

UGANDA / JUDGMENT

Uganda v Komakech & 2 Others (Criminal Session 153 of 2019) [2024] UGHC 414 (5 March 2024) [2024] UGHC 414

COURT

High Court of Uganda

BEFORE

Mwaka, J

CASE / FILE NUMBER

Criminal Session 153 of 2019

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

CRIMINAL SESSION CASE No. 153/2019

(ARISING FROM CRIMINAL CASE – CRB No. 014/2018: LAMWO).

5 UGANDA PROSECUTOR

Versus

- 1. KOMAKECH WALTER Alias ONGWECH
- 2. NYEKO RICHARD
- 3. BONGOMIN OKELLO JOSEPH ACCUSED

10 BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

RULING.

Background.

[1]. The Accused - Komakech Walter Alias Ongwech (A1); Nyeko Richard (A2); and, Bongomin Okello Joseph (A3) - were indicted on a Count of Aggravated 15 Robbery Contrary to **Section 285 and 286(2) of the Penal Code Act, Cap. 120**. The particulars of the offence in the Indictment are

that on the 5 th day of June, 2018 at Lirri East Village, Ayuu Alali Parish, Palabek Kal Sub County in Lamwo District the Accused armed with spears, bows and arrows, pangas and sticks robbed Omony David of his money UGX. 8,270,000/- (Uganda Shillings Eight 20 Million Two Hundred Seventy Thousand), a mobile phone, TV screen, amplifier and cooking utensils all valued at UGX. 10,000,000/- (Uganda Shillings Ten Million) and at the time or immediately before or immediately after the robbery used the weapons on Omony David. The indictment is dated 22nd May, 2019 and the Accused was committed to the High Court for Trial on 30th May, 2019.

[2]. The Accused were arraigned on the 19th December, 2023 and each of the Accused - Komakech Walter Alias Ongwech (A1); Nyeko Richard (A2); and, Bongomin Okello Joseph (A3) - pleaded not guilty to the charge of Aggravated Robbery individually read and explained to each of them by the Court 5 whereupon the Trial commenced. During the Trial the entire proceedings were interpreted into the Acholi language, the preferred language of each of the Accused. Ms. Lamunu Esther and Mr. Okumu Raymond were appointed Assessors in the Trial without objection of the Accused and Counsel and upon declaration of no conflict of interests following which they duly took oath and 10 assumed duties.

The Prosecution Evidence and Case Presented.

- [3]. The Prosecution commenced its case on the 9th January, 2024 and concluded its evidence on the 25th January, 2024 during which the testimony of Five (5) 15 witnesses was presented to the Court. PW1 – Omony David; PW2 – Oryema Robert; PW3 – Okot Joseph; PW4 – Langoya Benson; and, PW5 – D/Sgt Adenden Denis. The witnesses (PW1 – PW4) describe themselves as relatives and, or neighbours of the Accused.
- [4]. The first Prosecution witness was the **Complainant, Omony David, PW1**, 20 Thirty (30) years old, Businessman, a resident of Lirri East Village, Ayuu Alali Parish, Palabek Sub County in Lamwo District testified that he knows A1, A2 and A3. A1 is the son of the uncle of his father. A2 is the uncle to his father. A3 is the uncle of his father. They all live in the same village.
- [5]. PW1 testified that in the morning of the 5 th June, 2018 whilst he was at home 25 A1, A2 and A3 came to his home together with others at about 8am - 9am and the group armed with pangas (machetes) and axes begun to demolish his hut.

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- [6]. A1 had a panga. A3 had a panga. A2 had an axe. Others in the group had slashers. A1 climbed the roof of his grass thatched hut and started cutting the poles used for roofing, A2 removed grass from the hut and A3 was demolishing the wall of the hut.
- 5 [7]. Being afraid he ran to the home of his maternal uncle Okot Joseph (PW3) and told him about the Accused and others demolishing his hut who advised him to report the case to Police which he did at Palabek Kal Police Station. He later went to his home with Two (2) Police Officers and found that A1, A2, A3 and others had destroyed four (4) grass thatched

