

UGANDA / JUDGMENT

# Uganda v Nakaweesi Jane and Others (Criminal Session No. 191 of 2023) [2025] UGHC 499 (10 July 2025)

[2025] UGHC 499

COURT  
High Court of Uganda

BEFORE  
Lubega, J

CASE / FILE NUMBER  
Criminal Session No. 191 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE  
CRIMINAL SESSION NO. 191 OF 2023 CRB NO. 003 OF 2023

UGANDA ..... PROSECUTION

VERSUS

- 1. NAKAWEESI JANE
- 2. SENGABI RONALD
- 3. KAYIWA ROGERS ..... ACCUSED

BEFORE: HON. JUSTICE LUBEGA FAROUQ JUDGMENT

## 1. Introduction:

2. This is the judgment in a criminal trial where the accused persons were jointly indicted with the offence of aggravated Robbery C/S 266 and 267 of the Penal Code Act, Cap 128.

## 3. Background:

- 4. The Prosecution case was that on the 3rd day of January, 2023, the accused persons, Nakaweesi Jane (A1), Ssengabi Ronald (A2), and Kayiwa Rogers (A3) while at Naporu village in Mbale District, robbed a one Ochom Moses Ejiet of his money amounting to USD 500 and Ugx 700,000/= (Seven hundred thousand Uganda shillings), and his other property including a driving permit and two credit cards, and or immediately after the time of the said robbery they were in possession a deadly weapon, to wit; a panga.

- 5. It is imperative to note that at the commencement of this trial, A1- Nakaweesi Jane pleaded guilty under plea bargain, and was accordingly sentenced. A2-Ssengabi Ronald and A3- Kayiwa Rogers pleaded not guilty to the charge, and the matter proceeded against them to full trial. A3 was acquitted on a no case to answer. Therefore, this judgment is only in respect of A2.

## 6. Burden and standard of proof:

According to the locus classicus case of **Woolmington v DPP (1935) AC 462**, the Burden of Proof in criminal trials lies on the Prosecution all through a criminal trial. This burden does not shift onto the accused except where there is a statutory provision to the contrary. **See also: Article 28(3) of the Constitution of Uganda, Basita Hussein V. Uganda SCCA No. 35 of 1995,**

- 7. The standard or threshold required to prove a criminal case against the accused is beyond reasonable doubt as per the decision in the case of **Miller V Minister of Pensions [1947] 2 All ER 372**.
- 8. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book **Wharton's Criminal Evidence (at p. 31, Vol. 1 of the 12th Ed.)** as follows:

"It is difficult to define the phrase 'reasonable doubt'. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster case. He says: 'It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.'"

## 9. Representation:

- 10. The hearing of this case, Ms. Asimwe Racheal represented for Prosecution while the accused was represented by Ms. Nancy Cheptiok on State brief.
- 11. To prove its case against the accused persons, prosecution called five witnesses, that is; PW1-Byakika Esther, PW2- Nakaweesi Jane, PW3- ASP Kisolo Samuel Rogers, PW4- Kukina Tom and PW5- D/C Engwenu

Lambert. Prosecution also tendered in court the sketch plan for the scene of crime-PEX1, the photos taken at the scene crime-PEX2, sample of the cut chain link- PEX3, Itel mobile phone- PEX4, medical examination report of an injured person (PF3)-PEX5, Court order authorizing inspection of a document- PEX6, and call data report-PEX7. With that catalogue of evidence, the prosecution closed its case. On the other hand, the accused was the sole witness for the defence.

## 12. Analysis of court.

13. Section 266 of the Penal Code Act, Cap. 128 provides that-

"Any person who steals anything and at or immediately before or immediately after the time of stealing it uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained commits the felony termed robbery."\*

- 14. Where an offence of robbery is committed under the circumstances indicated in Section 267 (2) of the Penal Code Act, Cap. 128, the offence is aggravated, and the offender is liable to suffer death on conviction by the High court.

