

UGANDA / JUDGMENT

Uganda v Aruho (Criminal Session Case 629 of 2019) [2023]

UGHCCRD 131 (6 September 2023)

[2023] UGHCCRD 131

COURT

HC: Criminal Division (Uganda)

BEFORE

Nshimye, JA

CASE / FILE NUMBER

Criminal Session Case 629 of 2019

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA
CRIMINAL SESSION CASE NO 629 OF 2019 [DPP NO: SHM-CO-087 / 2018, POLICE NO:
CRB 620/ 2018]**

UGANDA Vs ARUHO GODUIS (A2)**BEFORE:** Hon. Justice Nshimye Allan Paul. M.

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 S **JUDGMENT****REPRESENTATION**

Adv. Jacob Nahurira for the ODPP representing the state. Adv. Suwaya Matovu on state brief.

INTRODUCTION.

The accused Nuwamanya Darius and Aruho Godius were indicted on two counts, these are;

Count₁ A. 20

The charge of aggravated robbery Contrary to section 285 & 286 (1) of The Penal Code Act. The particulars of the offence are that; Nuwamanya Darius and Aruho Godius on 23rd day of July 2018 at Nyaruhanga Village in Shema district robbed Twinamastiko Richard of a Motorcycle UEQ 239 E engine number DUZW HB45393, chassis Number MD2A18AY5HWB58568 Bajaj Boxer red in Color and at, immediate before or immediately after, the time of the said robbery used a deadly weapon to wit a knife on the said Twinamastiko Richard.

\$B.\$ Count₂

The charge of Doing grievous harm Contrary to section 219 of The Penal Code Act. The particulars of the offence are that; Nuwamanya Darius and Aruho Godius on 23rd day of July 2018 at Nyaruhanga Village in Shema district unlawfully did grievous harm to Twinamastiko Richard

Accused no 1 was convicted before the case proceeded to trial in a session. when the session started only Accused NO 2 (Aruho Godius) was on trial. On 19th June 2023 he pleaded Not Guilty.

BURDEN AND STANDARD OF PROOF. $\$ \mathbf{S} \$$

It is a principle of law that in criminal cases that the Prosecution has a burden of proving all the ingredients of the offence (Nandudu Grace & anor Vs Uganda Supreme Court Criminal Appeal No 4 Of 2009, Section 101 & 103 of the Evidence Act). In Criminal cases the standard of proof that is required is to prove all the ingredients

beyond reasonable doubt (See Miller Vs Minister of Pensions [1947] 1 ALLER 372, 10 **Uganda vs Monday Wilson high court Criminal case 22 of 2017**)

PRE-HEARING

The prosecution and defence during the pre-hearing agreed on some facts under section 66 of the Trial on Indictments Act. The documents that were agreed were 15 exhibited and made part of the evidence; they are:

- 1. **Police Form 24A**, for medical examination of a person accused of serious crime was exhibited as PEX1. In the form a medical officer confirmed on 02 August 2018 that the accused person no 2 (Aruho Godius) is of normal mental status.
- 2. **Police Form 3**, for medical examination of an injured person was exhibited as 20 PEX2. In the form a medical officer confirmed on 25 July 2018 that the Twinamastiko Richard suffered a stab wound in the Chest suggestive that he was stabbed with a sharp object. The injury was classified as Grievous Harm.

WITNESSES 25

The prosecution called three witnesses, PW1 Twinamastiko Richard, PW2 Turyahabwe Rodney and PW3 No 56753 DET Constable Akakwasa Ronald. The defence produced one witness, the accused, DW1 Aruho Godius.

ASSESSORS' OPINION 30

The assessors gave a joint opinion, where in they recommended that the accused, Aruho Goduis be convicted as charged on both counts.

SUBMISSIONS

The court issued out a schedule on 15 August 2023 for the parties to file written 35 submissions. The parties did not file any, so the court will consider the evidence on court record.