huts and two (2) grinding mills. 10 Other household property was destroyed and some had been carried away by A1, A2 and A3 and others in the group. The destroyed properties were; - a mattress, flat screen television (video), radio, tea flask, basin, cooking utensils, clothes, maize (1 kaveera, 1 sack 100kgs), simsim (1 kaveera, ½ sack – not sure of the weight), beans (4-5 basins – about ½ sack) and 1 box white star laundry 15 soap – as far as he could remember. The stolen property was money in the sum of Uganda Shillings Eight Million Two Hundred Seventy Thousand (Ushs. 8,270,000/-). The source of the money was Uganda Shillings Five Million (Ushs. 5,000,000/-) given to him by his father Oryema Robert (PW2) to keep because he was going to cultivate deep in the bush with which he wanted to build a 20 Mabaati (iron sheet) house. Uganda Shillings Three Million Two Hundred Seventy Thousand (3,270,000/-) which was his own money generated from a grinding mill he owned. The money was in the hut under the bed.

- [8]. The persons present when his house was being destroyed were: his wife, Limpe Filda; his children, Agenorwot Prisca, Atimango Gloria and Gumperom Gerald. 25 The Accused A1, A2, A3 did not talk to him or explain their actions and he has never established the motive of the Accused in destroying his property since in his view they had all been living peacefully.
- [9]. Most significantly, he concluded his testimony in chief by stating that he has not recovered the money and that there was nothing stolen other than the money.
- [10]. In cross examination, he testified that the Accused went to his home and found his family and they did not talk to him but immediately demolished Four (4) huts 5 starting with the hut in which he sleeps followed by the kitchen, the visitor's hut and then a hut belonging to his uncle Okot Joseph. He was present when they destroyed his hut and properties therein but the rest were destroyed when he had gone to report the matter to the Police. The first hut destroyed in his presence was his bedroom where the Ushs, 8,270,000/- was and the Accused started 10 destroying the hut from outside while he was there but when they destroyed the inside he had left. He did not witness the destruction of the mattresses and other properties since he was at the Police. He also admitted that he did not know who exactly stole the Ushs. 8,270,000/- since he had gone to report to the Police.
- [11]. Besides the Accused there were about 16 other persons involved and when the 15 Accused started demolishing the huts others persons were still arriving at his home. He left his wife and children at home when he went to report to Police. According to PW1, the Accused know whom among themselves picked his money. The Ushs. 3,270,000/- was from his grinding mill and some was from his cultivation. He did not have receipts or a receipt book. He found his 20 properties were scattered and it had rained on them. The Accused are his relatives with whom he did not have any grudge and did not know what came into their minds. Neither did he have a grudge with any of the other 16 persons.

- [12]. Upon returning home from the Police Station the Accused and others had left. The Police stopped him from going to their homes and went to find them 25 together with a crime preventer. They were located and arrested at the home of Okech Jalon, father of A1. Police did not inform him of the recovery of any items. There was no re-examination.
- [13]. The second prosecution witness was **Oryema Robert, PW2**, Fifty-Four (54) years old, Farmer, an area resident. He described A1, A2 and A3 as his uncles but later described them as the children of his maternal uncle. PW1 is his son.
- [14]. PW2 testified that on the 5th June, 2018 as he returned from his garden at 9am 5 while it was raining one Atto Grace run to him and found him in his house where she told him that the house of his son Omony David (PW1) was being demolished. His son had gone to report to the Police and he found the Three (3) Accused at the scene. Meanwhile, his son's wife and children (daughter in-law and grandchildren) were at the home of his brother Odwogo Aldo. He saw the 10 Accused demolish the grinding mill near the home but he did not have the capacity or energy to intervene. Later he followed the Accused after their arrest up to the Police Station – the same day, though he did not recall the time since it was the rainy season during which it is harder to estimate the time. He did not know where they were arrested from.
- 15 [15]. At the time he reached the scene there were other people besides the Accused and he found Four (4) huts already demolished as they were going to destroy the grinding mill. The Accused and others were very wild. He observed from about One Hundred (100) meters away as A1 broke the grinding mill house together with A2 and A3 which was all that he saw since most of the destruction was 20 already done. At the scene, in the evening, he observed that Four (4) huts had been destroyed and most of the destroyed properties were rained on, including: - simsim, sorghum, pigeon peas (*Lapena*) which he saw.
- [16]. When he interacted with his son PW1 after the incident and asked him about his money in the sum of Ushs. 5,000,000/-, PW1 told him that the money got lost 25 after his hut was demolished in total Ushs. 8,270,000/- with Ushs. 5,000,000/ being his money and Ushs. 3,270,000/- his son's money. The source of his money was the sale of simsim and a cow.

