the accused person participated in the
commission of the offence.

35 All the ingredients of aggravated robbery have been proved beyond reasonable
doubt and I am in agreement with the two assessors' opinion that the accused
person is guilty and is hereby convicted as charged.

.....
40 **OYUKO ANTHONY OJOK**
JUDGE

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA SITTING AT ENTEBBE CHIEF
MAGISTRATE'S COURT

CRIMINAL CASE NO. 0278/2020

UGANDA PROSECUTION

VERSUS

KABANDA JACKSON ACCUSED

Before: Hon. Justice Oyuko Anthony Ojok

Sentence and Reason for Sentence

The accused person was indicted with the offence of Aggravated Robbery contrary to **sections 285 and 286(2)** of the Penal Code Act.

In her submissions on sentencing, the learned State Attorney prayed for a deterrent sentence on the following grounds: although the convict had no previous conviction, the offence is, however, very grave in nature and attracts a maximum sentence of death. It is rampant in the area and a deterrent sentence should be given to the convict. The convict denied the owner of his property and created a threat to his victims with the use of a panga during the commission of the robbery.

In mitigation, defence counsel submitted that the convict had no previous record. That this is an occurrence which is not condoned but it happened. It was quite unfortunate. That the convict is capable of reforming if given a chance. He has been on remand for three (3) years and thirteen (13) days, and has been remorseful for his actions and all these should be taken into account.

The offence of aggravated robbery is punishable by the maximum penalty of death as provided for under the law. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of aggravated robbery. This case is not within that category, although it is close. For that reason I have discounted the death sentence. Where the death penalty is not imposed, the starting point in determination of a custodial sentence for cases of aggravated robbery has been prescribed by item 1 of part 1 under sentencing ranges (in capital offences) of the third schedule of the Constitution (Sentencing Guidelines

for Courts of Judicature [practice] direction 2013) as 35 years imprisonment. The sentencing guidelines, however, have to be applied bearing in mind past precedents of courts in decisions where the facts have resemblance to the case under trial. (See: **Ninsiima Vs Uganda , Crim. CA Criminal Appeal no. 180 of 2010**).

I have for that reason taken into account the current sentencing practices in relation to cases of this nature.

In this case, the convict is a first time offender. He was not remorseful; he even went ahead and forged a baptism card to lie to this court about his age. I consider the sentence of 40 forty years appropriate. He has spent three years, thirteen days on remand. This leaves the convict to serve thirty six (36) years and eleven (11) months and seventeen (17) days in prison. After serving his sentence and upon being released, the convict shall compensate the victim the total amount of UGX 983,000/= the total value of the items stolen.

Dated at Entebbe, this 29th day of July, 2022,



Oyuko Anthony Ojok,
Judge