- 15. Section 267 (2) of the Penal Code Act, Cap. 128 is to the effect that-

"Where at the time of, or immediately before, or immediately after the time of the robbery, an offender uses or threatens to use a deadly weapon or causes death or grievous harm to any person, such offender and any other person jointly concerned in committing such robbery shall, on conviction by the High Court, be sentenced to death."\*

- 16. To prove the offence of aggravated robbery, prosecution must four ingredients beyond reasonable doubt, that is-

- \*(a) Theft of property;\*

- \*(b) Use of violence or threat to use violence;\*

- \*(c) Possession of a deadly weapon during or immediately after the commission of the theft;\*

- \*(d) Participation of the accused.\*

## 17. \*Theft of property\*

18. Section 237(1) of the Penal Code Act. Cap. 128 provides for the definition of theft. It thus states that-

> "A person who fraudulently and without claim of right takes anything capable of being stolen, or who fraudulently converts to the use of any person other than the general or special owner of anything capable of being stolen, is said to steal that thing."\*

- 19. On this ingredient, Prosecution is required to prove that an item capable of being stolen was taken from the complainant with the intention to permanently deprive him of the same. There must be proof of what amounts in law to an asportation (that is carrying away) of the property of the complainant without his consent or lawful claim of right.

- \*20.\* In the case of **Sula Kasiira v Uganda, Supreme Court Criminal Appeal No.20 Of 1993** the following legal position from **Halsbury's Laws of England, Vol. 10, 3rd Edition, paragraph 1484** was cited with approval in regard to the act of taking or carrying away as an element of theft;

"There must be what amounts in law to an asportation (that is carrying away) of the goods of the prosecutor without his consent; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they are not entirely carried off. The removal, however short the distance may be, from one position to another upon the owner's premises is sufficient asportation, and so is a removal or partial removal from one part of the owner's person to another."\*

- 21. PW1-Byakiika Esther testified that on 3/1/2023 at around 10pm thieves broke into her house situate at Naporu village in Mbale District, beat his son Moses Ejiet, and stole his money amounting to USD 500 and Ugx 700,000/= (Seven hundred thousand Uganda shillings).
- 22. Nakaweesi Jane (A1) who testified as PW2 admitted that she stole the money belonging to Moses Ejiet, the complainant's son. That she did so because she wanted money to treat her sick mother.
- 23. Basing on the above highlighted prosecution evidence which was not disputed by the defence. I am convinced that valuable property belonging to Moses Ejiet, to wit; money was taken away from him without his consent and without any lawful claim of right over it. I am therefore satisfied that this ingredient of the offence was ably proved by the prosecution beyond reasonable doubt.

#### 24. \*Use of violence or threat to use violence\*

- 25. The prosecution is required to prove that during the commission of that theft, the assailants used or threatened to use violence. For this ingredient. There must be proof of the use or threat of use of some force to overcome the actual or perceived resistance of the victim.
- 26. PW2 Nakaweesi Jane told court that she was at home when the attackers broken into the complainant's house. That she heard a scuffle happening between Moses Ejiet and the attackers in the living room.
- 27. PW1 testified that during the robbery, her son, Moses Ejiet (the victim) was hurt on the shoulder, and that he had a big cut on the hand. She further stated that they recovered a pestle outside the house which the victim told him was used by the assailants to assault him during the attack.
- 28. It was not contested by the defence that the victim was hurt during the incident of robbery, which saw him sustain injuries on his body.

- 29. In that view, I have no reason to doubt that violence was used on the victim in the process of robbing money from him. Therefore, I hold

that prosecution was able to prove the ingredient of use or threat of use of violence beyond reasonable doubt.