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- [17]. In his view, they lived peacefully with the Accused and grew up in the same place.
- [18]. In cross examination, he admitted that he did not see any of the Accused destroy any of the Four (4) huts but saw the Accused destroy a grinding mill. His home is about one mile from his son's home and Atto Grace reported destruction of 5 the houses to him at about 9am -10am. He arrived at the Four (4) destroyed huts at about 11am and it was raining. He had first waited about Forty (40) minutes for the rain to reduce before going to the scene and he walked to the scene which took about 30 minutes. He stood aside about 100 meters away until the Accused left the grinding mill house which was in the same compound from which he 10 could observe the on goings with many other people, later moving to within Twenty

(20) meters. There were Two (2) grinding mills one being his and the other his son's and observed his grinding mill being demolished which was in the open near the roadside but did not see the Accused demolish his son's grinding mill. At the time he approached the scene other people were leaving.

- 15 [19]. In regard to identification he insisted that he identified A1 who wore a long black rain coat, A2 who wore a whitish shirt but he didn't remember the trousers and A3 wore a pinkish shirt but he didn't remember the trousers.
- [20]. PW2 admitted that he did not have any receipt or sale agreement for the cow or simsim he claims he sold but had had a sale agreement which got burnt with his 20 hut. He had opened a case with the Police but the Police had not asked him for the receipts.
- [21]. In re-examination, he insisted that he identified the persons who destroyed his grinding mill as the Accused since he was about Twenty (20) meters away from the scene.
- 25 [22]. The third witness presented by the Prosecution was **Okot Joseph, PW3**, 49 years old, Farmer, resident of the same area who knows the Accused as well as PW1 and PW2 as his village mates.
- [23]. PW3 testified that on the rainy morning of the 5 th June, 2018 PW1 ran to his house and told him that the Accused A1, A2 and A3 had gone to his home and demolished his huts.
- [24]. He left his hut and rushed to the scene at about 8am -9am though he could not 5 be exact since time was harder to tell during the rainy season. He found A1 on the roof of PW1's bedroom with a panga and destroying the hut by cutting the poles. When he called A1 by name A1 responded by warning him that if he got closer he would stab him with a piece of bamboo he was holding and upon seeing A1 advancing he told PW1 to rush to report to the Police with the situation being 10 out of control.
- [25]. Together with PW1 he ran and reported to Palabek Kal Police Station where Two (2) Police Officers were assigned and started looking for the Assailants arriving at the scene at about 2pm where they found Four (4) huts completely demolished - one belonging to him and the other Three (3) to PW1 as well as 15 Two (2) mabaati (iron sheet) and bamboo houses with grinding mills completely destroyed. PW1's property in the Three (3) huts was scattered and destroyed, including: - household utensils, solar panels and a television.
- [26]. The Police enquired from PW1 about missing items and he informed them that he lost Ushs. 5,000,000/- which was in his hut and belonged to his father and he 20 had been keeping and Ushs. 3,270,000/- of his own money from his grinding mill and bodaboda riding business.
- [27]. In regard to the arrest of the Accused, he testified that he saw them being arrested by the Two (2) Police Officers from nearby Liiri Centre where they were drinking punch (wine) at his business establishment.

- 25 [28]. In cross examination, he testified that he saw A1 and A2 demolish the house where PW1 sleeps but did not see them demolish the other Three (3) huts.

