

UGANDA / JUDGMENT

Uganda v Rukasurwa alias Sebataka and 8 Others (Criminal Session Case 207 of 2023) [2025] UGHC 114 (25 January 2025)

[2025] UGHC 114

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Criminal Session Case 207 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA H. C. CRIMINAL SESSION CASE NO.0207 OF 2023

(Arising from Kakumiro Criminal Case No.026/2022; CRB No.288/2022)

UGANDA=====PROSECUTION

VERSUS

A1 RUKASARWA JOHN alias SEBATAKA A2 MUGISHA JOHN BOSCO A3 ALINAITWE MICHAEL
A4 TURIAMUREBA CHARLES A5 KAKOOZA YORAM A6 BYAMUKAMA JOHN A7 MWESIGWA
JAFETI A8 BAHATI CHARLES A9 TWINOMUGISHA ALEX=====ACCUSED

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- The 9 accused persons, Rukasarwa John alias Sebataka (A1), Mugisha \$[1]\$ John Bosco (A2), Alinaitwe Michael (A3), Turyamureba Charles (A4), Kakooza Yoram (A5), Byamukama John alias Siiza (A6), Mwesigwa Jafeti (A7), Bahati Charles (A8), Twinomugisha Alex (A9) and others still at large, stand indicted of various offences of Aggravated Robbery C/ss 285 & 286 (1) (b) PCA in Count I, Arson C/s 327 (a) PCA in Counts II & III, Malicious Damage to Property C/s 335 (1) PCA in Count IV, Unlawful Wounding C/s 222 (a) PCA in Count V and Assault Causing Actual Bodily Harm C/s 236 PCA in Count VI.
- [2] It is alleged that on the 19/3/2022 at Kyetebuka Village in Kakumiro District, the accused persons and others still at large robbed Turyamwijuka Edward of shs. 8,300,000/=, a Panasonic flat screen (T. V), a woofer, 2 pairs of bedsheets, a wooden bed, wooden table, bags of food (beans, ground nuts, maize), 2 battery accumulators, 7 plastic chairs and other

home utensils using deadly weapons to wit; pangas and hoes. That at the same time, they wilfully and unlawfully set fire on houses of Byakatonda Isaac and Turyamwijuka Edward, destroyed

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a pit latrine, banana plantation and an ovacado tree, the property of Then, that at the same time, unlawfully Turvamwijuka Edward. wounded Niwagaba Samuel and assaulted Byakatonda Isaac causing him actual bodily harm.

- The accused persons save for A6 & A9 pleaded not guilty to the \$[3]\$ offence. A6 & A9 are at large and a warrant of arrest was accordingly issued for their apprehension.
- It is the prosecution case that on the evening of \$19/3/2022\$ at around \$[4]\$ 7:30-8:00pm, members of community being led by the L. C. I Vice Chairperson of Kyetebuka Village, Kitaihuka Sub-County, Kakumiro District a one Jeninah Kemirembe formed themselves into a mob and their neighbours, **Byakatonda** Isaac and homes \$\quad\text{ of }\quad\$ attacked Turvamwijuka Edward and robbed them of money, food stuffs, set fire to their houses and destroyed their banana plantations and fruit tree plantations on the grounds that they were suspected witches.
- The victims, **Byakatonda Isaac** (PW1), **Niwagaba Sam** (PW3) and \$[5]\$ Kyomuhangi Jovia (PW4) wife of Turyamwijuka Edward testified to had identified A2, A3, A4, and A8 being led by the L. C. I Vice Chairperson, a one **Jeninah Kemirembe** among the assailants.
- In their defence, A1, A3, A5 and A8 exercised their rights under S.73 \$[6]\$ (2) TIA and opted to keep quiet while A2, A4 and A7 pleaded alibi claiming that they were elsewhere at the time the offences were allegedly committed and not at the scene of the crime.
- The prosecution was led by Ms. Namusobya Hadija of the Office of the \$[7]\$ Director of Public Prosecutions, Hoima while the defence was led by Mr. Mutaryebwa Edwin of Justice Centre, Hoima.
- In all criminal cases, save where the statute is to the contrary, the [8] prosecution has the burden of proving the case against the accused persons beyond reasonable doubt. The burden does not shift to the accused persons and the accused is only convicted on the strength of the prosecution case and not on the weakness of his defence, Ssekitoleko vs Uganda [1967] EA 531.

