

UGANDA / JUDGMENT

**Uganda v Otim Peter Alias Master
(Criminal Session Case 127 of 2024)
[2025] UGHC 526 (10 July 2025)
[2025] UGHC 526**

COURT
High Court of Uganda

BEFORE
Mwaka, J

CASE / FILE NUMBER
Criminal Session Case 127 of 2024

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

CRIMINAL SESSION CASE No. 127/2024

(ARISING FROM CRIMINAL CASE - CRB No. 560/2019: AGAGO).

5 UGANDA PROSECUTOR

Versus

OTIM PETER Alias MASTER ACCUSED

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

JUDGEMENT.

10 Introduction and Background.

[1]. The Accused, **Otim Peter Alias Master**, was indicted on a count of Aggravated Robbery contrary to **Sections 266 and 267(2) of the Penal Code Act, Cap. 128**. The particulars of the offence in the indictment are that the Accused on 13th December, 2019 at Lumule West Village in Agago District robbed Ocen Aldo of 15 a motor cycle Reg. No. UEX 047J a red Bajaj Boxer valued at approximately UGX. 4,000,000/- (Uganda Shillings Four Million) and immediately before or immediately after the robbery used a deadly weapon to wit a gun on him. The Accused was

indicted on 12th August, 2020, committed to the High Court for Trial on 15th September, 2020 and arraigned on 19th December, 2023 where he pleaded not guilty. The Court determined on 5 20 th March, 2024 that a *prima facie* case had been made against him and he had a case to answer. He was subsequently put to his Defence where he elected to solely make a statement not on oath following which the respective Parties filed final submissions. Ms. Lamunu Esther and Mr. Okumu Raymond were the appointed Assessors.

1 | Page

The Prosecution's Case and Submissions.

[2]. The Prosecution presented the testimony of two (2) witnesses - PW1, Ocen Aldo, the complainant and PW2, Ochieng Tito, a neighbour of the complainant. The first, PW1, testified that on the night of the 14th December, 2019 as he 5 returned to his home at Lumule West Village (Cell), Lumule Ward, Adilang Town Council in Agago District riding his motorcycle Reg. No. UEX 047J and upon entering his compound at about 09:30pm he found the Accused in his compound who came from the corridor of his home and asked him whom he was to which he responded demanding to know why the Accused was asking him the questions 10 from his home. The corridor was between an incomplete iron sheet (mabaati) house and a grass thatched hut which was where he intended to park his motorcycle. The Accused then demanded money from him to which he replied that he had none and then threatened to kill him if he was not given money. It was at this point as he was turning his motorcycle in the narrow corridor that the 15 Accused removed a gun he was carrying on his back and fired a bullet at him which missed. A second bullet fired hit his right leg causing him to fall and he entered the mabaati house which had no door. The Accused followed him into the mabaati house as he crawled into and entered the bedroom and continued firing the gun three (3) more times still demanding money from him which he 20 did not give and then exited the house and went to the sitting room window still demanding money but later stated that if he did not have money he would take the motorcycle instead. The Accused then began to roll the motorcycle away. Meanwhile, PW1's wife and children had started to make an alarm. The Accused briefly parked the motorcycle and continued firing in the air many times and 25 subsequently rolled the motorcycle along the roadside and set it on fire. It was the testimony of PW1 that the Police subsequently recovered up to twenty-seven (27) cartridges of bullets from his compound fired by the Accused.

- [3]. After the Accused had left, he exited the house and made an alarm to which several persons responded including - Oyoo Charles, Kony Willy and Orach Walter. He was initially taken to D. F. Medical Center in Adilang Town Council for treatment where he was referred to Kalongo Hospital to which he was 5 transferred by an ambulance and spent five (5) days receiving treatment.