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- [29]. In regard to identification, A1 who wore big clothes, a jumper/rain coat light blue in colour though he did not see what was inside, A2 also wore a long big coat though he did not see the inside and he had a reddish sweater and A3 wore a shirt and trousers.
- 5 [30]. In further cross-examination, PW3 admitted that he did not see the Accused demolish the items belonging to PW1 and did not see the Accused take any money. Everything was destroyed when they returned from Police and the Accused were not at the scene. The Police stopped them from following and upon arrest of the Accused the Police did not recover any items taken.
- 10 [31]. In re-examination, he stated that he was about 25 meters away when he saw the Accused demolish the hut.
- [32]. The fourth witness presented by the Prosecution was **Langoya Benson, PW4**, 29 years old, a Farmer and resident of the same area. He knows PW1 as a neighbour and calls him brother. He is the son of his paternal uncle.
- 15 [33]. PW4 testified that he knows the Three (3) Accused as his neighbours from the same village and on the 5 th June, 2018 while at his home at about 8am - 9am as he brushed his teeth he saw the Three (3) Accused and others moving in a group moving towards the home of PW1. A1 had a panga (machete), A2 had an axe and A3 had a slasher and when they reached the home of PW1 they started 20 destroying his house which prompted him to ran to the house of PW1 to see.
- [34]. As he moved nearer to the PW1's home he observed A1 climb PW1's roof and remove the grass thatch while A2 was destroying the wall of the hut and A3 was removing the bamboo which was used for roofing. He attempted to stop them while about 9-10 meters from them but A1 jumped from the roof and chased 25 him with a panga threatening to kill him which prompted him to flee and he called the area LC3 one Nyeko and a Police Officer one Komakech to whom he narrated the incident.
- [35]. Regarding property, he testified that the Accused were taking the property of PW1 and running with it towards their homes. The alleged properties were not specified. The Police advised him to wait for them from a distance during which time it was raining and they arrived at about 2pm whereupon they visited the 5 scene and proceeded to arrest the Accused who were running from the scene to their homes. At the scene which he visited together with the Police Four (4) grass thatched huts were destroyed belonging to PW1 and PW3. Also destroyed was a house holding a grinding mill as well as food stuffs belonging to PW1, including; – sorghum, maize, simsim and household property.

- 10 [36]. PW4 admitted that he did not see any money being taken. He testified that he saw A1 give a chicken to Opoka Isaac who ran away with it. The same Opoka Issac had a solar panel and flat screen which he rode away with on a motorcycle. He however did not witness the arrest of the Accused and was not aware of any grudge between the Accused and PW1.
- 15 [37]. In cross examination, PW4 estimated that the Accused left the scene of crime around 2pm though he was not sure and did not have a watch. He admitted that he was not at the scene at the time of the offence having been chased away but stood at a distance of about 30 meters away the entire time from which he called the Police and LC3. Other persons observing from close to him included; – Atto
- 20 Grace, Ochieng Charles, Aldo Odwogo, the wife of PW1 together with his children. The Accused were together with about 15-16 people who are at large.
- [38]. In regard to identification, he claimed to be a distant relative of the Accused and knows them describing A1 as wearing a black rain coat but did not recall how A2 and A3 were dressed. He reiterated that he did not see any of the Accused 25 take Uganda Shillings Eight Million (Ushs. 8,000,000/-) nor did he see money. He saw A2 giving a black Kaveera to one Opoka Isaac.

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- [39]. In concluding cross-examination, he testified that he was not aware of any land dispute between the Accused, PW1 and PW3 and at the time the Police arrived at the scene the Accused had just left the scene with A1's home being 150 meters from the scene while A2's and A3's homes being 300 meters and 200 meters 5 from the scene respectively. There was no re-examination.
- [40]. The fifth and final witness called by the Prosecution was **No. 41904, D/Sgt Adenden Denis, PW5**, 45 years old attached to Omoro Police Station and previously deployed at Palabek Kal Police Station.
- [41]. PW5 testified that on the 5 th June, 2018 he received a case of aggravated robbery 10 and malicious damage to property against the Three (3) Accused following which he recorded the statement of PW3 and other witnesses whom he did not recall.
- [42]. On the 6 th June, 2018 he proceeded to the scene at Lirri East village where he saw Four (4) demolished grass thatched huts and Two destroyed (2) temporary structures for grinding mills. He then took photographs which he printed and 15 put on the case file and also drew a sketch map which he similarly put on the file. He returned to Police Station to compile the case file which he forwarded together with the suspects to Lamwo Police Station. The suspects were by then already in Police custody at Palabek Kal Police Station.

- [43]. Amongst the destroyed items PW5 saw at the scene were; sauce pans, plates, 2 20 grinding mills. Other items stolen were; - Ushs. 270,000/- (Uganda Shillings Two Hundred Seventy Thousand), television screen and other items he could not recall.
- [44]. PW5 identified the sketch map he drew with a key "A" "E" and photographs he took of the 1 st grinding mill, 2nd grinding mill and grass thatched huts which 25 indicated his force number, rank, name, signature with CRB 14/2018 marked. The photographs were admitted on Court Record without objection from the Defence as Exhibits "PE1" – "PE6". The Sketch map was admitted as "PE7".

