

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO. 65/1994

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTION

VERSUS

A1: NO. RA 76401 L/CPL. BULAGO ABDALAH :::::::::::::: ACCUSED

BEFORE: THE HONOURABLE JUSTICE C. M. KATO

R U L I N G

The accused No. RA 76401 L/CPL Bulago Abdalah is indicted for robbery contrary to the provisions of sections 172 and 273(2) of the Penal Code Act. He pleaded not guilty to the indictment. Originally he was indicted with another man called Muwaya Yakubu who was reported to have escaped and the indictment was accordingly amended so that the case could proceed with the present accused alone.

This ruling is concerned with the issue of whether or not a case has been made out for the accused to answer. The evidence as led by the prosecution has been that on the night of 19/7/1992 the accused with another person went to the home of Yusufu Mukasa and took away a weighing scale from his shop; the men who took the scale away were armed with a gun, after they had carried away the weighing scale they shot in the air once. Nobody identified those who took away the weighing scale. Later sometime in August of the same year the accused was arrested and eventually charged with the robbery which had been committed on 19/7/1992 at the home of Yusufu Mukasa (PWIV).

The prosecution closed its case after having called 6 witnesses; 3 of whom were the members of the complainant's family (PWI, PWII, PWIV) and 3 were policemen (PWIII, PWV and PWVI).

The principles upon which this court proceeds to hold or to refuse to hold that there is a case to answer are well known and some of them were stated in the case of: Bhatt vs. R. (1957) EA 334. One of the tests to be applied is whether or not the court would proceed to convict the accused on the available evidence if the accused decided to say nothing at the close of the case for prosecution. In the instant case no witness identified the people who attacked the home of Yusufu Mukasa and took away the weighing

scale on the night in question. Both his wife (PWI) and his son (PWII) who were at home on that night frankly told the court that they did not identify the person who carried away the weighing scale. The only evidence which would have connected the accused with this case is that of recent possession but even that evidence itself is lacking in several ways.

According to Yusufu Mukasa when the accused was arrested he was beaten up and in the process of being beaten up he admitted to the askaris who were beating him up that he in fact stole the weighing scale. The statement by Yusufu Mukasa cannot be treated seriously because the alleged admission was obtained under torture. None of the local Administration askaris to whom the alleged admission was made was called as a witness. The story of Yusufu Mukasa does not indicate how the weighing scale came to be connected with the accused since none of the witnesses who testified knows the circumstances under which the weighing scale and the gun were recovered. His story would have been completed if there was evidence showing who led those who recovered the exhibits to where they were found. The 3 policemen called by prosecution only spoke of having received the exhibits at different places starting with Busesa county headquarters but none of these policemen was present when the exhibits were being recovered. Their evidence cannot tell what transpired in the process of recovering the exhibits.

In these circumstances I find that prosecution has not adduced enough evidence to connect the present accused with the commission of the alleged robbery at the home of Yusufu Mukasa on the night of 19/7/1992 and I find that no reasonable tribunal properly directing its mind to the present evidence and the law of robbery would convict the accused on such evidence if the accused chose to say nothing.

I accordingly find that no prima facie case has been made out for the accused to answer I find him not guilty and I do acquit him of the offence of robbery under section 71 (1) of the T.I.D. He is to be set free unless he is being held in prison for some other lawful purposes.

C.M. KATO
JUDGE

21/11/1994