- [4]. In as far as identification of the Accused, PW1 testified that he knew the Accused who lived near him in the same Ward, Lumule West, and had known him for about ten (10) years and he also recognized the Accused that night by way of a solar light in his compound during the encounter at his home which lasted about 10 twenty (20) minutes and during which they were about three (3) meters apart. The Accused allegedly continued to "disturb" residents of the area until he was arrested about a year later.
 - [5]. As regards the motorcycle, PW1 testified that it was recovered by the Police in good condition and much as it had been set on fire, the fire had been put out 15 quickly and the motorcycle was taken to Adilang Police Station.
 - [6]. In cross examination, PW1 maintained that he identified the Accused by the solar light adding that he wore a black jacket and black trousers but then stating the period of the encounter as three (3) minutes as opposed to the earlier twenty (20) minutes and the distance between them now as 1 ½ meters and also stating that 20 whereas he had previously known the Accused for ten (10) years prior to the incident the Accused had at the time been in the area for about two (2) months.
 - [7]. In addition, PW1 admitted that prior to the arrest of the Accused, two (2) other persons one called Bishop and the other Opio had been arrested initially stating that it was because he suspected their involvement since they lived together with 25 the Accused but later stating that while they lived in separate places they often congregated and moved together. He insisted that he was attacked by one person only being the Accused who carried a small gun like a machine gun.
- [8]. It was his evidence that no grudge existed between him and the Accused and nothing was stolen other than the motorcycle which was found abandoned about forty (40) meters away where it had been rolled to and set ablaze.
- [9]. The only other person who had been in or around the compound when the 5 incident occurred was Ochieng Tito, PW2.
- [10]. In re examination, PW1 testified that of the other suspects Opio lives in Lumule East Village and Bishop lives in Alokokiwinyo Central Village. He confirmed that no other property had been taken from his home than the motorcycle which was recovered.
 - 10 [11]. The second Prosecution witness Ochieng Tito, PW2, a neighbour and in-law of PW1 testified that on the night of the 14th December, 2019 at about 09:30pm PW1 had given him a lift on his motorcycle as he was returning from the Centre and dropped him at the front door of his home before wishing him goodnight and continuing on. Before his wife could open the door so that he could enter 15 his house, he heard a voice coming from PW1's home threatening to shoot him if he ran and then ordering him to pick all the money in his house and hand it over. Two (2) gun shots rang out and then the firing seemed to have turned in his direction prompting him to take cover on the ground and he moved to the side of his compound until the fire was directed away when he got up and ran to 20 Adilang

Police Station while making an alarm where he reported the incident. Later, two (2) Police Officers were assigned to intervene and he went with them to PW1's home at about 10pm where they found that he had already been taken to hospital with a gunshot wound. However, they found the motorcycle which had been rolled away and set ablaze and together with Police he put out the fire.

- 25 [12]. As regards the motorcycle, PW2 stated that he did not recall the number plate of the motorcycle and it was dark and the motorcycle was taken to Adilang Police Station the same day.

4 | Page

- [13]. In respect of identification of the Accused on the night of the incident, it was PW2's testimony that he did not see the assailant because he was running for his life and it was dark. He, however, claimed that he had known the Accused for many years who had lived in the area for a while with his uncle Ochieng David.
- 5 [14]. In cross examination, he admitted that he did not see the Accused fire the bullets and neither did he see the Accused roll the motorcycle away. There was no reexamination.
- [15]. The Court observes that the Prosecution had indicated that it intended to call the Investigating Officer and a Medical Officer for which witness summons were 10 issued to no avail. The Prosecution closed its case without presenting to the Court the evidence of the Investigating Officer or the Medical Officer.
- [16]. In its final submissions, the Prosecution citing **inter alia** **Woolmington Vs. DPP [1935] AC 462; Miller Vs. Minister of Pensions [1947] 2 ALL ER 372; and, Sekitoleko Vs. Uganda [1967] 1 EA 531** and highlighting the testimony of its 15 witnesses presented contended that it had discharged the required burden of proof in criminal Trials of beyond reasonable doubt and citing **HCT CR SC No. 351/2020: Uganda Vs. Wanyama Ivan & 3 Others** submitted that it had duly established the essential ingredients of the offence of Aggravated Robbery which include - (1). Theft of property belonging to the victim. (2). Use of actual 20 violence at, before or after the theft or that the Accused caused grievous harm to the victim. (3). The Assailant was armed with a deadly weapon before, during or after the theft and use of the deadly weapon at or immediately before or immediately after the robbery. (4). The Accused participated in the robbery.
- [17]. In regard to the first essential ingredient being the alleged theft of PW1's red 25 Bajaj Boxer Motorcycle Reg. No. UEX 047J, the Prosecution contended that PW1's testimony was corroborated by his neighbour, PW2, with whom he was the same night shortly before the incident and gave a ride on the motorcycle.