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COUNT I: AGGRAVATED ROBBERY

- In the instant case, the prosecution can only secure a conviction in §9] Count I of Aggravated Robbery upon proving inter alia, the following ingredients of the offence to the required standard:
- Theft of property belonging to the victim/complainant. §1. §
- Use of violence or threat of use of violence during the theft. §\overline{2}\$. .
- Possession of a deadly weapon during the theft. §3. §
- Participation of the accused persons in the commission of the §4. § offence.

1st Ingredient of the offence; theft.

- [10] Under S.254 PCA, theft is committed when a person fraudulently and without claim of right takes anything capable of being stolen. In the instant case it is the evidence of Byakatonda Isaac §(PW1)\$, Turyamwijuka Edward (PW2) and Kyomuhangi Jovia (PW3) that during the night of 19/3/2022 at around 7:30-8:00pm, they were attacked by assailants who came in form of a community mob who hurled stones on roofs of their houses and set their houses on fire on the grounds that they were witches. The victims and their families fled for their safety. The mob ferried away their stored bags of food (maize, beans and ground-nuts), household properties to wit; mattresses, bedsheets, blankets, chairs, kitchen utensils, T. V and a woofer, batteries of solar, a phone, a bicycle and money. Thereafter, the mob razed down their banana and fruit (mango, jack fruit and ovacado) tree plantation, the property of Turyamwijuka Edward (PW2) and Byakatonda Isaac (PW1).
- §\sim\$ [11] The accused persons did not contest theft of the alleged items. They admitted that indeed, the victims' houses were set on fire. The victims fled for safety of their lives leaving their household properties behind and it became inevitable that the mob would steal the properties. Although none of the properties were recovered by police from any of the accused persons, I believed the corroborated evidence of PW1, PW2 and PW4 as regards theft of the alleged items. In the premises, I find the 1st ingredient of the offence proved to the required standard i.e. that there was theft of Turyamwijuka Edward's properties.

§2^{nd}\$ & §3^{rd}\$ Ingredient of the offence; use or threat of use of violence and possession of a deadly weapon during the theft.

- [12] It is the corroborated evidence of the victims, Byakatonda Isaac (PW1), his brother Niwagaba Samuel (PW3) and Turyamwijuka Edward and his wife, Kyomuhangi Jovia (PW4) that the mob attacked their homes, robbed their properties and set houses on fire while they were armed with all sorts of weapons that included spears, arrows, pangas, axes and sticks. The possession of these items by the mob was also not contested by the defence. The fore mentioned weapons are deadly weapons within the meaning of S. 286 (3) PCA because when

used for offensive purposes, they are capable of causing death or grievous harm and or are capable of inducing fear in a person that they are likely to cause death and grievous harm.

- [13] From the above, it follows therefore, that possession of such weapons and the hurling of stones at the victims' houses coupled with setting the houses on fire, all amounted to use of violence. I find that the 2nd and 3rd ingredient of the offence have been proved by the prosecution to the required standard.

4th Ingredient of the offence; participation of the accused persons in the commission of the offence.

- [14] The offence was committed during night time around 7:30-8:00pm as per the eye witnesses, PW1, PW3 and PW4. The witnesses state that though it was night, they were able to identify some of the assailants by the help of the solar lights outside and fire light that was coming from the houses set on fire. In my view, the solar light from outside burning houses rendered conditions for from the fire and identification conducive for the eye witnesses.
- [15] Byakatonda Isaac (PW1), testified that he was with his brother Niwagaba Samuel (PW3) and both of them identified the following as among the assailants:
- Turyamwijuka Bosco and Bukirira, father of A2, both who were (i) never charged and therefore, they are still at large.
- Mugisha John Bosco (A2) who was identified as putting on a red (ii) jersey and a black trouser and was armed with a club which he used to hit PW1.

