

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
HIGH COURT CRIMINAL CASE NO. HCT-01-CR-SC-0015 OF 2000

UGANDA ::: PROSECUTOR

VERSUS

1. MUKASA RONALD

2. OJARA JOSEPH: ::: ACCUSED

3. ASUMAN SAID

BEFORE: THE HONOURABLE MR. AG. JUSTICE PAUL K. MUGAMBA

JUDGMENT:

All the three accused persons were indicted for robbery contrary to sections 272 and 273(2) of the Penal Code Act in three separate counts. They are alleged to have committed acts of aggravated robbery against Businge Livingstone, Baguma Byegarazo and Sunday Robert. They denied the indictment in its totality and trial proceeded.

During the trial the prosecution led evidence from four prosecution witnesses namely Businge Livingstone (PW1), Byamugayo James (PW2), Aberi Baguma Byegarazo (PW3) and Okot Robert Obwana (PW4).

At the close of the prosecution case court found that no sufficient evidence had been adduced against Accused 3, Asuman Said, and in accordance with S.71 of the Trial on Indictments Decree he was duly acquitted. The remaining two accused elected to give sworn statements in their defence but called no witnesses.

The prosecution case is that on the night of 23rd February 1997 at Kaduku village in Masindi District the accused persons together with others still at large, using a deadly weapon, to wit a

gun, attacked and robbed Businge Livingstone of money amounting to shs. 300,000/= merchandise and some other property in one incident, attacked and robbed Baguma Byegarazo of merchandise in another incident and attacked and robbed Sunday Robert of a bicycle in yet another incident. Needless to say the state alleges that in all those incidents of robbery a gun was threatened to be used during, immediately before and immediately after those acts.

Both accused persons set up alibis in their defence.

In order for the prosecution to succeed in a case of aggravated robbery it must prove the following ingredients beyond reasonable doubt:

- (a) theft of some property;
- (b) use or threat to use a deadly weapon during immediately before or immediately after the theft or robbery or causing death or grievous harm; and
- (c) participation of the accused.

Concerning the first ingredient, PW1 testified before court that money and merchandise had been stolen from his shop on the night of 23rd February 1997. He testified further that he was able to identify some of the merchandise and other property and indeed identified it in court as exhibits P.1 to P.8. PW3 also testified that his shop had been broken into and some merchandise had been stolen. He identified that property as exhibits P.9 and P.10. In his evidence P W 1 also states that some property had been taken from the shop of PW3. I find it for a fact that there had been theft in so far as counts I and 2 of the indictment are concerned and that that ingredient was proved by the prosecution beyond reasonable doubt. Court heard no evidence concerning theft in the case of count 3. I find that the prosecution did not prove

the ingredient of theft regarding count 3.

The second ingredient relates to the use or threat to use a deadly weapon. The only evidence there is that of PW1 who in his testimony stated that he saw A.1 with a gun on the night in issue. The gun was used to guard him. The witness does not say what role the gun played apart from the fact that it was being carried. He was neither threatened with it nor was it discharged. What is more, it was not exhibited. A deadly weapon includes any instrument made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death. See S.273 of the Penal Code Act. Given the fact that what appeared to be a gun could have been mistaken for a gun in a situation lacking of good light conditions and the fact that the gun was never discharged to show that it had the expected properties of a gun, I am reluctant to agree that there was a gun in evidence that night. The single witness could have been mistaken. This finding is in relation to count 1. I find no evidence of a gun also where such is not advanced even in the case of count 2 and count 3. Consequently the prosecution has not proved the second ingredient beyond reasonable doubt.

The third ingredient is in relation to the participation of the accused persons. P W 1 told court that he saw both A.1 and A.2 at his premises on the night in issue. He stated that he was able to identify the two people because of the torch which he had. He was also assisted by moonlight which was shining outside that night. He stated that the attackers were at his house for about one hour. Accused stood near P W 1 on the night in question. I must also note that accused persons were not known to P W 1 before. It would be unsafe to convict the accused on evidence of single witness without further evidence. Next morning when he was tracing the whereabouts of the accused he mentioned a green jacket as an item of clothing one of the attackers would be identified by. According to P W 4, the investigating officer, all that was found of the stolen property was a kikoyi and coffee satchets. There is no qualification given that those items and indeed slippers which were in wrappers belonged to either P W 1 or P W 3 and not anywhere else. The prosecution has not given additional evidence to that of identification by PW1, as initially designed, showing that the persons who were eventually arrested were in any way connected to the property eventually recovered. I am therefore not persuaded that A.1 and A.2 were the people who on the night of 23rd February 1997 went and

attacked and took away PW1's property. I need not refer to count 2 and count 3 as no evidence was adduced in support.

I agree with counsel for the accused that the alibis of the accused persons have not been disproved by the prosecution thus putting them at the scene of crime. The third ingredient has not been proved by the prosecution beyond reasonable doubt.

Major contradictions appear in the prosecution case concerning recovery of the stolen property. The investigating officer (PW4) told court that all that was found was a kikoyi, coffee satchets and later a radio. The radio was of no relevance to the case. PW1 did not enter any of the houses searched but told court that property suspected to have been stolen was recovered from the house of A.1. Yet PW3 who also went along told court what property was recovered that day was recovered from the house of A.2. Prosecution evidence is not agreed on where the property, if any, was recovered from. This is a disappointing difference in perception by the witnesses.

In the result I find that, in agreement with the assessors, the accused persons are not guilty of any of the three counts they are indicted for. They are to be acquitted and set at liberty forthwith unless they are being held on any other lawful charge.

Paul K. Mugamba

Ag. Judge.

8th May 2001.

Order

Exhibits P.1 to P.8 are to be handed over to Livingstone Businge while exhibits P.9 and P.10 are to be given to Baguma Byegarazo.

Paul K.Mugamba
Judge.

Ag.

8th May 2001.