

UGANDA / JUDGMENT

Uganda v Ayesiza and 5 Others (Criminal Case 299 of 2023) [2024] UGHC 891 (30 August 2024) [2024] UGHC 891

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Criminal Case 299 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA HOLDEN AT KYANGWALL CRIMINAL CASE NO. 0299 OF 2023

UGANDA ::::::::::::::::::::::::::::::

VERSUS

1. AYESIZA HAMUDAN
2. SGT. KYAMANYWA WYCLIFF
3. KATO DENIS ALIAS LIBUTI
4. RUTWAZA GEOFFREY
5. MUGISA RAMAZAN
6. BIGIRWA COLLINS ::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] The 7 accused persons; Ayesiga Hamudan (A1), Sgt. Kyamanywa Wycliff (A2), Kato Denis alias Libuti (A3), Rutwaza Geoffrey (A4), Byabasaija Bosco (A5), Mugisa Ramazan (A6) and Bigirwa Collins (A7) were indicted with the offence Aggravated Robbery C/ss 285 & 286 (2) PCA. It is alleged that on the 5th day of May 2023 at Kayera village, Buseruka Sub county in Hoima District, the 7 accused persons and others still at large robbed 3 cows, the property of **Kansiime Richard**, valued at approximately Ugx 8,500,000/\$\$ from **Tumusiime Wilber** and at or immediately after the said robbery threatened to use

a deadly weapon, to wit a gun, a knife, and a panga on the said Tumusiime Wilber. The accused persons pleaded not guilty to the offence.

- [2] The prosecution case is that during the night of the 5th day of May 2023, at around 11:00pm, A1, A3, A5 and 5 others that were never

identified were sighted with a car and a pickup loaded with a cow parked near the farm of the complainant, Richard Kansiime, by the complainant's workers Tumusiime Wilber and a one Twesigye Wilson. When Tumusiime Wilber approached them inquiring about their presence, one of them who was putting on an army uniform cap came out of the car and threatened to shoot him by pretending to draw a pistol. The said Tumusiime Wilber and Twesigye Wilson fled the scene to inform the manager of the farm who in turn alerted the complainant who also involved security to track down the suspects. Later, 3 heads of cattle were discovered to had been missing from the farm.

- [3] The security agencies mounted an operation to track down the suspects upon which 2 motor vehicles, a Fielder Car Reg. No. UAT 259 G belonging to Kyamanywa (A2) and Noah M/ vehicle Reg. No. UAS 414 S belonging to Hamudan (A1) were later driven and impounded at Hoima police station. A3, A4 and A7 who were among those identified by the complainant's worker, Tumusiime Wilber were traced and arrested from various areas and it was through interrogation that they revealed the names of their colleagues.
- [4] The 2 vehicles impounded by police were taken to Hoima police station where a search of each of the vehicles was reportedly conducted. The Fielder vehicle boot was found to contain a shirt stained with cow dung, a kitchen knife, a machete (big panga), a toy pistol while in its seats, there was a pair of UPDF shoes and belt and other army uniform parts and other items which were detailed in the search certificate drawn by the search police team. The Noah vehicle is reported to had had its seats dismantled to accommodate suspected cows' meat and hides.
- Consequent of the above, the accused persons were charged with the [5] instant offence of Aggravated robbery.
- In their respective sworn statements, save for A5 who gave an [6] unsworn defence in court, each of the accused persons denied the prosecution allegations and pleaded alibi.
- For A1, he stated that he was arrested from his home at around [7] 10:00pm and taken to police with his Noah vehicle Reg. No. UAS 414 S. That when his vehicle was searched at police, nothing was recovered. As regards A2, he stated that while returning from his garden in Kiziranfumbi and buying fish from Kaiso-Tonya, while driving home, his motor vehicle Reg. No. UAT 259 G TOYOTA Fielder, heated up at around 10:40 pm and he stopped on the road side. That it is then that he was found by the security men who questioned him about his lonely parking in the area. That they suspected him to be a wrong doer. That when his vehicle was searched the following day at police, his fish was missing and a rope, toy gun, a shirt and a trouser which he never knew about were recovered.

