IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: ODER, KAROKORA, MULENGA, KANYEIHAMBA AND KATUREEBE JJ.S.C.

CRIMINAL APPEAL NO. 7 OF 2004

BETWEEN

1. **MBAZIRA SIRAGI**
2. **BAGUMA HENRY ::APPELLANTS**

AND

UGANDA::RESPONDENT

(Appeal from the judgment of the Court of Appeal (Okello, Engwau and Kitumba JJ.A) at Kampala, in Criminal Appeal No.126 of 2002, dated 8th October 2004)

JUDGMENT OF THE COURT.

Mbazira Siragi and Baguma Henry *alias* Karuna, the 1st and 2nd appellants in this appeal, were convicted by the High Court (Mugamba J.) at Mbarara, on two counts for simple robbery. They were both sentenced on each count to 15 years imprisonment to run concurrently. Their appeals to the Court of Appeal against conviction and sentence were dismissed, hence this second appeal.

The prosecution case may be described in two segments. The first comprises the evidence

adduced to prove the robberies. The second comprises evidence on discovery of stolen items and a gun and bullets the robbers had during the robberies, which evidence was adduced to prove that the appellants were among the robbers. We would summarise the case as follows:

In the night of 23rd September 2000, at about 10 p.m., three men armed with a gun, attacked Erineo Turinawe, PW1, and his wife Winnie, PW6, at their house in which they also operated a bar. They beat the victims, tied them by the arms and forced them to lie down, while they stole diverse goods, including 17 bottles of beer, a jerrycan of waragi, a radio cassette, 30 music tapes, a handbag, a pair of trousers and a jacket, which they packed in sacks. They demanded money as they continued to beat their victims until PW6 surrendered an unascertained amount from the day's bar sales. The robbers then ordered PW1 to cause the neighbour, Katarina Kikabahenda, PW2, to open her house cum shop. When Katarina opened, the robbers attacked her also. One of them repeatedly hit her with the butt of a gun demanding for money. while the other two stole her shop items including 10kgs of sugar, a box of soap, 3 packets of Hedex tablets, Pepsi packages, and a 4" mattress. In addition, she surrendered to the robbers shs.75,000/-. The victims reported the robberies to the LC1 Chairman and to Ishunguriro Police Post. None of them recognised their assailants. It is also noteworthy that even subsequently the victims never identified any of the appellants as one of the robbers.

On 25th September 2000, PW1 found one Kwizera Fred, PW3 playing one of his stolen music tapes. Kwizera told him he had borrowed it from Mbazira. Upon confirming from a mark on it that it was his, he sought assistance from the Local Defence Unit (LDU) at Ishunguriro detach. Four of the LDU personnel returned with him to Kwizera's home. They asked Kwizera for the tape and he said that Mbazira had taken it. They went with

Kwizera to Mbazira's home. When asked for the tape Mbazira denied any knowledge of it. They searched his house but did not find the tape. Mbazira was arrested and taken to the LDU detach. Kwizera was not arrested. Between 26th and 29th September 2000, Saad Gumisiriza, PW4, of the said detach, with other LDU personnel continued the investigations to trace the stolen goods. In the course of the investigations, they discovered around the home of Mbazira, a radio cassette, half a jerry can of waragi, a gun and bullets. They also discovered a 4" foam mattress from the home of Baguma Henry alias Karuna; and 1kg of sugar, a box of dry cells and a tin of sleeping baby cream from the home of Mbabazi. They arrested Mbazira and Baguma the two appellants and the said Mbabazi, who was later acquitted by the trial court. They also arrested two other persons who apparently were never charged. The gun and bullets were passed on to the police and later produced in court but the rest of the discovered items were given to the respective claimants and were never produced in evidence.

The appellants, together with Mbabazi, were indicted on two counts for aggravated robbery. As the three eye witnesses did not identify the accused as their assailants, the prosecution relied on the evidence that the discovered items were some of the stolen goods and that they were found in the possession of the accused soon after the robberies. The trial court accepted the evidence, applied the doctrine of recent possession of stolen goods, and held that the appellants committed the robberies. Mbabazi was acquitted on the ground that the items taken from his home were not particularly identified as items stolen during the robberies. Further, the court was not satisfied that the robbers used or threatened to use the gun produced in evidence. Accordingly, it convicted the appellants of the lesser offence of simple robbery on both counts. The Court of Appeal upheld the convictions on strength of the same doctrine of recent possession of stolen goods.