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- [45]. In cross examination, PW5 admitted that he visited the scene of crime the day after on the 6 th June, 2018. The Accused were in Police custody having been arrested on the 5 th June, 2018 while others were on the run. He recalled Four (4) suspects though he only saw Three (3) in the dock in Court.
- 5 [46]. The scene had been tampered with. He did not recall the amount of money stolen. He further recalled that Four (4) fully constructed huts were destroyed and One (1) unfinished hut. One (1) hut had damaged household property shown in photograph Exhibit "PE6". He testified that the hut with the household property belonged to PW3 and he did not visit the hut of PW1 which 10 was not among the photographs taken. The grinding mill in Exhibit PE1 was destroyed and salt was poured into it which he extracted and forwarded to the Scene of Crime Officer (SOCO) at the District. The grinding mills were in temporary structures. PW5's testimony was confused, random and inconsistent.

[47]. PW5 claimed that he was informed during an interview with the Accused that 15 they had a land related case and before the incident the Accused had made threats to PW1 in respect of land demanding that he leaves the land, though he did not enquire further.

[48]. In re-examination, he re-iterated that the Four (4) huts belonged to PW3.

20 Defence Submission.

- [49]. The Defence submitted a no case to answer under **Section 73 of the Trial on Indictments Act, Cap. 23** upon conclusion of the Prosecution evidence emphasizing that the burden of prove all the ingredients of the offence lay on the Prosecution beyond reasonable doubt and does not shift with the Accused 25 presumed innocent until proven guilty.
- [50]. The ingredients of aggravated robbery under **Sections 285 and 286(2) of the Penal Code Act, Cap. 120**, include; -
 - i. The theft of property.
 - ii. Use of actual violence at, before or after theft. Or that the accused persons caused grievous harm to the complainant.

- iii. The Accused being armed with a deadly weapon before, during or after the theft.
- iv. The Accused participating in the robbery.
- [51]. In as far as the evidence presented, the Defence argued that considering the testimony of PW1, PW2, PW3, PW4 and PW5 there was a lot of doubt as to whether there was any theft and there were contradictions on what was actually stolen which caused reasonable doubt as to the first ingredient of whether there was theft of property. The ingredient was not proved beyond reasonable doubt.
- [52]. The Defence further submits that there is reasonable doubt as to the second ingredient whether there was actual violence at before or after the theft and the Accused did not attack PW1 who is the complainant nor cause actual injury.
- 15 [53]. In regard to the third ingredient of whether the Accused were armed with deadly weapons before, at or after the theft, the Defence concedes that the Accused were armed with deadly weapons but mitigates by claiming that they were not intended to be used to threaten, scare or harm anyone or aid in theft of property. Instead, they were used to demolish huts. Therefore, the Prosecution has not proved the third ingredient beyond reasonable doubt.
- [54]. In regard to the fourth ingredient of whether the Accused participated in the robbery, the Defence submits that nobody saw the Accused take any money and there were many other persons at the scene. Even considering circumstantial evidence, there is no proof that the Accused took any money and or used violence against the complainant. Reasonable doubt was therefore caused in respect of the fourth ingredient.
- The Defence submits that there are grave contradictions and inconsistencies in [55] the Prosecution evidence in regards to whom demolished the huts and to whom the huts belonged.
- [56]. Further doubt was created in respect of the role of one Opoka Issac who was allegedly seen taking a chicken, flat screen and solar panel from the scene which he allegedly rode off with on a motorcycle.
- [57]. In their view, the Prosecution evidence is doubtful, unreliable and tainted with deliberate falsehoods and must be disregarded by the Court.
- [58]. The Defence concluded by contending that there is no evidence that points to the guilt of the Accused and the Prosecution has failed to establish that the Accused participated in the alleged aggravated robbery. They therefore prayed that the Accused be acquitted of the offence of aggravated robbery.

Prosecution Submissions.

- The Prosecution contested the no case to answer submission and outlined the 15 requirements for establishment of a **prima facie** case. The Prosecution relied on and highlighted the testimony of PW1, PW2, PW3, PW4 and PW35 in respect of the essential ingredients of aggravated robbery.
- [60]. In respect of theft of property, the Prosecution contended that "... cash of 8,270,000/- was indeed stolen on the 5th June, 2018 and whoever took it did so forcefully or fraudulently without any claim of right."

In respect of use of a deadly weapon in the alleged robbery, the Prosecution [61]. highlighted the demolition of the huts by the Accused who had in their possession pangas, axes and slashers and contended that Exhibits "PE1" - "PE6" confirmed that the Accused used weapons thereby proving the ingredient.