- [18]. Theft, the Prosecution submits, is provided for under **Section 237(1) of the Penal Code Act, Cap. 128** and the actions of the Accused in forcefully taking away the motorcycle UEX 047J from PW1's home without any claim of right and rolling it away to the road side and then setting it on fire amounts to theft 5 and would impliedly amount to the Accused intending to permanently deprive PW1 of his property. This, the Prosecution submitted, suffices to prove the ingredient beyond reasonable doubt.
- [19]. In regard to the second essential ingredient being the alleged use of actual violence at, before or after the theft or the Accused allegedly having caused 10 grievous harm to the victim, the Prosecution submitted that this was established by PW1 having been shot in the right leg as a result of which he was taken for treatment at D. F. Medical Center in Adilang Town Council and later referred to Kalongo Hospital where he was hospitalized for five (5) days. The Prosecution submitted that the testimony of PW1 and PW2 establishes that the incident was 15 chaotic, traumatic and not only did PW1 experience an apprehension of fear but sustained the gun shot injury to his right leg as a result. This, the Prosecution submitted, suffices to prove the ingredient beyond reasonable doubt.
- [20]. In regard to the third essential ingredient being the alleged use of a deadly weapon defined in **Section 267(3)(a)(i)(ii)(b) of the Penal Code Act, Cap. 20 128** to wit a gun, the Prosecution submitted that this is stated and established in the testimony of PW1 and corroborated by PW2 and that it is their case that twenty-seven (27) spent cartridges of bullets fired by the Accused on the night of the armed robbery were recovered in PW1's home's compound in the morning following the incident. Moreover, PW1 was shot in the right leg by the 25 Accused and the matter was reported to Adilang Police Station. This, the Prosecution submits, suffices to prove the ingredient beyond reasonable doubt.
- [21]. In regard to the fourth ingredient being the alleged participation of the Accused in commission of the offence, the Prosecution cites **inter alia** **Section 133 of the Evidence Cap, Cap. 8** in respect of there being no requirement for a particular number of witnesses to prove any fact and **Abdullah Nabulere & Others Vs.**
- **5 Uganda: Criminal Appeal (CA)No. 9/1978** in respect of conducive conditions favouring identification including: - (1). The conditions of light and lighting available. (2). The proximity of the Witness to the Accused. (3). The familiarity of the Witness with the Accused. (4). Other factors - and submitted that the quality of the evidence as opposed to number or quantity of witnesses matters.
- 10 [22]. It is the Prosecution's case that the testimony and evidence of PW1 as a sole identifying witness established that he had properly identified the Accused whom he previously knew as a village mate and during the encounter was in close proximity of about three (3) meters interacting for up to three (3) minutes with the incident lasting up to twenty (20) minutes and whom he had also identified 15 by the use of solar lights attached to his house in his compound. These, the Prosecution submitted, were sufficient and appropriate conditions for identification of the Accused during the incident.

- [23]. In sum, the Prosecution prayed that the Court finds that all the ingredients of the offence of Aggravated Robbery have been established against the Accused 20 and that he is convicted.
- [24]. In concluding, the Prosecution submitted in respect of the Accused's unsworn statement made to the Court in which he had raised a Defence of alibi stating that at the time of the incident he was working in Gulu City at the saloon of one Odera Calvin and he had left Adilang Town Council in February, 2019 - that 25 once an Accused has been positively identified during the commission of a crime his claim that he was elsewhere must fail. **See: Supreme Court Criminal Appeal No. 28/1994: Alfred Bumbo & 3 Others Vs. Uganda.**

7 | Page

The Defence Case and Submissions.

- [25]. Upon this Court finding that the Prosecution had established a **prima facie** case of Aggravated Robbery against the Accused and that he had a case to answer, the Defence opened its case. **See: Section 73 Trial on Indictments Act, Cap. 25.**
- 5 [26]. The Accused elected to make an unsworn statement to the Court and stated that - he knew the complainant PW1 and they had lived as neighbours in Lumule West Village, Adilang Sub County in Agago District and on the night of the alleged incident on the 14th December, 2019 at 9:30pm he was in Gulu City where he was working in the saloon of one Odera Calvin. The Accused insisted that he 10 did not know anything about the matter he was charged with before the Court explaining that he was arrested at Pajule Town Council in Pader District on the 4 th February, 2020 whilst returning to Adilang Sub County in Agago District from Gulu City. It is his claim that the Police Officers that arrested him did not state the reasons for his arrest and he was informed at Patongo Police that they had 15 been searching for him for a long time over a case of Aggravated Robbery. In response, he informed the Police of his absence from Adilang Sub County having left on the 9th April, 2019 and he had lived in Gulu City for about eight (8) months. The Defence closed without any witnesses presented for the Accused.
- [27]. In his final submissions, the Accused similarly cited **Woolmington Vs. DPP 20 [1935] AC 462** and submitted that the burden of proof lay on the Prosecution and that he is not required to prove his innocence but "**a doubt**" raised as to his guilt would result in his acquittal.
- [28]. As regards the essential ingredients of the offence of Aggravated Robbery, the Accused reiterated his unsworn statement and submitted that the Prosecution 25 had failed to prove the essential ingredients of the offence beyond reasonable doubt.