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- (iii) Turyamureba Charles (A4) who was identified as dressed in the very shirt he was putting on in court and a black trouser but nevertheless was not armed with any weapon.
- (iv) Mwesigwa Jafeti (A7) who was identified as putting on a black jacket and a black suit trouser and was armed with an arrow and a panga.
- [16] Others identified by PW3 included the L. C. I Vice Chairperson Jeninah Kemirembe, a one Denis Senge Edward and A8 who he at first stated that he was armed with a panga, spear and wore an arrow and later he stated that A8 was armed with an axe and then, that it was A7 who he alleged that cut him by the right arm.
- [17] Kyomuhangi Jovia (PW4) identified A2, A3 and A7 among the assailants.

- [18] As can already be seen from the above, none of the prosecution witnesses identified A1 and A5 while A8 was allegedly identified by only PW3 who claimed at first that he was with a panga, a spear and wore an arrow and then later, stated that he had an axe. I find such inconsistency in the evidence of the sole witness identifying A8 causing anxiety on the correctness of the identification of A8 and as a result, I find his identification unsatisfactory.
- [19] As regards A3, he was also solely identified by PW4 who claimed that he was active in ferrying out bags of food from the victims' house but she never described how he was dressed and or what weapons he possessed for purposes of enabling court consider and evaluate her evidence with the other available evidence for court to satisfy itself with the veracity of her evidence and therefore, rule out a possibility of error in her identification of A3.
- [20] In their defence, A2, A4 and A7 pleaded alibi as their defence, that they were elsewhere at the time of the alleged offence. It is trite that by setting up an alibi, an accused does not assume the burden of proving its truthfulness so as to raise a doubt in the prosecution case, Cpl Wasswa & Anor vs Uganda S. C. Crim. Appeal No. 49/1999.
- [21] The prosecution is under the obligation to prove its case placing the One of the ways of accused persons at the scene of the crime.

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disapproving an alibi is to investigate its genuineness; Androa Asenua & Anor vs Uganda, S. C. Crim. Appeal No. 1 of 1998. In R vs Sukha & Ors [1939] 6 EACA 145, the Court of Appeal for E. Africa observed that:

"If a person is accused of anything and his defence is in alibi, he should bring forward that alibi as soon as he can because firstly, if he does not bring it forward until months afterwards there is naturally a doubt as to whether he has not been preparing it in the interval and secondly, if he brings it forward at the earliest possible moment it will give prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness, proceedings will be stopped."

- [22] In the instant case, A2 adduced an unsworn statement to the effect that on the fateful day at around 5:00pm, he was busy operating his boda boda taking a passenger from Mubende to Bumera village in Kakumiro District where he stayed for a night at his sister, a one Twikirize Goldina's place since he could not return home for fear of robbery of his new motorcycle he was riding.
- [23] On the other hand, the prosecution adduced evidence of PW1 and his brother, PW2 who were together and both were able to identify A2 by the help of the solar light outside and light from the burning houses. I find that the conditions of identification were favourable. A2 was one of their neighbours whom they knew very well and therefore, I find that they

were able to place him at the scene of the crime as one of the PW1 and PW3's evidence is mob who attacked the victims. corroborated by that of PW4 who also after fleeing from her house, she was able from her hiding vintage point able to identify A2 as among the assailants.

- [24] I, in the premises reject A2's alibi and find that he has been placed on the scene of the crime and therefore was one of the assailants that attacked the victim of this offence.
- [25] As regards A4, in his unsworn statement stated that on the fateful day at around 3:30pm, he left for his brother in law, Muhangi James's place in Kiteredde village where he stayed for a night because of the heavy

rain that prohibited him from returning home that very day. He presented the said **Muhangi James** (A4/DW1) to support his alibi.