In this Court two grounds of appeal were framed in the Memorandum of Appeal, but in the written submissions filed under r.93 of the Rules of this Court, Mr. Robert Tumwine, counsel for both appellants, abandoned the second ground and, quite rightly in our view, argued the first ground alone, which adequately covers the substantive complaint. The only ground of appeal for our consideration therefore, is that –

*"**The learned Justices of Appeal erred in law when they failed to correctly re-evaluate the prosecution evidence about the recovered property."***

In his submissions, the learned counsel stressed that the circumstantial evidence on which the prosecution case rested was not strong enough to sustain a conviction. He pointed out that the witnesses' descriptions of the stolen items were insufficient and that the discovered items were not passed on to the police let alone produced in evidence to satisfy the court that they matched the description of the stolen goods. He also argued that the alleged searches in the appellants' homes and discovery of the items were not in the presence of the appellants, and that the appellants' respective evidence in defence was not taken into account. Learned counsel pointed out that both appellants had denied possession of the discovered items and stressed that the prosecution evidence alleging the possession was adduced from an uncorroborated single witness. He criticised the trial court for applying the doctrine of recent possession in those circumstances, and the Court of Appeal for upholding the application of the doctrine, when there was not sufficient evidence to connect the discovered items to the stolen goods and despite other deficiencies. Counsel also submitted that the gun produced in evidence was not the gun used in the robbery.

In his written arguments in reply, Mr. Andrew Odiit, Senior State Attorney, submitted that the Justices of Appeal had correctly re-evaluated the evidence and rightly upheld the trial court's finding that the discovered items were sufficiently identified as stolen goods. He argued that it was through proper re-evaluation of evidence that the Justices of Appeal came to the conclusions, first, that the stolen mattress was not adequately described, and secondly, that the use of a gun during the robbery was not sufficiently proved. The learned Senior State Attorney further pointed out that the Justices of Appeal had considered the failure to produce the recovered items in evidence as exhibits and found the fact that the investigations were first carried out by the military rather than by police to be a reasonable explanation.

It is common ground that the conviction of the appellants rests solely on circumstantial evidence and specifically on the doctrine of recent possession. In the Court of Appeal, the appellants contended in ground 1 that the discovered goods were neither produced nor sufficiently described in evidence; and in ground 2 that the trial judge misdirected himself in applying the doctrine of recent possession to the evidence before him. In its judgment, the Court of Appeal held first, that the radio cassette, the tape and the jerry can of enguli were described to the court with enough accuracy and were properly identified by PW1, and the gun was properly identified by PW4 and PW7. Secondly, the court held that the radio cassette, the tapes and the gun with a full magazine of ammunition were discovered hidden around the home of Mbazira. Thirdly the court upheld the decision of the trial judge that there was no evidence to show that the gun was used during the robberies and in that regard observed –

> ***"If PW1 and PW2 had heard any gunshot on the night of the said robbery, then it was from another gun."***

Lastly, the learned Justices of Appeal reviewed submissions of counsel on ground 2, which was that the doctrine of recent possession was wrongly applied to the facts of this case. In concluding their consideration of that issue they said –

> "***Mr. Odit for the respondent ….. submitted, rightly in our view, that the learned trial judge rightly applied the doctrine of recent possession to the facts of this case. PW4 testified that it was the 2nd appellant*** **[**Mbazira**]** ***who led him and other LDUs to his home where the radio cassette, tapes, a jerrycan of enguli and the gun were recovered. We agree with Mr. Odit that it was impossible for the gun to be recovered before the offence was committed. <u>According to the evidence on record, the investigations were conducted first by the army and later by the police. We think that explanation satisfactorily establishes why there was a delay in exhibiting the gun.</u>***
>
> ***On the question of a mattress, PW4 stated that it was found in possession of the 1st appellant*** **[**Baguma**].** ***The evidence of PW2 who said that the mattress was found at the home of one Kihondo is hearsay and should not have been admitted in evidence. She did not disclose the name of the person who told her that the mattress was found at the home of Kihondo. However, PW4 clearly stated that the mattress was found at the home of***

> ***Karuna who is actually the 1st appellant. PW2 stated that she identified the mattress by its bluish and unique cover. We find no explanation about the uniqueness of the cover. We, therefore, agree with Mr. Mubiru, that the mattress was not sufficiently described. That notwithstanding, ground 2 fails in part."*** (Emphasis is added)