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- [62]. There is reference in the Prosecution submission, perhaps inadvertently, to Two (2) gunshots and injury to a right leg which is not consistent with the testimony adduced before the Court.
- [63]. In respect of whether the Accused participated, the Prosecution submits that 5 PW1, PW2, PW3 and PW4 put the Accused at the scene of the crime. Further, the condition of light enabled proper identification, there was proximity of the witnesses to the Accused at the scene and there was familiarity of the witnesses with the Accused.
- [64]. The Prosecution prayed that the Court finds that the Accused have a case to answer.

Representation.

- [65]. Counsel, Mr. Ojara Patrick, Resident Senior State Attorney, represented the Prosecution.
- [66]. Counsel, Ms. Anena Clare Lagoro represented the Accused. The Accused A1, A2 and A3 - were present in Court during the entire proceedings.

Proceedings before the Court.

- [67]. The Prosecution concluded its evidence and closed its case on the 25th January, 2024 whereupon the Defence prayed for timelines to file Written Submissions to submit a No Case to Answer.

- [68]. The timelines were given by the Court with the Defence filing on or before the 29th January, 2024 and the Prosecution filing on or before the 1st February, 2024 and the Ruling fixed for the 15th February, 2024.
- [69]. The Defence filed on the 2nd February, 2024 and the Prosecution also filed on the 2nd 25 February, 2024.
- [70]. At the proceedings on the 15th February, 2024 Counsel prayed that the Court consider the Written Submissions already filed on the Record of the Court.

Considerations and Determination of the Court.

- [71]. Aggravated robbery is provided for by **Section 285 and 286(2) of the Penal Code Act, Cap. 120**. The burden of proof lies on the Prosecution and does not shift. The standard of proof is beyond reasonable doubt.
- **5 See: Sections 101 - 106 of the Evidence Act, Cap. 6; Woolmington Vs. DPP [1935] AC 462; Ssekitoaleko Vs. Uganda [1967] EA 531; and, Miller Vs. Minister of Pensions [1947] 2 ALL ER 372.**
- [72]. In pleading not guilty to the offence, the Accused put all the essential ingredients of the offence of aggravated robbery into issue. The Accused is presumed
- **10 innocent under Article 28(3)(a) of the Constitution**. The prosecution is therefore required to prove all the essential ingredients of the offence of aggravated robbery.
- [73]. At the end of the Prosecution case, the Court is required to determine whether the Prosecution has made a **prima facie** case against the Accused before the 15 Accused is put to his or her Defence. **Section 73 of the Trial on Indictments**
- **Act (TIA), Cap. 23** requires that this Court determines whether or not the evidence adduced has established a **prima facie** case against the Accused. Only if a **prima facie** case is made out against the Accused is he put to his defence.
- [74]. **Section 73(2) of the Trial on Indictments Act** provides: -
- **20 "... where at the close of the prosecution case a prima facie case has not been made out, the Accused would be entitled to an acquittal." See: Wabiro Alias Musa Vs. Republic [1960] EA 184; ...**

[75]. A **prima facie** case is defined as: -

"One where a reasonable tribunal properly directing its mind on the Law 25 and evidence would convict the Accused if no evidence or explanation was set up by the Defence."

"A prima facie case could not be established by a mere scintilla of evidence or by any amount of worthless discredited prosecution evidence. The prosecution though, at this stage is not required to have proved the case beyond reasonable doubt since such a determination can only be made after hearing both the prosecution and defence."

See: **Rananlal T Bhatt Vs. Republic [1957] EA 332.**

- [76]. The considerations that justify a finding of no *prima facie* case established against the Accused are: -
- i. "When there has been no evidence to prove an essential ingredient 10 in the alleged offence.
- ii. When the evidence adduced by the prosecution has been so discredited as a result of cross examination, or is so manifestly unreliable that no reasonable Court could rely on it.
- It is important to note, that for the Accused to be put on defence, Court 15 must be ready to convict if he offers no explanation on the credible, admissible and high quality evidence in support of each ingredient of the offence but not to shift the burden of proof to the Accused as any conviction must be based on the strength of the prosecution."

See: **Uganda Vs. Alfred Ateu [1974] HCB 179.**

20 [77]. The Court would have to determine whether sufficient and reliable evidence has been adduced in proof of each of the essential ingredients and the evidential value depends on the accuracy, consistency, competence, credibility, reliability and authenticity of the witnesses and evidence presented.