- [26] On the other hand, prosecution adduced evidence by PW1 and his brother PW3 who identified A4 as one of the assailants. According to PW1, he was able to identify A4 who was putting on the very shirt he was putting on while in the dock and a black trouser. This is the same description PW3 gave during cross examination since A4 was also a neighbour of PW1 and PW3, I find that there was no possibility of mistaken identification. A4 was correctly identified by PW1 and PW3 as one of the assailants, he did not challenge his description and dressing during the commission of the offence as clearly stated by the 2 witnesses who placed him at the scene of the crime. As a result, I reject his alibi as supported by his brother in law.
- [27] As regards A7, he claimed that on the fateful day he was hospitalised in Max Medical Centre i.e. from 18/3/2022 to 20/3/2022 because of malaria and stomach problems. He exhibited a medical form to that effect as D. Exh.1. The prosecution however contested D. Exh.1 as being different from the photocopy he left with police when he raised the same alibi, while recording his statement and on comparison of both medical forms, one purporting to be a photocopy of the other, this court found that the medical form presented by the accused (D. Exh.1) had an additional ailment of kidney and by visual observation, it is apparent that whoever wrote the date and the names of the accused/patient is different from that of who wrote the prescription. A7 insisted that the handwriting was of one person, the doctor. The glaring evidence of **D. Exh.1** having been tampered with and unexplained difference handwritings rendered D. Exh.1 unauthentic.
- [28] On the other hand, all the 3 prosecution eye witnesses, PW1, PW3 and PW4 identified A7 who was seen putting on black clothings clearly described by PW1 during cross examination and a black jacket and a black track suit trouser. This evidence was not challenged by A7 at all. I find that the prosecution witnesses; PW1, PW3 and PW4 placed A7 at the scene of the crime and as a result, I find his alibi false and I accordingly reject it.

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[29] In conclusion, I find that the prosecution has not proved Count I of Aggravated Robbery against A1, A3, A5 and A8. It is only A2, A4 and A7 who are found guilty of the offence and are convicted accordingly.

Counts II, III & IV, Arson & Malicious Damage to Property.

- [30] Under S.237 (a) PCA, Arson is committed by any person who wilfully and unlawfully sets fire to any building or structure whether completed or not. The essential ingredients of the offence as per case law are as follows:
 - Setting fire to a dwelling house/structures. 1.
 - The fire is set unlawfully and intentionally. 2.
 - The accused's participation in the commission of the offences; \$3.\$ Uganda vs Asobasi Oloki - Amba H. C. Crim. Session Case No. 025 of 018.
- [31] As regards the offence of Malicious Damage, under S. 335 (1) PCA, the offence is committed by any person who wilfully and unlawfully destroys and damages any property belonging to another.
- [32] In the instant case, the prosecution case is that A2, A4 and A7 who have been found to have participated in the mob action against the victim/complainants, together with others still at large, descended on the victims i.e. PW1, PW2 and PW4's homes and set their houses on fire and razed down their banana plantation and fruit trees (mango and ovacado etc). Their evidence was corroborated by that of the Police scene of crime officer D/Cpl Abdul Nasser (PW5), who visited the scene and took the photos of the arson and damage (P. Exh.1).
- [33] The prosecution witnesses' evidence is supported and corroborated by that of A2, A4 & A7 who stated that indeed, the 2 homes of PW1 and PW2/PW4 were knocked down and set on fire. As a result of the totality of the above since as I have already observed that they were positively identified at the scene of the crime as among the assailants, I find the prosecution has proved that A2, A4 and A7 set fire of the 2 houses of the complainants and maliciously damaged their various properties as depicted in **P. Exh. 1** thus they are found guilty of **Arson** in Counts II,

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III and Malicious damage to property in Count IV. They are accordingly convicted of the offences as charged.