- [8] The other recovered items like army rank (chevron) and shoes, a cap, a green belt, a pair of pliers, a panga, a knife and cycles to harvest rice and 5 bottles of herbicides, he admitted them as his personal entitlements as a former chief clerk in the Reserve forces and others as his garden tools and herbicides.
- [9] For A3, he stated that the name "Libuti" is his nick name from school time. He slaughters animals for butchers. He was arrested after slaughtering the cow of Byabasaija (A5) and buying meat from that butcher stall for his consumption.
- [10] As regards A4, he stated that he was the last to be arrested on 7/5/2023 from his home at around midnight on allegations of stealing cattle, something he never knew about.

$\frac{S}{S}$

$w = v$

- [11] For A5, he stated that on the 1/5/2023 he and a one Asiimwe Vicent each bought a cow from one Kanyankole which was later after 3 days slaughtered on the funeral of a one Byakagaba at Kipapati Trading Centre where he was later arrested on allegations of stealing cattle.
- [12] A6 on his part stated that he is the one who slaughtered A5's cow which he bought from a one Kanyankole. That him and A5 were arrested while fleeing bullets that were being fired in the air by security men as they sought for suspects in the case of stealing cattle.
- [13] As regards A7, he stated that on the 7/5/2023 at around 1:00pm he was having a rest at his maize store when un uniformed policemen came and arrested him. That when they searched his house, they recovered half a kilogram of meat from the cupboard on a saucepan and his Ugx 1,000,000/ \$=\$ which they took.

Counsel legal representation

[14] The Prosecution was led by Ms. Seera Becky and Mr. Naloda Chrispus of the office of the Director of Public Prosecutions, Hoima while the Defence was led by Ms. Dorothy Mushabe of the Refugee Law Project and Mr. Asasira Benjamin of Justice Centres.

Burden and standard of proof

[15] In criminal cases, it is trite that the burden of proof is upon the prosecution to prove the guilt of the accused person beyond reasonable doubt. The prosecution must prove each and every ingredient which constitutes an element of the offence. The burden never shifts to the defence except in a few exceptions provided for by the law which is not applicable to the instant case, see *Woolmington Vs DPP* (1935) AC 462 and *Leonard Aniseth Vs R* [1963] EA 206. Furthermore, the accused ought not to be convicted

on the weaknesses of the defence but on the strength of the prosecution case, *Uganda Vs Oloya* [1977] HCB 4.

[16] This court is also mindful of its duty to evaluate all the evidence on record, both for the prosecution and the defence to be able to determine as to whether the offence for which the accused persons were indicted has been proved to the required standard. Evidence is evaluated as a whole, See *Abdu Ngobi Vs Uganda*, S. C. Crim. Appeal No.10 of 1991.

Ingredients of the offence

- [17] In a charge of Aggravated Robbery, the prosecution must prove the following ingredients of the offence:
- a) Theft of property
- b) Use of actual violence at, before or after the theft or that the accused persons caused grievous harm to the complainant.
- c) Use of a deadly weapon before, or after the theft.
- d) The accused participated in the robbery.

a) That there was theft of property

- [18] Theft occurs when a person fraudulently and with intent to deprive the owner of a thing capable of being stolen takes that thing from the owner without a claim of right, see S.254(1) PCA.
- [19] In its bid to prove theft, the prosecution relied on the evidence of the complainant, Richard Kansiime (PW1), his worker, Tumusiime Wilber (PW4) and D/Sgt. Ariyo Laban (PW5). On the fateful night of 5/5/2023 at around 11:00pm, PW4 sighted suspicious people with a car and a pick up loaded with a cow parked near the complainant's (PW1) cattle farm. When these people threatened to shoot PW4, he fled the scene and informed the manager of the farm who in turn alerted the complainant (PW1). The complainant also reported the

incident to police and as per PW5 and other police officers, on receipt of the information, swung into action to track down the suspects. 3 heads of cattle were in due course found missing from the complainant's farm.

[20] The above evidence was not at all challenged by the defence. The accused persons merely denied being the ones who stole the 3 heads of cattle. In the premises, I find that the \$1st\$ ingredient of the offence has been proved by the prosecution to the required standard.

b) Use of actual violence and a deadly weapon

[21] In its endeavor to discharge its aforesaid obligation under the law. the prosecution addressed evidence of again Tumusiime Wilber (PW4), D/AIP Bainomugisha Dickson (PW2) and AIP Apio Nancy \$(PW6)\$.