- [29]. In regard to the first ingredient of the alleged theft of the Complainant's red Bajaj Boxer Motorcycle Reg. No. UEX 047J, the Accused's primary defence was his alibi that he was in Gulu City on the said date and at the said time which he contended that the Prosecution did not rebut.
- 5 [30]. It is the Defence case that there were numerous shortcomings in the Prosecution's case, including: - firstly, the indictment states that the offence allegedly occurred on the 13th December, 2019 at 11pm while in contradiction PW1 and PW2 testified that the offence occurred a day later on the 14th December, 2019 at 9:30pm; secondly, the motorcycle alleged to have been stolen 10 from the Complainant was not exhibited in the Court and neither was a photograph of it tendered in evidence nor was any finger print evidence tendered indicating that it had been handled by the Accused or which would have had the effect of putting him at the scene of the crime thus raising doubt as to the guilt of the Accused; thirdly, PW2 admitted that he did not see the Accused let alone 15 see him rolling the motorcycle or with the motorcycle and therefore there was no corroboration with PW1 in respect of identification of the Accused or the conditions for identification and the Court should warn itself before relying on PW1's uncorroborated evidence; fourthly, the conditions were not suitable for identification with PW2 having admitted that it was dark and PW1 did not testify 20 as to the strength of the solar light and further that their interaction was brief and thus PW1 could not have positively identified the Accused.
- [31]. The Defence submitted that the Prosecution had failed to prove the essential ingredients of theft beyond reasonable doubt.
- [32]. In regard to the second ingredient being alleged use of actual violence at, before 25 or after the theft or grievous harm allegedly caused to the Complainant, the Defence submitted that whereas PW1 testified that he had been shot and received treatment no medical report was tendered in evidence to establish this.
- [33]. Moreover, the Police did not recover a gun from the Accused nor was a gun exhibited in Court. PW2 did not see the Accused holding a gun either or shooting PW1. In his view, the gun is still out there with the real thief as he is innocently held in Prison. The Defence submitted that the Prosecution has not established 5 this ingredient beyond reasonable doubt.
- [34]. In respect of the third ingredient being the use of a deadly weapon before, during or after the theft or robbery referring to the definition of a "deadly weapon" in **Section 267(3) of the Penal Code Act, Cap 128**, the Defence submitted that the gun PW1 alleged he was shot with by the Accused was not recovered or 10 tendered in evidence in Court and further that the twenty-seven (27) spent bullet cartridges said to have been expended were never matched to any gun and also that had twenty-seven (27) bullets been actually fired in PW1's compound and in his house more injuries would have been caused than to his leg with his family within. In addition, PW2 did not see the Accused firing a gun as he was running 15 for his life much as he heard gunshots. The Defence submitted that the Prosecution has not

established this ingredient beyond reasonable doubt.

- [35]. In respect of the fourth ingredient of establishing the participation of the Accused in the robbery; on the one hand, the Defence reiterated the Alibi that the Accused was not in Agago District at the time of the incident and it was not sufficient for PW1 to simply state that he knew the Accused by virtue of being residents of the same Ward or area to establish familiarity.
- [36]. On the other hand, the Defence cited **Criminal Appeal (CA) No. 09/1978: Abdallah Nabulere Vs. Uganda** on correct conditions for identification of the Accused by the Complainant moreso as a sole identifying witness urging the 25 Court to also consider black clothing allegedly worn by the Accused.
- [37]. In sum, the Defence submitted that upon the Prosecution failing to establish the essential ingredients of Aggravated Robbery, the Accused should be acquitted.

Representation.