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DETERMINATION

It is a principle of law that the prosecution has a duty to prove all the ingredients of the offences as is stipulated in the law in Section 101 & 103 of the Evidence Act and confirmed in case law in Nandudu Grace & anor Vs Uganda Supreme Court Criminal

Appeal No 4 Of 2009. \$\mathsf{S}\$

The question for determination in the analysis here below is whether the ingredients of the offence in both count 1 and count 2 have been proved beyond reasonable doubt against the accused person

Count₁

The prosecution must prove all the ingredients of the offence aggravated robbery Contrary to section 285 & 286 (1) of The Penal Code Act beyond reasonable doubt. These are:

- 15
- 1. The occurrence of theft of property
- 2. The use of violence during the theft
- 3. The use of or threat of use of a deadly weapon either at or immediate before or after the theft.
- 4. The participation of the accused in the theft.

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Count₂

The prosecution must prove all the ingredients of the offence of Doing grievous harm C/S 219 of The Penal Code Act beyond reasonable doubt. These are;

- 1. The victim sustained grievous harm.
- 2. The harm or injury was caused unlawfully.
- 3. The accused caused or participated in causing the grievous harm

The evidence on court record for both the prosecution and the defence is produced below.

A. PW1 Twinamastiko Richard testified that on 23rd July 2018 at around 9pm he 30 was going to Kyapa on a motorcycle to see a friend when he met two boys (accused) who said that they were going to Kabwohe. That when they got to green valley hill, PW1 told them that he is not going any further, so he stopped. He stated that A2 (ARUHO GODIUS) pulled out the key of the motorcycle and said that "it was you we wanted" then he pulled out a knife and stabbed PW1 35 in the chest. During cross examination he pointed to A2 (ARUHO GODIUS) and identified him as the person who stabbed him.

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- B. PW2 Turyahabwe Rodney testified that he has a motorcycle UEQ 239 E which on 23 July 2018 he gave to Twinamatisko Richard. That he waited for him to return it but his phone was off. That at around 10pm he was called by Tumuhimbise Norman who told him that the person he gave the motorcycle was stabbed. That he found his motorcycle, but it was missing a plug and had to replace the switch of the motorcycle.
- C. PW3 No 56753 DET Constable Akakwasa Ronald testified that he was the investigating officer in the case. That on 21st July 2018 he received a case of alleged aggravated robbery of motorcycle UEQ 239 E. During cross examination PW3 stated that the motorcycle was stolen but it was later recovered from Nyarubanga a village near the crime scene. That the motorcycle was moved a few meters from the scene of the crime.
- D. DW1 Aruho Godius during his testimony denied stealing the motorcycle or 15 stabbing Twinamatsiko. He stated that when he saw that Darius and the complaint were about to fight, he run to the trading center and got a boda boda to his home. Later A1 (Daruus) called him to stand surety for him at police and when he came, he was arrested. He denied stabbing Twinamatsiko Richard.

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In my analysis, the evidence of PW1 and DW1 is in tandem that they were in geographical proximity when the complainant (PW1) stopped the motorcycle on which he was carrying the accused. The evidence of the PW1 is that the accused (Aruho Godius) removed the key of the motorcycle, PW2 testified that the Motorcycle was moved from the scene and PW3 testified that he later recovered his motorcycle but it \$25\$ had no plug. PW1 also testified that the accused said "it was you we wanted" then he pulled out a knife and stabbed PW1 in the chest. During cross examination he pointed to A2 (ARUHO GODIUS) and identified him as the person who stabbed him. He also stated that the motorcycle was not stolen they only took the phone, And that the accused ran away when the villagers came. The defence testimony as earlier stated 30 does not challenge the fact that the accused and the complainant were in geographical proximity. Dw1 agrees they hired and sat on the motorcycle. what is denied is stealing the Motorcycle or stabbing the complainant.

Count₂ 35

The evidence on court record proves the ingredients of the Offence in Count 2. Doing grievous harm C/S 219 of The Penal Code Act. The ingredients such as the fact that the victim sustained grievous harm, that the harm or injury was caused unlawfully. And we Page 4 of \$6\$

that the accused caused or participated in causing the grievous harm have to be considered.