With the greatest respect to the learned Justices of Appeal, we think the criticism that they did not properly re-evaluate the evidence is justified. First, their view that the initial conduct of the investigations by the army was a satisfactory explanation for the delay in exhibiting the gun was erroneous. As we shall explain later in this judgment, the issue raised before them, which was reiterated in this appeal, was not delay in exhibiting the gun. The issue was that the gun exhibited in court could not be the gun used in the robbery let alone discovered from Mbazira's home. More importantly, however, we disagree with the implicit notion that investigation standards may be compromised where the investigations are conducted by the army. the contrary, we should stress that in such circumstances the court must ensure that the investigator's shortcomings do not prejudice the justice of the case. Secondly, the learned Justices did not re-evaluate the evidence as a whole as they are required to do. They only reviewed the prosecution evidence without considering its cogency and did not consider the defence evidence save that in their judgment, they said in passing that each appellant denied the offence and set up an alibi. Thirdly, although the incriminating evidence against the appellants was virtually from a single witness, the learned Justices did not consider his credibility, which was particularly put in issue by the defence allegation that he was motivated by a grudge to frame Mbazira. Fourthly, the learned Justices did not consider separately the case against each appellant, so as to be sure of the guilt of each beyond reasonable doubt.

On the whole, we find that the learned Justices of Appeal did not subject the evidence against the appellants to that degree of scrutiny and re-evaluation as an appellant is

entitled to expect from the first appellate court. the circumstances, and on the principle enunciated in ***Bogere Moses & Another vs. Uganda***1SCD (Crim) 1996/2000 p.185, we are satisfied that this is a clear case where, owing to the failures of the first appellate court, it is incumbent on this Court to re-evaluate the evidence.

The law on proof of a criminal offence by circumstantial evidence is as was articulated by the Court of Appeal for Eastern Africa, in the leading case of ***Simoni Musoke vs. R.*** (1958) EA 715, at p.718 that –

> "… ***in a case depending exclusively upon circumstantial evidence, (the judge) must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt."***

In the same case, the court also cited with approval, the principle stated in ***Teper vs. R. (2)*** (1952) A.C. 480 (PC) that –

> "***It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."***

The doctrine of recent possession of stolen goods is an application of the ordinary rule relating to circumstantial evidence. The fact that a person is in possession of goods soon after they are stolen raises a presumption of fact that that person was the thief or that that person received the goods knowing them to be stolen, unless there is a credible explanation of innocent possession. It follows that the doctrine is applicable only where the inculpatory facts, namely the possession of the stolen goods, is incompatible with innocence and incapable of explanation upon any other reasonable hypothesis than that of guilt. The court must also be sure that there are no other co-existing circumstances that weaken or destroy the inference of guilt.

The starting point for the application of the doctrine of recent possession, therefore, is proof of two basic facts beyond reasonable doubt; namely, that the goods in question were found in possession of the accused and that they had been recently stolen.

Accordingly, in re-evaluating the evidence adduced against each appellant we have to consider it from two perspectives; namely whether the evidence proves that –

1. the found items (or any of them) were stolen during the robberies in question;
2. any of the appellants was in possession of any of the found items.

The prosecution relied on the complainants, PW1, PW2 and PW6, to prove that the found items were goods stolen during the robberies, while PW4 was the principal witness as to the item or items found in the possession of each appellant. However, we are constrained to observe, with due respect to the learned trial judge, that the recording of the evidence leaves a lot to be desired. The evidence is unduly fragmented and marred by hearsay evidence. The record also contains allegations of confessions/admissions to PW4 by the appellants and co-accused whose admissibility is doubtful. Clearly, however the lower courts did not base their respective decisions on any of the confessions/admissions and we find it appropriate to ignore them. Be that as it may, we shall only re-evaluate what is pertinent and admissible evidence.

None of the complainants witnessed the finding of any of the items. The music tape, which PW1 found Kwizera playing, was not seen again and was not among the found items. The complainants were only called to the LDU detach to receive the items found by PW4 and his colleagues. PW1 testified that he recovered from the LDU detach a radio cassette, a jerrycan of waragi and 6 empty beer bottles. He identified the radio cassette by a mark of “T” he had previously made on it signifying his name “Turinawe”. He identified the jerrycan by the name “Paulo” written on it to signify the person from whom he bought it. It is not clear if his wife, PW6, went to the detach with him. She simply testified that they got the radio cassette, half a jerrycan of waragi and empty beer bottles. Like PW1 she testified that the jerrycan was identified from the name “Paulo” written on it, but unlike him she testified that the radio cassette was not marked. PW2 testified that

when she was called to the LDU detach, she recovered only the 4" foam mattress, which she identified from its bluish and unique cover.