ASSAULT $\mathbf{AND}$ UNLAWFUL WOUNDING $\mathbf{VI}$; COUNTS $\mathbf{V}$ $\mathbf{\&}$ $\mathbf{\&}$ OCCASSIONING ACTUAL BODILY HARM.

- [34] Whereas in evidence Niwagaba Samuel (PW3) claim that as he fled the scene he fell into the hands of A7 who cut him by the right arm and he showed the scars to court and Byakatonda Isaac (PW1) also claimed that as he fled, A7 and others assaulted him, none presented any medical evidence in proof of this allegation. There is no evidence for example in form of medical documentation connecting the scar that PW3 showed to court to the events of 19/3/2022 when the offence was allegedly committed.
- [35] As a result of the above, this court finds that Counts V of Unlawful wounding and Count VI of Assault occasioning actual bodily harm were not proved to the required standard and as a result, the accused persons are found not guilty of the 2 counts and are accordingly acquitted.
- [36] In conclusion, this court finds that the prosecution has not proved any of the charges against A1, A3, A5 and A8 and they are therefore found not guilty and therefore acquitted. A2, A4 and A7 are found guilty of Counts 1, II, III & IV and accordingly convicted of the same.
- Dated at Hoima this 25th day of February, 2025.

Byaruhanga Jesse Rugyema Judge

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27/2/2025 :

Accused persons present save for A6 & A9.

Mr. Ochopa for state.

Ms. Dorothy Mushabe holding brief for Counsel Mutaryebwa for defence.

Ms. Kenyange: clerk.

Court:

Judgment delivered in open court in the presence of the above.

State:

No past criminal record of the 3 convicts, A2, A4 & A7. The accused persons have been convicted of very serious offences of Aggravated Robbery and Arson which carry maximum sentences of death and life imprisonment respectively. In the circumstances of this case, I pray for an appropriate sentence of about 25 years for Count I and 20 years for Counts II & III.

We also pray for compensation of the victim's robbed properties.

Ms. Mushabe:

The convicts have families and children they were taking care of at the time of their arrest.

They have been on remand for a period of 2 years and 9 months. The offence arose out of a mob action and in the circumstances of this case, the convicts deserve a lenient sentence.

SENTENCE:

The convicts, A2, A4 & A7 are first offenders, aged 21 years, 39 years They are in the age bracket of the and 42 years respectively. productive stage of men. The convicts however have been found guilty of very serious offences which include, Aggravated Robbery which carries a maximum sentence of death and Arson which carries a maximum sentence of life. Since the offences were committed under mob action where the convicts and their colleagues still at large, were under the illusion that the victims/complainants were witches, I do find that the convicts deserve leniency and I do in the circumstances sentence each of the accused to a deterrent sentence of 10 years' terms of imprisonment on Count I. Taking into account of the fact that they have been on remand for a period of 2 years and nine months, each of the accused persons will serve 7 years and 3 months.

In addition, under S.126 TIA & 286 (4) PCA, the convicts are to compensate the victim Turyamwijuka Edward shs, 25,000,000/= (including 8.3m/= that was stolen from him).

As regards Counts II & III, each of the accused is sentenced to 8 years' imprisonment but will serve 5 years and 3 months upon deduction of the period spent on remand.

Besides, the convicts to compensate the 2 victims i.e. Turyamwijuka Edward and Byakatonda Isaac, shs. 15,000,000/= each for the burnt/or destroyed houses.

Lastly, upon service of the sentence, each of the accused/convict is to under S. 124 TIA be placed under police supervision of Kitebuka police post where they shall each report once a month for a period of 2 years. As regards the charge of Malicious damage to property, each of the accused persons is sentenced to 2 years' term of imprisonment.

The terms of imprisonment shall run concurrently.

\$R/A\$ explained.

Sgd: Byaruhanga Jesse Rugyema Judge 27/2/2025

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