PW4 testified thus:

"On \$5.5/2-23\$ at around 7:00am, I returned cattle to the *kraal and went to Buseruka trading centre....on my way* back at around 11:00pm, I found the car and the pickup parked near our cattle farm.... I saw A1 and others about 5 of them whom I never identified. One of them who had an army uniform cap came out from the car. I felt as if he was going to draw a pistol. I took off as I raised an alarm."

[22] Clearly from his evidence, PW4 did not see any pistol. He merely felt that this suspect was going to draw a pistol because of the army uniform cap he put on or probably certain gestures he saw this suspect do. Such gestures cannot amount to either violence or use of a deadly weapon the victim never saw. As regards both PW2 and PW6, they testified that when Kyamanywa's (A2) impounded Fielder **vehicle** was searched, one of the recovered items was a wooden toy pistol, see also the **search certificate** (P. Exh13).

- [23] The recovery of the wooden toy pistol which in law constitute a deadly weapon under Section 286(3)(a) PCA is a mere assumption that the suspect at the complainant's farm possessed such. There is no evidence that PW4 either identified A2 at the scene or that a toy pistol or any of the recovered knife and panga was used to threaten him at the farm. PW4 merely imagined that one of the suspects had a pistol.
- [24] In the premises, I find that the \$2^{nd}\$ and \$3^{rd}\$ ingredients of the offence have not been proved to the required standard.

c) The accused persons' participation in the robbery

[25] Lastly and most importantly the prosecution is required to prove beyond reasonable doubt that the accused persons participated in the robbery. This is done by adducing direct and or circumstantial evidence, placing the accused persons at the scene of the crime.

Identification of the accused persons

- [26] According to **Tumusiime Wilber** (PW4), the only identifying witness who testified in court, on the fateful day at around 7:00pm, after returning cattle to the kraal, he went out to Buseruka Trading Centre. He claim to had seen A1, A3, and A5 whom he knew as cattle dealers because he also used to buy cattle from Buseruka market for his boss and they would converge during the market purchase of cattle. The said accused persons were with other persons who PW4 never identified. The accused persons had a car and a pickup parked by the roadside.
- [27] On his way back from Buseruka Trading Centre at around 11:00pm, **PW4** found the same car and the pickup this time parked near the complainant's cattle farm. This time, he identified A1 and the rest who were about 5 in number were never identified. One of them who had an army uniform cap came out from the car, PW4 felt as if this

man was going to draw a pistol. PW4 took off as he raised an alarm. PW4 had already seen a cow on the pickup.

- [28] According to D/Sgt. Ariyo Laban (PW5), the investigating officer of the case, PW4 was able to identify A1, A3, A5 and a one Musori who is still at large. Then a one **Twesigye Wilson**, also one of the workers of the complainant, in addition to identifying A1, A3, A5 and the said Musori, identified Rutwaza (A4). Unfortunately for the prosecution, the said **Twesigye Wilson** never testified in court. The testimony of Ariyo Laban (PW5) regarding the identification of A4 at the scene of the crime therefore remain hearsay evidence with not probative value.
- [29] In conclusion, the evidence of PW4 becomes evidence of a single identifying witness. In *Abdallah Nabulere & 2 Ors Vs Uganda* [1978] UGSC 5, [1979] HCB 77, to reduce the possibility of a miscarriage of justice occurring where a mistaken witness can be a convincing one, court held:

"*In our judgment, when the quality of identification is*" *made after a long period of observation or in satisfactory* conditions by a person who knew the accused well before, a court can safely convict even though there is no 'other evidence' to support identification evidence; provided the court adequately warns itself of the special need for caution."