Apart from the gun and bullets, the rest of the found items were not produced in evidence. According to PW4, the radio cassette, jerry can, beer bottles and mattress were returned to the robbery victims on the orders of Major Kahimbo. PW1 testified that subsequent to recovery of the radio cassette he sold it on 23rd February 2001, but he did not say what he did with the other two items. PW2 testified that the mattress was at her home. It is apparent that the lower courts did not consider the failure to produce the items in evidence, to be significant. However, we cannot over-emphasise the importance of producing the items in issue as exhibits in order that the court is able to verify that they fit their description by the witnesses. In this regard we think that the learned Justices of Appeal did not properly direct themselves on evidence where they said –

> ***"[We] think that PW1 had sufficiently described his radio cassette and the tape to court with enough accuracy. He identified both items with letter "T" for his name "Turinawe" that he marked on them. The evidence of his wife, PW6, that there was no mark on those items can be ignored as she might not have known of the marking. It was PW1 who marked the same. Similarly, PW1 properly identified the jerry can of enguli which he had marked with the name "Paulo" who sold him the stuff".***
> (Emphasis is added)

In the first instance, reference to the tape in this context is an error as the tape was not among the found items. Secondly in our view, the court was not in a position to hold that the items were *"sufficiently described to court with enough accuracy"* because it did not see the items. The distinguishing description of the items was the marks on them, which the court did not see and therefore did not verify. Thirdly, we note the explanation by the learned Justices of Appeal for ignoring the apparent discrepancy between the description of the radio cassette by PW1 and PW6, but have to observe that the evidence of PW6 is equivocal. Her averment that *"the radio cassette was not marked"* may have referred to

the radio cassette that was robbed or to the radio cassette that was recovered. If it was the latter, that explanation by the court would not hold and the averment by PW6 would raise serious doubt about the identification of the radio cassette as the one robbed from PW1 and PW6. In the circumstances, the most that a court can hold on basis of PW1's evidence, without independent verification, is that PW1 claimed the items shown to him at the detach as some of his stolen goods. That is on the same footing as PW2's claim that the mattress shown to her at the detach was the mattress stolen from her, which claim the Court of Appeal rightly held to be inadequate proof. In our view, the evidence of identification of the found items as stolen goods is at best very weak for lack of the support that might have been provided by producing the items in evidence as exhibits.

As indicated earlier in this judgment, the sole witness to the fact that the items in issue were found in possession of the appellants was PW4, an LDU personnel who apparently led the search for the items stolen during the robberies. However, the circumstances of his assumption of that role, to the exclusion of the police, are not clear, given that the victims reported the robberies to the police. Be that as it may, PW4 testified that while he was coming from Bihanga [military] barracks, the LC1 Chairman, PW5, told him of armed robberies that had occurred in his area against PW1 and PW2, whereupon he started investigations for recovery of the stolen property. He first sent out people, including one Magezi, to check on information that PW1 heard his stolen tape being played by one Kwizera and to gather other intelligence. Because of what we observed earlier about the recorded evidence, we are constrained to reproduce as recorded by the trial judge, excerpts of PW4's pertinent evidence on the discovery of the found items during two separate visits to the 1st appellant's home and one to the 2nd appellant's home. In respect of the first visit he testified -

> "***I found Mbazira*** [1st appellant] ***clearly arrested by Magezi. He was at the detach. Mbazira spoke to me in fact and he told us that he had the radio cassette. <u>He told me upon interrogation</u>. He said the radio was at his home. Mbazira is my brother <u>so we agreed he would give me the radio and that implications would come to an end.</u> He took me to his house together with other LDUs. He called his wife and told her to go and bring the radio. She went to the banana plantation near the bush and brought the radio.***

After that I took Mbazira back to the detach. We collected the radio."
(Emphasis is added)

In the course of further investigations PW4 arrested Karuna, Lubahizi, Mbabazi and one SPC called Kaweesa, and he collected items from Mbabazi's home. He testified further –

"***We asked Karuna who told us that the gun they used was kept by Mbazira's wife. Unknown led us to Mbazira's but the wife was not there. We went to where they had gone. The wife went with us to Mbazira's home where in the garden of sweet potatoes there was a gun and the bottles of beer. The second wife got the gun from there. There was also half jerry can of waragi which was in a bush near the home. There was spare parts of bicycles and other shop items which we recovered in the courtyard. Tapes were also buried in the compound. There is also sleeping baby jelly and about 25 or 26 bullets which had been dropped in the pit latrine. These [were] retrieved in polythene paper…….I can't recall whether there were 27 or 29. Some were in a magazine but others were not…"***

On this second visit to the home of the 1st appellant PW4 collected –

- tapes buried in the compound and bicycle parts and shop items in the courtyard;
- half a jerrycan of waragi in a bush near the home;
- a gun and beer bottles in a garden of sweet potatoes; and
- bullets that had been dropped in a pit latrine.