- [38]. Counsel, Mr. Patrick Ojara, Resident Senior State Attorney (SSA) represented the Prosecution.
- [39]. Counsel, Ms. Anena Clare Lagoro & Ms. Prisca Atim, represented on State Brief.
- 5

Considerations and Determination of the Court.

[40]. In consideration of the core elements of the offence of Aggravated Robbery provided for by virtue of **Sections 266 and 267(2) of the Penal Code Act, Cap. 128 (Revised)** which the Accused was indicted with and tried for in this 10 Court, the core elements or essential ingredients required to be established and proved by the Prosecution beyond reasonable doubt which burden solely rests on the Prosecution as submitted by both Parties citing **inter alia** **Woolmington Vs. DPP [1935] AC 462** and **Sections 101, 102 and 103 of the Evidence Act, Cap. 8** **Mutatis Mutandis** are: - (1). Theft of Property. (2). Use of actual violence prior, at or after the theft or the Accused having caused grievous harm to the Complainant or victim. (3). The Accused being armed with or use of a deadly weapon before, during or after the theft. (4). The participation of the Accused in the robbery. The first ingredient of the offence of Aggravated Robbery, theft of property, is an offence in and of itself by virtue of **Sections 236 and 237 of the 20 Penal Code Act, Cap. 128** with its own ingredients being: - (1). The taking of Property belonging to another which is capable of being stolen involving the element of asportation. (2). The absence of consent or acquiescence from the owner of the Property. (3). The intention to fraudulently and, or permanently deprive the owner of the Property. (4). The participation of the Accused in the 25 unlawful enterprise. The Court is therefore necessarily required to analyse and evaluate the ingredients and evidence of theft in a case of Aggravated Robbery.

- [41]. Here, the most basic essential element of the offence of theft as a pre-requisite to an analysis and possible finding of Aggravated Robbery said to have been committed by the Accused, in the circumstances of this case, would require establishment in proof of an identifiable and tangible object having been the 5 subject of an unlawful taking. This is stated in the indictment as a red Bajaj Boxer motor cycle Registration Number UEX 047J said to belong to the Complainant.
- [42]. The Court is cognisant that the basis of the Prosecution's case of theft as the first ingredient of Aggravated Robbery is the testimony of the Complainant, PW1. It is not in dispute that PW2, the other Prosecution witness, was at his own 10 home. He did not in fact see any aspect of the said theft of the motorcycle and he did in fact concede as much candidly admitting that besides initially being at his own home where he had been dropped by PW1 he had fled to Adilang Police Station to report the incident and did not once venture into PW1's home. The testimony, therefore, of the motorcycle being removed from his compound and 15 then rolled away to the roadside being asportation without consent or right of claim or entitlement is that of PW1 solely. It is the demands, gunshots and the aftermath of the said theft by removal of the motorcycle being the motorcycle observed ablaze at the roadside that is testified to by PW1 and corroborated by PW2. As to the fate of the motorcycle, PW2 testified that after being salvaged 20 from being set ablaze and with minimal damage it was immediately taken to Adilang Police Station by the Police Officers who had responded to the incident. [43]. Curiously, the Prosecution did not tender in evidence or otherwise exhibit the motorcycle itself, or the Police exhibit slip of the said recovered motorcycle or any other evidence in regard to the motorcycle to corroborate this yet by the 25 testimony of their witnesses this should have been readily available to them. This

would have been most instructive and the exhibition of the partially burnt recovered motorcycle would inevitably put this core element beyond doubt.

12 | Page

- [44]. Moreover, neither the testimony and evidence of the duo of Police Officers PW2 stated had later accompanied him from Adilang Police Station towards PW1's home and subsequently assisted him in extinguishing the fire engulfing the motorcycle nor the testimony and evidence of the Investigating Officer (IO) and, 5 or the Scene of Crime Officer (SOCO) was presented to the Court. The Court finds this failure or omission inexplicable. This represented missed or otherwise squandered opportunities in Prosecution of the case being below par.
- [45]. As such, the Prosecution's uncorroborated evidence of PW1 presented to the Court of the ingredients of theft as a core element of Aggravated Robbery 10 without the items recovered by the Police fell short of being cogent. Moreso, upon consideration of the Accused's Alibi that he was not in Adilang Sub County at the time claimed and thus a claim of theft could not be attributed to him.