See: **Rananlal T. Bhatt Vs. R [1957] EA 332, Criminal Case No. SC No. 25 125/2015 (High Court, Gulu – Justice Mutonyi): Uganda Vs. Akena Nixon Gasfero & 2 Others.**

- [78]. Accordingly, the Court has duly considered the submissions of the respective parties, the testimony of the witnesses presented and the evidence adduced by the Prosecution before the Court.
- [79]. The ingredients to prove beyond reasonable doubt on a charge of aggravated 5 robbery are as follows:
 - i. The theft of property belonging to another.
 - ii. The use or threat of use of violence against the victim.
 - iii. The actual use or threat to use a deadly weapon either at, immediately before or immediately after the theft; or that death, or grievous harm, was 10 caused.
 - iv. The Accused participated in the commission of the theft.

See: Supreme Court Cr Appeal No. 20/1993: Sula Kasiira Vs. Uganda.

- [80]. The Court has duly evaluated the testimony of PW1, PW2, PW3, PW4 and PW5 reproduced *in extenso* herein-above together with the Exhibits admitted on the 15 Record of the Court Exhibit "PE1" – "PE7" and the submissions of both the Defence and the Prosecution filed on Court Record in reaching its determination on whether or not there is a case in respect of each of the Accused "A1", "A2" and "A3" individually to answer as to the offence of aggravated robbery contrary to **Section 285 and 286(2) of the Penal Code, Cap. 120**.
- 20 [81]. The first ingredient, in regards to the theft of property belonging to another, the Court makes reference to and observes that the indictment stipulates that the Accused armed with spears, bows and arrows, pangas and sticks robbed Omony David the Complainant, PW1, of his money UGX. 8,270,000/- (Uganda Shillings Eight Million Two Hundred Seventy Thousand), a mobile phone, TV screen, 25 amplifier and cooking utensils all valued at UGX. 10,000,000/- (Uganda Shillings Ten Million). The case summary mentions other property items including; chickens, solar panel, accumulator, flask, beans, simsim, clothes and inverter.

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- [82]. This is instructive because in his testimony PW1, as the complainant, testified that the only property stolen was money in the sum of Uganda Shillings Eight Million Two Hundred Seventy Thousand (Ushs. 8,270,000/-).
- [83]. In regard to property destroyed, PW1 testified that to his recollection the 5 destroyed properties included; - a mattress, flat screen television (video), radio, tea flask, basin, cooking utensils, clothes, maize (1 kaveera, 1 sack 100kgs), simsim (1 kaveera, ½ sack – not sure of the weight), beans (4-5 basins – about ½ sack) and 1 box white star laundry soap.
- [84]. This effectively eliminated items claimed to have been stolen and instead in a 10 significant reversal were classified by the Complainant, PW1, as destroyed. This as shall be seen would have a significant impact on the scope of the considerations of the Court in regard to the offence.
- [85]. The Court considers that PW1, as the complainant, and specified in the indictment was best placed to identify in his testimony items stolen as distinct 15 from items destroyed which would be entirely within his knowledge.
- [86]. In apparent and stark contradiction, Prosecution witnesses especially PW4 who claimed to have observed A1 give one Opoka Isaac a chicken which he ran away with and also claimed to have seen the same Opoka Isaac ride off on a motorcycle with a solar panel and flat screen (television) find themselves being 20 undermined by the testimony of the Complainant as to items allegedly stolen.