On the order of Major Kahimbo he handed the gun and bullets to the intelligence officer at the Bihanga barracks and the rest of the items to the Chairman LC1 to hand over to the owners.

The 1st appellant testified in his defence that he knew nothing about the robberies and that his arrest was not connected with any robbery. He also denied ever dealing with Kwizera. He testified that on 26th September 2000, six soldiers found him at home and questioned him about maize he had purchased and he explained that he sold it to the

public from his shop. They searched his house and then arrested him and took him to Bihanga barracks. When he asked why he was being arrested *"They said they did not know where [he] took the maize"*. He was tortured and detained at the barracks for 4 days and later was transferred to Ibanda, and subsequently to Mbarara, police stations. He was not questioned about any robbery or gun at either police station. He knew of no further search or discovery of items at his home subsequent to his arrest.

Furthermore, the 1st appellant testified that PW4, was his cousin, and was close to him until they had a dispute over a plot of land, which culminated in a court case and he obtained judgment in 2000. He contended –

"***This is why I am here in prison. Sadi*** [PW4] ***is the one who caused me problems."***

There are a number of unexplained and/or unsatisfactory features in the prosecution evidence adduced to prove the guilt of the 1st appellant. The first is that case was investigated by the army rather than the police. The possibility that the 1st appellant was initially arrested for reasons other than robbery, as he claimed, was not ruled out. The second feature relates to material discrepancies in the evidence concerning the gun and bullets as well as that concerning the music tapes. PW4 testified that the gun found in the potato garden at the 1st appellant's home was an SMG number 14103041 and that the bullets that had been thrown in the pit latrine were about 25-26 or 27-29 and that they were in a polythene bag. He sent them to Ibanda Police station. He then identified a gun with a broken butt, bearing the same number, and a full magazine of bullets as the gun and bullets he discovered at Mbazira's home. He did not explain how the loose bullets in a polythene bag came to be in a full magazine of 30 bullets. What is more, PW7, D/C Turyahikayo, testified that according to the police store records, the gun and magazine produced in court were received at Ibanda Police Station on 13th April 2000 and were

transferred to Mbarara Police Station on 20th October 2000. Counsel for the appellants, quite legitimately argued that the gun, which had been in police possession from 13th April 2000, could not have been discovered in Mbazira's possession, over five months later, on 26th September 2000. In view of that, the evidence that the gun and the magazine produced in court were found in the 1st appellant's home cannot be true. When this issue was raised in the Court of Appeal, the purported explanation volunteered by counsel for the respondent, which was surprisingly adopted by that court, was that: "*The investigations were conducted first by the army and later by the police*." That court held that *"that explanation satisfactorily establishes why there was a delay in exhibiting the gun."* With due respect, however, the issue was not that there was delay in exhibiting the gun, but that the gun and bullets could not have been discovered in Mbazira's home because at the material time they were in the police store. It is noteworthy that the learned trial judge did not accept the evidence that the gun and bullets produced in court were used during the robberies.

Additionally, though PW4 testified that he found tapes buried in the compound at the 1st appellant's home, PW1 testified that he did not recover his stolen tapes. It is not probable that there were tapes, which were discovered but not returned to PW1.

In the circumstances, we are inclined to hold that PW4'testimony falsely testified that he found at the 1st appellant's home the exhibited gun with the magazine of bullets and music tapes, cannot be true. In our view, that finding raises considerable doubt on the credibility of the rest of PW4's evidence, and renders it unsafe to base a conviction on his evidence alone. We considered whether his evidence was corroborated. The only

semblance of corroboration, which we concluded was not sufficient corroboration for that evidence, was the testimony of PW5, Herbert Karamagye, the LC1 Chairman, who simply stated –

> "***I was present when the radio cassette was recovered from Mbazira's place. After its recovering it remained at the LDU detach until we recovered other items. I saw other items after they were recovered. I was called to the detach where I found a mattress, waragi in a jerry can and women's lotion. I called the owners of the property…"***

This testimony lacks minimum detail for it to suffice as corroboration of PW4's evidence that on 26th September 2000, on the 1st appellant's instructions, his wife fetched the radio cassette from the banana plantation near the bush.