[30] In the instant case, PW4 claim to had identified A1, A3 and A5 by the help of the moonlight. In evidence, this court was not told how bright was the moonlight at 7:00pm and at what distance PW4 stood from the said accused persons while on his way to Buseruka Trading Centre. On his way back at 11:00pm again, it is not clear how bright was the moonlight and the distance he was when he inquired from them as to what they wanted on the farm. It should be noted that on

this \$2^{nd}\$ leg of identification, he only identified A1 and others who were about 5, could not be identified. It is noted that he only made use of his torch to see a cow that had been loaded on the pickup but the torch was not used to identify the said unknown accused persons.

- [31] Upon cautioning myself of the danger of convicting on the evidence of identification alone because of a possibility of a mistaken identity, in my view, though PW4 claim to had previously known A1, A3, and A5 as cattle dealers as he also used to purchase cattle from Buseruka market for his boss, I find that the quality of identification appear to have been poor. This is evidenced by the fact that PW4 had to use a torch flash so as to be able to see what was loaded on the pickup. PW4's evidence would in the circumstances require corroboration.

- [32] According to SP Mwesige James (PW3), the arresting officer, upon arresting A3, A4 and A7 whom he found under suspicious circumstances, he testified that they admitted participating in the theft of cattle and the said accused persons made charge and caution statements admitting participation in the commission of the offence. The said charge and caution statements were however not proved and tendered in evidence. The charge and caution statements of A3, A4 and A7 therefore remained an illusion.
- [33] According to D/Sgt. Ariyo Laban (PW5), the investigating officer, because the complainant's workers, PW4 and Twesigye Wilson had identified A1 as one of the suspects at the complaint's farm on the fateful night, that very night, police went to A1's home, got him and recovered his Noah Vehicle. From the Noah vehicle, nothing was recovered. Nevertheless, the Noah vehicle was impounded and taken at Hoima police station.
- [34] According to D/AIP. Bainomugisha Dickson (PW2), the Scene of Crimes Officer (S. O. C. O), he photographed the impounded motor vehicles allegedly used by the thieves; A1's Noah M/V Reg. No. UAS 414 S. It had its seats dismantled and was stacked with suspect cow's meat and hides. The carpet was filled with cow dung. The photos of the said vehicle by PW2 were exhibited as P. Exh.8. He carried out the photographing in the presence of D/ASP. Nancy (PW6), who led the search team in the presence of the suspects. PW2 was however not present during the impounding of the said vehicles.
- [35] According to D/ASP Apio Nancy (PW6), only 1 vehicle, a Fielder car was subjected to a search and not, A1's Noah vehicle.
- [36] In their defence, the accused persons raised a defence of alibi. It is the law that where an accused raises a defence of alibi, he has no duty to prove it. The duty lies on the prosecution to disprove a defence of alibi and place the accused at the scene of the crime as the perpetrator of the offence, Cpl Wasswa & Anor Vs Uganda, S. C. Crim. Appeal No.49 of 1999.
- [37] In the instant case, A1 in his sworn defence stated that he was arrested from his home at around 10:00am and taken to police with his Noah vehicle Reg No. UAS 414 S. That when the vehicle was searched at police, nothing was recovered. A1's evidence appear amply corroborated by that of the investigating officer D/Sgt. Ariyo Laban (PW5) who at p.12 of the proceedings stated thus;

"Because the workers; Tumusiime and Twesigye had identified **Hamudan** \$(A1)\$ at the scene, the information had been relayed to police. Police sought for **Hamudan** (A1) whom they found at his home and arrested him that very night. He was found with a Noah vehicle which was A1's vehicle, nothing useful was recovered."

In cross examination at p.14 of the proceedings, he added thus;

"The hides were not recovered from the Noah vehicle. Actually nothing was recovered from the Noah."

[38] Indeed, even Apio Nancy (PW6) who led the search team on the impounded vehicles recovered during the operation tracking down the suspects, clearly indicated that the Noah vehicle was not searched. What remains a mystery is the S. O. C. O's (PW2) evidence that the Noah vehicle was stacked with suspect cows' meat and hides and that the carpet was filled with cow dung. The above contradictions in the prosecution's evidence goes to the benefit of A1. If at all the S. O. C. O found the Noah vehicle stacked with suspect cows' meat and hides, then these items were planted on the vehicle. Such evidence cannot be used to corroborate PW1 evidence placing A1 at the scene of crime. Besides, as regards the hides, D/Sgt. Ariho Laban (PW5), the investigating officer clearly testified that they were recovered at A5's butcher stall at Kipapati Trading Centre (P. Exh.9) which were identified by the complainant to be of his three animals; black and white and then white and brown. Then during cross examination, he confirmed that:

> "There were no hides recovered from the vehicles but were recovered from the butcher stalls. The hides were not recovered from the Noah vehicle."