- [46]. That said, the Court is conscious that firstly, the omission or failure to produce items as here known to have been recovered by Police from a crime scene or 15 otherwise deriving from a crime as exhibits; secondly, the omission or failure to produce witnesses that may have recovered items from a crime scene or deriving from crime most especially the principal investigators the Investigating Officer (IO) and Scene of Crime Officer (SOCO) whose primary duty it is to collect and preserve evidence obtained undoubtedly to support Prosecutions; and thirdly, 20 also the omission or failure where applicable to call a Medical Officer charged with conducting required examinations or such other similar professionals as expert witness evidence, while unusual, does not necessarily negate the proof of an offence even where only a sole witness is left and the Court needn't necessarily draw an adverse inference from the Prosecution's failure to present the testimony 25 and evidence of witnesses in discharging its overall burden of proof to the required standard of beyond reasonable doubt. It may, however, emerge as a significant or compelling factor depending on the magnitude or degree.

See: Supreme Court Criminal Appeal No. 35/1995: Hussein Basita Vs. Uganda; Supreme Court Criminal Appeal No. 34/2015: Ntambala Fred Vs. Uganda; Supreme Court Criminal Appeal No. 19/2006: Ssewanyana Livingstone Vs. Uganda; Supreme Court Criminal Appeal No. 70/2004: 5 Mbazira Siraji Vs. Uganda; Supreme Court Criminal Appeal No. 1/1997: Bogere Moses & Another Vs. Uganda; Supreme Court Criminal Appeal No. 28/1994: Alfred Buwembo Vs. Uganda; Supreme Court Criminal Appeal No. 20/2000: Okwanga Anthony Vs. Uganda; Criminal Appeal No. 167/1969 (EACA): Alfred Tajar Vs. Uganda; Uganda Vs. Katushabe 10 [1988-1990] HCB 57; Rwaneka Vs. Uganda [1967] EA 768; Etc.

- [47]. As shall be seen in the course of the evaluation hereunder, such omission or failure in the circumstances of this case is not isolated. Apparently, it recurs.
- [48]. The test would therefore be whether it is safe to convict the Accused here in view of the omissions and, or the failures and consequently whether the absence 15 of other corroborating evidence is inevitably fatal to the Prosecution's case.
- [49]. The second and third core elements of the offence of Aggravated Robbery here being on the one hand the use of actual violence before, at or after the theft or the Accused having caused grievous harm to the complainant *viz* the victim and on the other hand the Accused being armed with a deadly weapon before, during 20 or after the theft are inextricably linked. In regard to both, the Prosecution's case is primarily hinged on the Complainant, PW1, having sustained a gunshot wound and with it having experienced a chaotic and traumatic confrontation causing an apprehension of fear during the said incident. It is significant that PW1 did not state that the Accused physically assaulted him by way of roughing him up. The 25 entire testimony of PW1 is premised on the presence and use of a submachine gun in which he avers that up to twenty-seven (27) bullets were fired in intervals and asserting that the Police recovered twenty-seven (27) spent cartridges.

- [50]. Again, it is therefore inexplicable that in view of the testimony of PW1 as well as PW2 that twenty-seven (27) or so odd bullets were fired and subsequently the Police recovered about twenty-seven (27) spent cartridges in or around PW1's compound and cognisant of the testimony that the discharge of the said bullets 5 by the submachine gun was said to be primarily in a narrow corridor between the hut and the incomplete house and thereabouts that the Prosecution failed or did not otherwise present to the Court in evidence or exhibit a single one of the said twenty-seven (27) spent cartridges or an exhibit slip in which the Police exhibited the cartridges while preserving them for the purpose of this Trial.
- 10 [51]. Moreover, as regards the injury PW1 stated in Court he sustained as a gunshot wound, the Prosecution failed to support the claim of the nature of the injury with a medical report or evidence which is routinely available since it is well established that medical examinations as a matter of course are conducted at public expense on alleged victims of such crimes. It is trite that under **Section**
- **15 43 of the Evidence Act, Cap. 8** incorporating quality medical or other scientific expert evidence including quality reports and testimony by Professionals such as medical officers and other officers upon due consideration and evaluation would enhance the Court's ability to come to its own comfortable conclusion as to the nature of the injury sustained which here is stated to be a gunshot wound. Here, 20 the Court during the Proceedings briefly observed a scar displayed by PW1. It may well have been a bullet wound but the Court could not determine this here with any degree of certainty; let alone distinguish it from any other projectile *viz* an arrow or spear. Besides, the onus of establishing the nature of the injury in corroboration with the testimony of the Complainant rested with the 25 Prosecution which fell short. Interestingly, in the indictment the Prosecution indicated that they would present evidence in Court of *inter alia* Police Forms PF3 and PF24 being the medical examination reports and the elusive motorcycle.
- [52]. Apparently, the expended cartridges are not included in the indictment as an item to be presented in evidence or exhibited in support of the Prosecution's case.
- [53]. As a fundamental aspect of the Constitutional right to a fair hearing, excluding evidence and exhibits obtained in an investigation or enquiry and especially 5 known by the Police, the Prosecution and the Authorities or other to be in their possession for whatever reason be it deliberate or dereliction prejudicially and unfairly denies an Accused the opportunity to disprove one's alleged complicity in the commission of an offence and extricate one's self from culpability and, or prove extenuating factors thereby clearing one's name and reputation. This also 10 undermines the essence and ethical foundation of disclosure. Here, the Court inevitably draws an adverse inference from the Prosecution's failure to present the witnesses and the evidence. **See: See: Supreme Court Criminal Appeal No. 030/2014: Kato John Kyambadde & Anor Vs. Uganda and Bukenya and others vs Uganda [1972] EA 549.**