The evidence adduced against Baguma Henry *alias* Karuna, the 2nd appellant, is very scanty and was also given by PW4. He testified that Karuna was implicated by Mbabazi, who was co-accused at the trial but was acquitted. He testified –

> "***Later the mattress was found at Karuna's home. The Chairman LC III took us to Karuna's home. Karuna holding a gun with the mattress*** (sic) ***and afterwards we arrested him. There was nothing apart from the mattress. We arrested him and brought him to the detach."***

The phrase: *'Karuna holding a gun with the mattress'* is vague and appears to be a mis recording of evidence. It cannot mean that Karuna was found holding the gun and the mattress because elsewhere the same witness asserted that the gun was found in Mbazira's garden of sweet potatoes. No other witness testified to the recovery of the mattress or that it was found in Karuna's possession. Instead, we note two assertions that are inconsistent with that. First, Mbabazi told PW4 that it was Mbazira who remained

with the mattress as part of his share of the loot. Secondly, PW2 whose mattress was stolen testified that when the recovered mattress was returned to her at the detach, she was informed that it had been found in Kihondo's home. The Court of Appeal held that this information was hearsay and should not have been admitted in evidence because PW2 did not disclose the person who informed her. We agree that the information was hearsay and was not admissible to prove where the mattress was discovered. However, the fact of the statement being made to her may be taken into account in considering the consistency of the evidence on the investigations.

For his part, Baguma Henry *alias* Karuna testified that on 23rd September 2000 he was at home attending to his very sick mother. On 29th September he went out at night to buy medicine prescribed by the doctor for the patient. He was arrested in Katooma Trading Centre at about 1.30 a.m. by soldiers on patrol, allegedly for moving at night. He was taken to the army detach for overnight and to Bihanga barracks for one day. He was then transferred first at Ibanda Police station and later to Mbarara. After arrest he never returned home and therefore, knew nothing about his home being searched.

His conviction at the trial was based on the evidence that the mattress was found in his home. The learned trial judge noted in his judgment, that the accused raised an alibi and testified that '*he was arrested in connection with matters relating to state security and not robbery'*. However, without evaluating that defense evidence the trial judge in effect held that despite the alibi, the prosecution had, through the doctrine of recent possession, placed Karuna at the scene of crime. In our view, however, the 2nd appellant's alibi was not disproved. As we have said in respect of the 1st appellant, the undisputed fact that the

2nd appellant was arrested by the army tends to lend credence to his version that he was initially arrested in connection with matters relating to state security rather than robbery. That together with the observations we have just made on the inconsistencies concerning the mattress, lead us to the conclusion that the prosecution evidence is too weak to prove beyond reasonable doubt that the mattress was found in the 2nd appellant's possession.

What is more, the weakness is exacerbated by insufficiency of proof that the recovered mattress was the mattress stolen from PW2 during the robbery. The learned Justices of Appeal, in agreement with counsel for the appellant, quite rightly found merit in the contention that the mattress allegedly found in Karuna's home '*was not sufficiently described*' as the stolen mattress. With the greatest respect to the learned Justices of Appeal, we are puzzled by their holding that notwithstanding that insufficiency, '*ground 2 fails in part*'. While it is not clear what part of ground 2 failed, the successful part must be the finding that the mattress was not sufficiently described, which finding obviously raised critical doubt on whether the discovered mattress was the stolen mattress. That doubt renders the conviction of Baguma Henry *alias* Karuna unsustainable. The doctrine of recent possession was erroneously invoked because it was not proved beyond reasonable doubt that he was in possession of the mattress and that the mattress was recently stolen. We should observe that the case against him was no stronger than that against Mbabazi who allegedly implicated him but who was acquitted because the articles found on his premises were not properly identified as stolen items.

For the reasons we have given, we find that it would be unsafe to uphold the conviction of either appellant. Accordingly, we allow this appeal, quash the conviction of both appellants and set aside their sentences.

DATED at Mengo this 20th day of March 2007.

A.H.O. Oder
Justice of the Supreme Court

A.N. Karokora
Justice of the Supreme Court

J.N. Mulenga
Justice of the Supreme Court

G.W. Kanyeihamba
Justice of the Supreme Court

B. Katureebe
Justice of the Supreme Court