The above evidence clearly show that both the meat and the hides were planted in A1's Noah vehicle.

[39] As regards A3, A4, A5, A6 and A7, again all of them raised alibi as their respective defences. A3 was arrested after slaughtering the cow A5 had bought from a one Kanyankole which they ate at the funeral of a one Byakagaba and A7 was arrested on the 7/5/2023 at around 1:00pm while having a rest at his maize store. Upon searching his house, police recovered a half kilogram of meat in a sauce pan and \$Ugx\$ 1,000,000/=.

- [40] There is no evidence connecting the recovered hides from the butcher stall of A5, the $\frac{1}{2}$ Kg of meat and money got from A7 to the robbery of the complainant's 3 heads of cattle. In the st instance, though PW4 in evidence described the stolen 3 heads of cattle as "2 black and white and 1 brown and white", only 1 hide, brown in colour was exhibited in form of a photo (P. Exh.8) which in my view is not sufficient evidence that it is of the stolen "black and white" and "brown and white cattle" as described by PW4. Actually, none of the recovered items connected any of the accused persons to the scene of the crime as counsel for the prosecution claimed in her submissions.
- [41] All in all, I find no sufficient evidence incriminating A1, A3-A7 that they participated in the robbery of cattle that occurred during the night of 5/5/2023.
- [42] As regards A2, he accounted for the army rank (chevron) and shoes. a cap, a green belt, pair of pliers, a panga, a knife and cycles and then the 5 bottles of herbicides that were recovered from his M/vehicle Fielder Reg. No. UAT 259 G as his personal entitlements as a former chief clerk in the Reserve forces and the rest as his properties for use in his gardens.

- [43] He stated on oath that on the fateful day, he was arrested while returning from his garden at Kiziranfumbi and buying fish in Kaiso-Tonya after his vehicle had heated up and stopped on the roadside. He denied being in possession of a rope, toy gun, a cow dung dirtied shirt and trouser. However, both the S. O. C. O (PW2) and AIP Apio Nancy (PW6) who participated in the search of the vehicle confirmed that the above items and other were recovered from his vehicle as per the search certificate presented (P. Exh.13).
- [44] It has to be recalled that PW4 did not identify either the Fielder car or A2 as being among the suspect sighted at the complainant's farm during the night of 5/5/2023 when the cattle were stolen. PW4 was a man putting on an army cap. A careful consideration of the search certificate (P. Exh.13) show that an army cap is not one of the items recovered from A2's vehicle. So, whatever was recovered from A2's Fielder car, does not in any way connect him to the alleged tampering of his Fielder vehicle's registration number plate. The evidence merely rendered A2 a suspect but that is not evidence beyond reasonable doubt sufficient for his convictions, See Cpl Wasswa & Anor Vs Uganda (supra) for the proposition that evidence based on suspicion however strong, cannot form a basis for proving a charge. The prosecution may have to consider other charges related to the vehicle and the recovered items other than aggravated robbery.
- [45] In view of the totality of the above, in disagreement with the lady and gentleman assessors' joint opinion regarding the guilt of A1, A2, & A5, considering the doubts raised by the defence evidence, this court finds all the accused persons not guilty of the offence of Aggravated Robbery C/ss 285 & 286(1) (b) PCA. A7 to be refunded his \$Ugx\$ 1,000,000/= recovered and exhibited in this court as P. Exh.10.
- [46] Accordingly, all the 7 accused persons are hereby acquitted and set free from prison unless held on other lawful charges.

Dated this 30th day of August, 2024.

Byaruhanga Jesse Rugyema JUDGE.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/891/eng@2024-08-30>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-v-ayesiza-and-5-others-criminal-case-299-of-2023-2024-ughc-891-30-august-2024-unknown-topic-unknown-court-2024>

Prepared on 14 October 2026 · Esheria