- [87]. Accordingly, the Court finds that the even PW1, as the Complainant, contradicted himself in his own testimony initially asserting that A1, A2 and A3 carried away some of his properties and in fact almost immediately abandoned his original claims to the properties listed being stolen other than money.
- 25 [88]. The Court further finds that the Prosecution witnesses PW4 and PW5 contradicted PW1, the complainant, in regards to items allegedly stolen which therefore renders their evidence not credible. PW5 was grossly unreliable.
- [89]. These inconsistencies and contradiction cast doubt on the first ingredient required to be proved by the Prosecution regarding whether there was theft of the stipulated properties. PW4's testimony tends toward being untruthful.
- [90]. This, therefore, leaves only for the consideration of the Court whether the 5 Accused A1, A2 and A3 stole the sum of UGX. 8,270,000/- (Uganda Shillings Eight Million Two Hundred Seventy Thousand) from the complainant's hut which he testified was under his bed. **Exhibit PE6** is instructive and is the hut with PW1's belongings. There is no bed simply Two (2) mattresses on the floor.
- [91]. In their evidence in chief and cross-examination the Prosecution witnesses PW1, 10 PW2, PW3, PW4 and PW5 testified that they did not see any of the Accused A1, A2 and, or A3 removing or in possession of any money at the scene. Moreso, PW1 who was present during the demolition of his hut confirmed that he did not see any of the Accused remove money from the hut. According to PW1, it is the Accused who amongst themselves know who took the money.
- 15 [92]. The Court finds that their testimony was consistent in that regard and credible.
- [93]. The testimony of PW4 to the effect that he observed A2 hand one Opoka Isaac a black plastic bag (*kaveera*) does not add any value to the Prosecution case since the Complainant did not even mention that the UGX. 8,270,000/- (Uganda Shillings Eight Million Two Hundred Seventy Thousand) allegedly stolen was 20 contained in such a plastic bag. In any case, PW4 did not testify as to its contents.
- [94]. Theft is provided for by **Section 254 of the Penal Code Act, Cap. 120** and its ingredients, including; - unlawful taking of property belonging to another without claim of rights and with intention to permanently deprive. Once asportation occurs without consent of the one in possession theft is proved.
- 25 [95]. In view of the evidence considered, the Court finds that the Prosecution has not proved the first and indeed core ingredient of theft of property beyond reasonable doubt in respect of any of the Accused A1, A2 and A3.
- [96]. The Court considers it curious and unbelievable that the Complainant, PW1, who claims to have had Uganda Shillings Eight Million Two Hundred Seventy Thousand (Ushs. 8,270,000/-) in his hut under his bed did not attempt to retrieve or salvage such a sum of

money when he observed his hut being demolished. 5 His apparent passivity casts his claims as to the existence of the funds in doubt. Also noteworthy is that his wife, with whom he presumably shared the hut where he slept and was the other person most likely to know about any funds in the hut, observed the demolition and did not give any testimony to corroborate PW1 on the existence of funds. Court has scrutinized **Exhibit PE6**, the Complainant's 10 hut, with no bed as claimed and simply Two (2) mattresses on the floor.

- [97]. It is trite Law that once an essential element (ingredient) of an offence is not proved, it cannot be said that a **prima facie** case has been established. Considering that the first and primary ingredient has not been proved the Court considers the other elements moot.
- 15 [98]. Notwithstanding, in regards to the second, third and fourth ingredients of whether there was use of violence, possession of deadly weapons and participation of the Accused A1, A2 and A3 the Court considers the actions would appear to have been focused on the destruction of property and not theft (robbery) which gives credence to the insinuations of PW5 that there may have 20 been a land dispute between the Complainant and the Accused who are apparently related and neighbours.
- [99]. The Court is of the considered view that the Accused A1, A2 and A3 therefore have No Case to Answer since the Prosecution has not established a **prima facie** case. The Accused A1, A2 and A3 are thereby acquitted of the offence of 25 aggravated robbery contrary to **Section 285 and 286(2) of the Penal Code, Cap. 120** and therefore discharged unless held on any other Lawful charge.
- [100]. It is so ordered.

Orders of the Court.

- [101]. Accordingly, the Court makes the following Orders:
- 1. The Prosecution has not established a **prima facie** case against the Accused A1, A2 and A3 who therefore have No case to Answer.
- 5 2. The Accused A1, A2 and A3 are thereby acquitted and discharged by the Court.

Signed and Dated on the 5th day of March, 2024. (High Court, Kitgum).

Philip W. Mwaka

10 Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Ruling has been delivered at Kitgum High Court Circuit this **Monday, the 5th day of March, 2024 at 2:00pm** and the Counsel, Accused and persons present are recorded hereunder.

- 15 1. Prosecution Counsel Mr. Ojara Patrick, Resident Senior State Attorney.

- 2. State Brief/Defence Ms. Anena Lagoro Clare.
- 3. Court Clerk/Interpreter Mr. Atube Michael.
- 4. Accused: A1 Komakech Walter Alias Ongwech, A2 Nyeko Richard and A3 – Bongomin Okello Joseph.
- 20 5. Assessors: Ms. Lamunu Esther and Mr. Okumu Raymond.

Philip W. Mwaka

Acting Judge of the High Court.

5 th day of March, 2024.

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