

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(CRIMINAL DIVISION)

HCT-00-CR-SC-1115-2016

(ARISING FROM LDC. COURT, CRIMINAL CASE NO.0012/2016)

UGANDA PROSECUTOR

VERSUS

ANGURA SAMUEL ACCUSED

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

JUDGMENT:

The named person is indicted with Aggravated Robbery C/s. 285 and 286(2) of the Penal Code in two counts.

In count one, it is alleged that on 8th December 2015 at MOIL Petrol Station at Wandegeya, Kampala District, robbed Baridawa Isaac of cash Shs. 1,431,479/= and or immediately before or immediately after the time of the said robbery, threatened to use a deadly weapon to win a gun on the said Baridawa Isaac.

In count two, it is alleged that the accused person on 8th December 2015 at the same place robbed Mukasa Ronald of Shs. 400,000/= and two telephone sets.

In each of the above two counts the essential elements of the offence are as follows:-

1. Proof that theft or robbery took place.
2. That there was use or threat to use a deadly weapon, a gun.
3. That the accused person participated.

All the three elements of the offence must be proved before a case of Aggravated Robbery can be said to be proved.

PW1, Baliddawa Isaac told court that on 8th December 2015 at 2:30 a.m., the accused was guarding Moil Petrol Station. He put one Mukasa on a gun point in a car and demanded for money. That he demanded that PW1 and Mukasa put all the money they had in a black bag that the accused had in his hands. They put in the bag the money and telephones and he took them. They reported to Wandegeya Police Station which was 300 metres away. PW1 stated that he handed over to the accused Shs. 1,431,479/= but conceded that he had no proof that he had the money at the time. No evidence that he had counted the money.

PW2, Kamugisha Ronald (D/AIP) told court that on 8/12/2015 at 2:30 a.m. PW1 reported to Wandegeya Police that he had been robbed. PW2 and other policemen moved to the scene but found nothing valuable relating to the case. This witness made a self recorded statement – Admitted as Defence Exhibit DE1 where he stated **"It was the money of one of the pump attendants called Mukasa that was stolen totalling to Ug. Shs. 1,431,479/= whereas that cash of Balidawa Isaac remained intact"**. With the above evidence, the state closed it's case.

In defence, Angura Samuel told court that on that 8th December 2015 he was on guard duty at the alleged Petrol Station. He had no gun. He was armed with a batton. He was taken off duty on 9th December 2015 and he got leave on 9th December 2015 and went to Kaboong District up to 25th May 2016. He was arrested by his Superiors on 22nd June 2015 and charged with this offence. He closed his defence.

This court has the duty to evaluate the evidence as a whole, the evidence given by the prosecution and that of the accused and make a decision as to whether or not the state has discharged it's duty of proving the case against the Accused person beyond any reasonable doubt.

Any person charged with a criminal offence is presumed not guilty until he pleads guilty or he is proved guilty by the evidence adduced during the trial. See Article 28(3)(a) of the Constitution of Uganda.

The burden of proving the case as a whole or proving any alleged fact against the accused person is always upon the prosecution and the accused person has no duty to prove his innocence.

I will now address my mind to this particular case's evidence. This is a case that I find lacking in seriousness in both investigation and prosecution of a capital offence. This is a typical case that I should have terminated for lack of a prima facie case at the closure of the prosecution evidence but I caused it to proceed to defence for hearing purposes hoping that people concerned and responsible for criminal investigations and prosecution could pay attention to the essential details and respect suspect's right to liberty.

Why charged the suspects, detain them and commit them when there is no evidence to support the case? Maintaining criminal cases like this one has a lot of negative financial and economic implication. Apart from the expenditures on prisoners while on remand, there is a cost on trial and management of each criminal case and above all, the accused person's time spent in prison could have been employed in betterment of his own welfare and that of his family.

- (i) There is no evidence that Mukasa Ronald, the alleged victim of robbery existed. If he does, why was he not produced to testify to prove how he was robbed?
- (ii) Why was there no evidence of Investigating Officer? Why was there no evidence of the Arresting Officer? These would have explained how and why the Accused was incriminated to quality for arrest.
- (iii) The state made no effort to prove that the accused was ever armed with a gun. There was no witness to confirm that he was armed by Securex Company that deployed him. In defence, the Accused stated that he was never armed. PW2 told court that PW1 was not robbed. That his money was intact. This is the self recorded statement which those who prepare cases to bring to court ought to have read and should have avoided this malicious prosecution.

(iv) The Indictment in count 1 alleges that he robbed Baridawa Isaac of Ug. Shs. 1,431,4779/=. Baridawa testified as PW1 and told court that he has no proof that he had this money. One would have expected him to show the sales he had made that night that he had not got opportunity to keep away or bank at the time of alleged theft. PW2 contradicts PW1 when he stated in DE1 that the money of Baridawa was intact. This contradiction is not explained away by evidence or otherwise by the prosecution.

Count 2 alleges that the accused robbed Mukasa Ronald of Ug. Shs. 400,000/= and two mobile phones. Mukasa Ronald was never called as a witness to give evidence on these allegation he ought to have given the state investigating agencies. This remains a mere allegation without supporting evidence.

I do accept the advice of the two Assessors to acquit the accused person on both counts. The Accused person is hereby acquitted and set free unless he is held for any other lawful reason.

Dated at Kampala this **21st** day of **May 2019**.


J. W. Kwesiga

Judge

21/05/2019

In the presence of:-

- The Accused person
- Mr. S. S. Senkezi for defence
- Ms. Jean Nareeba – State Attorney
- Mr. Irumba Atwooki – Court Clerk

J. W. KWESIGA