- 15 [54]. The fourth core element of the offence of Aggravated Robbery and indeed of the offence of theft is establishing that the Accused participated in the unlawful enterprise by putting him at the scene of the crime or otherwise considering whether there were favourable and conducive factors for identification.
- [55]. The Complainant, PW1, stated the incident as having occurred at about 9:30 pm. 20 It was admittedly dark in the area and this is confirmed by PW2, a neighbour of the Complainant. The factors relied on by the Prosecution in establishing that the Complainant identified the Accused within his home during the encounter in the said corridor between the grass thatched hut in which he lived with his family and an incomplete iron sheet (*mabaati*) house were elaborated in his 25 testimony by PW1, the Complainant. Firstly, a single solar light in the corridor of indeterminate wattage and capacity. Secondly, proximity to the Accused stated as being about between one and a half (1 ½) meters and three (3) meters.

Thirdly, the duration of the entire encounter stated initially in examination in chief as having lasted about twenty (20) minutes in intervals was subsequently adjusted by the Complainant, PW1, upon cross examination to a duration of about three (3) minutes. Fourthly, the familiarity with the Accused stated by the 5 Complainant as having known him for about ten (10) years claiming that the Accused had recently returned to the area in the previous two (2) months prior to the incident.

- [56]. The Accused did not deny having earlier lived in the same village as the Complainant.
- 10 [57]. Significantly, it is not clear as to the degree of familiarity between the Accused and the Complainant. This is besides admittedly being neighbours in the same Lumule West village. The Complainant who stated that his assailant aggressively demanded money from him multiple times did not explicitly testify that he recognized the Accused by his voice. For that matter, PW2 did not state that he 15 recognized the Accused by his voice either much as he had averred that the Accused had previously lived with his uncle suggesting familiarity.
- [58]. In turn, the Accused counteracted the Complainant's testimony on identification by asserting his Alibi in his unsworn statement before the Court to the effect that at the time of the incident stated as having occurred on the 14th December, 2019 20 at 9:30pm he had long since left the area and was not in Adilang Town Council or Lumule West Village in Agago District having left the area on the 9th April, 2019 and travelled to Gulu City where he had lived for about eight (8) months during which he had worked in the saloon of one Odera Calvin and was arrested on the 4th February, 2020 at Pajule Town Council in Pader District as he was 25 returning to Adilang Sub County. Thus, he could not have been at the scene of the crime. It was his case that he did not know anything about the incident.
- [59]. While this may seemingly require a relatively simple assessment of one's word against another requiring a balance of credibility, the Court is cognisant that it emerged in cross examination that PW1, the Complainant, admitted that prior to the arrest of the Accused culminating in this Trial he had caused the arrest of 5 two (2) other individuals one Bishop

and one Opio in respect of the same incident. This begs the question: Had the Complainant been so concretely certain as he indeed claims he is as to the identity of the Accused as his sole assailant wielding a submachine gun, discharging twenty-seven (27) bullets, shooting him in the leg, demanding money from him, robbing him of his motorcycle, later 10 setting it ablaze, moreover insisting that he had known him prior for ten (10) years - it is inexplicable that the other two (2) individuals would be arrested over the same incident as he had admitted in cross examination. His explanation that they were arrested because they are associates of the Accused is simply dubious.

