THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CRIMINAL SESSION CASE NO.191 OF 1992

UGANDA::PROSECUTOR.

VERSUS

A1.JOHN KATURAMU::::::::::::::::::::::::::::ACCUSED

A2.JAMES KASIIMA

BEFORE: HONOURABLE JUSTICE M.KIREJU

RULING

This ruling is in respect of a submission of no case to answer made by the learned defence counsel Mr. Musana on behalf of the second accused James Kasiima. The two accused were indicted for robbery Contrary to sections 272 and 273 (2) of the Penal Code Act. Both accused pleaded not guilty to the indictment.

The prosecution case has been based on the evidence of 5 witnesses P.W.I. Yovan kyalimpa, the complainant, P.W.3 Violet Kyalimpa and P.W.2 Daniel Kyomya Kyalimpa are the only persons who witnessed the events of the night of the robbery. P.W.I and p.w.3 testified that they never identified any one on the night of the attack P.W.2 testified that he identified Al Katuramu. As was pointed out by Mr. Musana, the spear allegedly used in the attack was identified by the complainant as belonging to one Ruhweza. The search which was made in Kasiima' home by the police did not lead to discovery of any of the alleged stolen properties.

After the prosecution had closed its case, Mr. Musana in his brief submission argued that there was no prima facie case made out to warrant the accused A2 Kasiima to be called upon to give defence. He cited the celebrated case of Bhatt v R 1957 EA 332 which defines a prima facie case, On the basis of that case, counsel invited Court to acquit the accused under the provision of S.71 of the Trial on Indictments Decree.

Mr. Kikomeko learned Counsel Resident State Attorney who appeared for the prosecution rightly in my opinion conceded with the defence counsel, that on assessment of the evidence so far on record no evidence has been made out against the accused and therefore he had no case to answer.

The principles under which this type of submission may be rejected or upheld are well known, some of those principles were set down in the above cited case of Bhatt. One of the leading principles upon which Court will proceed to uphold a submission of no case to answer is where a reasonable tribunal properly directing its mind to the evidence and the law would not proceed to convict if the accused decides to offer no evidence at the close of the case for prosecution.

In the case before me and in full agreement with both counsel, from the evidence of all the prosecution witnesses no reasonable tribunal applying its mind properly to that evidence and the law would convict the accused if he decided to say nothing at the close of the prosecution case.

The available evidence does not in any way connect the accused with the alleged robbery. The fact that he may have been suspected by the complainant as he was an associate of Al is not enough, as mere suspicion. However strong is not evidence. R V. Esrail Epuku s/o Achietu (1934 1 EACA 166); U vs. G SIRANUYE 1977 HCB 214.

I have given serious consideration to the learned Counsel submission, the evidence on record and the relevant principles of the law involved, and in full agreement with both counsels, I have come to the conclusion that a submission of no case to answer must be upheld. No prima facie case has been made out for the accused A2 James Kasiima to answer. I find the accused person not guilty and I acquit him under the Provisions s.71 of the trial on indictment decree. Unless held on other charges he should be set free forthwith.

M.KIREJU

4/1/1994.