In my analysis I find that the evidence on court record is that the PW testified that the accused pulled out a knife and stabbed him. DW1 the accused denied stabbing the $\$S$ complainant, but the evidence in Police Form 3, that was exhibited as PEX2 at the prehearing confirms that the complainant suffered a stab wound in the Chest suggestive that he was stabbed with a sharp object. The injury was classified by medical personnel on Police Form 3 as Grievous Harm. The evidence in PF3 exhibited as PEX2, collaborates the evidence of PW1 in respect to the stabbing and harm suffered as such it outweighs 10 the DW1's denial. I find that the evidence on court record proves beyond reasonable doubt the offence in count 2 Doing grievous harm C/S 219 of The Penal Code Act.

Count₁

The evidence on court record proves some ingredients of the Offence in Count 1, 15 aggravated robbery Contrary to section 285 & 286 (1) of The Penal Code Act. The ingredients relating to the use of a deadly weapon, violence and participation are shown in the testimony of the Complainant PW1, who clearly identified the accused Aruho Godius in court by pointing at him in the dock as the person who removed the key from the motorcycle, pulled out a knife and stabbed him. 20

In respect to the ingredient relating to theft of motorcycle, whereas PW2 testified that the motorcycle was taken and moved a short distance, this evidence has to be weighed against that of the accused who denied stealing the motorcycle claiming that he left and run away. We must also consider the evidence of PW1 who during cross \$25\$ examination stated That "the motorcycle was not stolen they only took the phone, And that the accused run away when the villagers came". I am inclined to believe the accused basing on the testimony of PW1, that they did not steal the motorcycle. The failure to steal it is explained by PW1 testimony who said the accused run when the villagers came.

In my view the prosecution evidence on court record points to the fact that the accused was on the motorcycle, he removed the key to the motorcycle, stabbed the complainant, a fight ensued and the appearance of villagers made them run away. The theft of the motorcycle has not been proved beyond reasonable doubt. I therefore have no basis to convict the accused of the offence of aggravated robbery Contrary to section 285 & 286 (1) of The Penal Code Act.

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MINOR AND COGNATE OFFENCE

In principle an accused can based on the evidence on record be convicted of a minor and cognate offence to the offence he was charged as is stated in the law in section 87 of the Trial on Indictment Act, which provides that.

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"When a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he or she was not charged with it."

The evidence on court record proves the ingredients of attempted robbery contrary to section 287 of the Penal Code Act. The ingredients are; 1. Any person assaults another 10 with intent to steal anything, 2. The assailant uses or threatens to use actual violence to obtain the thing they intend to steal.

PW1 testified that when they stopped, the accused said "it was you we wanted" which implies that the complainant was targeted. PW1 also told the court that the accused 15 pulled the key from the motorcycle, this in my opinion would disable it and put control in the hands of the accused. If as was testified by the accused, that the scuffle was about money, they would not have run on seeing the villagers, they would have been happy to see villagers come to make the case before the LC or police as so the solve

- the fare dispute. The fact that the accused ran lends credence to the presupposition 20 that the target was to steal the motorcycle, and they only failed due to the villager's appearance. If the villagers had not come, they could have overpowered the complainant and then used the key that was now in their possession to ride away. In my opinion the evidence on court record proves beyond reasonable doubt the offence
- of Attempted Robbery Contrary to section 287 (1) & (2)(b) of The Penal Code Act. \$25\$

CONCLUSION

I find that the prosecution has proved all the ingredients of the following offences.

- 1. Attempted Robbery Contrary to section 287 (1) & (2)(b) of The Penal Code Act.
- 2. Doing grievous harm C/S 219 of The Penal Code Act.

I therefore convict the accused, ARUHO GODUIS (A2) of the offence of Attempted Robbery Contrary to section 287 (1) & (2)(b) of the Penal Code Act on count 1 and of the offence of Doing grievous harm C/S 219 of The Penal Code Act on count 2.

Wirth 303 Nshimye Allan Paul M. JUDGE 06-09-2023

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