### **30. \*Possession of a deadly weapon during or immediately the commission of the theft.\***

- 31. The prosecution, in a case of aggravated robbery must prove that the assailant used or threatened to use "a deadly weapon. (See: Uganda

### **Vs. Okello (1992) HCB 68).**

- 32. According to Section 267(3) (a) (i) of the Penal Code Act. Cap. 128, a deadly weapon is defined-

> \*"To include any instrument made or adopted for shooting, stabbing or cutting or any imitation of such instrument."\*

- 33. PW1 testified that when she received information of the robbery that was happening at home, she hurriedly drove back home. On reaching there, she found when the thieves had fled. That as they walked around to see how the attackers gained access to the house, she saw a pestle outside. Her son, Moses Ejiet (the victim) told her that it was the one which the robbers used to beat him. She further testified that during the robbery, the victim was hurt on the shoulder, and that he had a big cut on the hand.
- 34. I have looked at the summary of the case which was availed to the accused at the time of his committal for trial. It indicates that the attackers who broke into the complainant's house were in possession of a panga which was given to them by Nakaweesi Jane (A1). Also, the deadly weapon described in the particulars of the offence on the indictment is a panga.
- 35. But in her evidence, PW1 told court that the victim told her that the assailants assaulted him using a pestle. Indeed, PW1 testified that a pestle was found in the courtyard, after the assailants had fled the scene. This is a material departure from the contents of the summary of the case, incitement.
- 36. The evidence of PW1 establishes new material facts which do not form part of the summary of the case. In her evidence, she states that the assailants had a pestle which in the theory of the prosecution case was a deadly weapon. While the summary of the case and the indictment indicate that the deadly weapon used by the assailants was a panga. In my view, the present scenario is akin to amendment of evidence which is improper. This fact was not disclosed to accused person to enable him and his advocates prepare for defence in that line.

- 37. If prosecution were to have an open latitude to depart from the summary of the case, the principle of trial by ambush would have no meaning in our jurisprudence. And, this would put in futile the accused's non-derogable right to fair hearing guaranteed under Article 28 of the Constitution of the Republic of Uganda.
- 38. I am fortified in this view by Section 80 of the Trial on Indictments Act, Cap.25 which provides that-

\*"No additional material fact which does not form part of the summary of the case against an accused person shall be alleged by the prosecution unless the prosecution has given reasonable notice in writing to the accused person or his or her advocate of the intention to allege that fact, but no such notice need be given if the prosecution first becomes aware of it on the day on which it is alleged in evidence during the trial."\*

39. In any case, the pestle which PW1 talked about was not exhibited in court, not even a photograph of the same was tendered in court to support the prosecution case. The position of the law is that as much as possible, the weapon used in an attack should be exhibited in Court, and where it is not, it should be explicitly described. The description is required in assisting the court to determine whether the said instrument or weapon was lethal or not.

40. In the case of **Mustesaira Musoke Vs. Uganda, SCCA NO. 17 of 2009**, when faced with the issue relating to proof of possession of a deadly weapon, the Supreme Court held that-

> \*"Unless the weapon stated to have been used is produced in court or sufficient evidence is adduced in court to describe that weapon, reliance on such injury alone would in our view not be sufficient evidence to prove the ingredient of a deadly weapon in an indictment of aggravated robbery."\*

- 41. In the context, the prosecution ought to have exhibited the pestle or its photograph to clear the disparity in summary of the case and PW1's testimony. Further still, PW1 told court that she was only told by the victim that the assailants used a pestle to assault him. This means that PW1 was not a direct witness to this offence. Her evidence is therefore hearsay.
- 42. It is settled law that oral evidence must be direct in all cases whatsoever. Section 59 (a) of the Evidence Act, Cap. 8 provides that-

\*"Oral evidence must, in all cases whatever, be direct, that is to say, if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw...."\*

43. In the case of **Lugemwa Vs. Uganda, Court of Appeal, Criminal Appeal No. 216 of 2017**, while citing the case of **Badru Mwindu Vs. Uganda SCCA No. 15 of 1997**, it was held inter alia that-

> \*"Hearsay evidence is only admissible and can only be relied upon if the totality of the prosecution evidence points to the guilty of the accused person"\*

44. On considering the totality of the prosecution evidence as highlighted above, I am unconvinced that a deadly weapon was used in the offence of aggravated robbery herein, or that the assailants were in possession of the same. It is therefore, my finding that the prosecution failed to prove this ingredient beyond reasonable doubt.