- [60]. In coming to the foregoing determinations, the Court duly warned its mind and 15 the Assessors of the need for special caution in this case where identification would be of centrality in any conviction requiring correctness and of the dangers of relying on a mistaken sole identifying witness as well as the need for an exhaustive evaluation of the factors favouring or obscuring identification and with it the quality of the evidence of identification. **See: Abdalla Bin Wendo &**

20 Anor Vs. Republic [1953] EACA 166; Criminal Appeal (CA) No. 09/1978: Abdalla Nabulere Vs. Uganda; Roria Vs. Republic [1967] EA 583.

[61]. In concluding, as regards the entire core elements of the offence of Aggravated Robbery with which the Accused is charged, the reasonable doubt already established as to the credibility of the Prosecution's case is compounded by 25 conflicting stipulated dates of the incident: - said in the indictment to have occurred on 13th December, 2019 while PW1 and PW2 testified that it was the following day the 14th December, 2019. The Accused benefits from the doubt.

- [62]. The Court hastens to observe that it is not in every instance that a variance in the date of the indictment and in the testimony of witnesses alone would be fatal and would depend on the circumstances of the case - including certain incidents traversing overnight or days, or other circumstances. Here, in the overall 5 consideration of the Court, it seals the deficiencies in the Prosecution's case.
- [63]. It was the opinion of each of the Assessors that in view of deficiencies in the evidence of the Prosecution including the failure or omission to present in evidence *inter alia* the motorcycle, the gun, medical evidence, the Investigating Officer and the Scene of Crime Officer, the absence of corroboration as well as 10 doubts as to the factors favouring identification of the Accused and including the lighting as well as the inconstancy in the date of the incident between the 13th December, 2019 and the 14th December, 2019 that the Prosecution had not presented sufficient evidence to convict the Accused. The Court concurs.
- [64]. Upon considering the entirety of the testimony and meagre evidence presented 15 by the Prosecution which is at best tenuous, sufficient doubt has been established as to the cogency of the Prosecution's case to find that the Prosecution has not established its case against the Accused beyond reasonable doubt.

- [65]. Thus, it is the finding of the Court that it would be manifestly unsafe to convict the Accused on the basis of the Prosecution's testimony and evidence presented to the Court at the Trial.
- [66]. Having considered the charges against the Accused in the indictment, the entirety of the testimony and evidence submitted by the respective parties at the Trial, the submissions of the respective Parties, the Law Applicable and all relevant factors as well as having taken all required precautions; the Court finds that the Prosecution failed to establish the guilt and culpability of the Accused beyond reasonable doubt. The Accused, Otim Peter Alias Master, is hereby acquitted. He is, therefore, discharged forthwith unless held in another Lawful cause.
- [67]. Accordingly, the Court here issues the following Orders:
 - 1. The Accused, Otim Peter Alias Master, is hereby acquitted.
 - 2. The Accused, Otim Peter Alias Master, is forthwith discharged unless he is held in another Lawful cause.
 - 5 It is so Ordered.

Signed and Dated on the 10th day of July, 2025. (High Court, Kitgum Circuit).

Philip W. Mwaka

Acting Judge of the High Court.

10 Delivery and Attendance.

This signed and dated Judgement has been read and delivered to the Parties in Open Court by the Presiding Judge of the High Court, Kitgum Circuit on **Thursday, the 10th day of July, 2025 at 10:00am** and the Counsel, Accused and Parties present are recorded hereunder.

- 1. Counsel for the Prosecution Mr. Ssozi Yusuf, SA, Holding Brief for Mr. Ojara Patrick, SSA.
- 2. Accused's Counsel, State Brief Ms. Akoli Mwajuma.
- 3. The Accused Mr. Otim Peter Alias Master.
- 4. Court Clerk, present Mr. Ongom Samuel Grey.

Philip W. Mwaka

Acting Judge of the High Court.

10th day of July, 2025.

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/2025/526/eng@2025-07-10>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-v-otim-peter-alias-master-criminal-session-case-127-of-2024-2025-ughc-526-10-july-2025-unknown-topic-unknown-court-2025--6a3ea4db3b1caa91297e86da>

Prepared on 14 October 2026 · Esheria