**45. \*Participation of the accused in the commission of the offence.\***

- 46. This ingredient can be proved by direct or circumstantial evidence. In this case.
- 47. Prosecution largely relied on the evidence of PW1 who testified that she identified Ssengabi Ronald (A2) from the CCTV camera footage as one of the robbers who broke into her house and stole money from her son Moses Ejiet. It is worth noting that the said CCTV footage was not exhibited in court, and even the officers who carried out investigations in this matter told court that they did not have an opportunity to watch that footage.
- 48. It is trite law that a video recording is regarded as a document (see: **R v Daye 1908 KB 330 at 340**). According to Section 2 (1) of the Evidence Act, Cap. 8 a document means-

"Any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."\*

- 49. It therefore falls that if prosecution intended court to rely on the CCTV camera footage from which PW1 allegedly identified the accused person, it was required to follow the rules of admissibility of electronic evidence provided under the law.
- 50. In other words, it was improper for prosecution to rely on the evidence of PW1 to speak for a document in form of a video footage. The general rule is that a document speaks for itself. This means that when a document has been properly admitted as evidence in court, its contents are considered to be the best evidence of its own meaning, and should be interpreted based on its express terms, without the need for extrinsic evidence to explain or contradict its contents. (Ref. **Section 91 of the Evidence Act Cap. 8**)
- 51. Secondly, PW5- Engwenu Lambert testified that that he conducted the tracking of phone number 0709975857 which was used by AI-Nakweesi Jane to find out the people she was coordinating with during the robbery incident. That he obtained call data which showed that there was continuous communication between A1 and the phone Number 0750628391 in the name of Mulira Ibrah. He further told court that the communication between A1 and A2 started on 29/12/2022, and that the two communicated the whole day, up to 9pm on the fateful day.
- 52. PW3- Kisolo Samuel Rogers also testified that the accused persons A2 and A3 were arrested because A1 implicated them in her statement she made while at police.
- 53. When A1 Nakaweesi Jane was called to testify for the prosecution, she told court that she did not know A2 and A3. That she only got to know them at police upon their arrest.

- 54. In his defence, the accused (A2) testified that sometime in 2022, a one Ssegawa John stole his phone, he reported a case of theft at Kasasa Police Station where he was given a police reference number to arrest him. That when Ssegawa John learnt that A2 had reported him at police, he fled the village and relocated to Kampala.
- 55. The accused (A2) further testified that the phone number/line which was contained in the stolen phone was in his real name Mulira Ibrahim. That when the police arrested him he was surprised to find the said Ssegawa John at police. He also clarified that he got to know A1 upon his arrest.
- 56. From the evidence of the accused (DW1), it appears to me that the phone number which was tracked by PW5 was not in possession of, or being used by the accused person at the time of the commission of the offence. This is because the accused irrefutably told court that his phone containing a phone line in his name was stolen by Ssegawa John prior to the commission of the offence hereof. That the said Ssegawa

John disappeared from the village when A2 reported him to police a case of theft against him.

- 57. This area was not thoroughly investigated by police, yet the accused indicated that he revealed it to police at the time of his arrest. No statement was obtained from Ssegawa John, yet PW1, PW3 and PW5 all told court that he is the one who linked the police to the accused for his arrest.
- 58. I acknowledge that the accused (A2) did not produce in court the evidence of the police reference number about the theft case of his phone which he reported to police for reasons that he had it at home. However, prosecution did not contest this fact. On that account, I am persuaded by the defence case, and find it believable.
- 59. I would therefore agree with the opinion of the assessors that the prosecution failed to prove beyond reasonable doubt the participation of (A2) Ssegabi Ronald in the commission of the offence of aggravated robbery.
- 60. In the upshot, I acquit Ssegabi Ronald (A2) for the offence of aggravated robbery. He is hereby set free and shall be released forthwith unless if held on other lawful charges.
- 61. I so order

..... LUBEGA FAROUQ Ag. JUDGE

\*Judgment delivered in open court in the presence of the accused and Advocates for both sides on the 10th day of July, 2025\*

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