

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**HCT-00-CR-SC-0459-2017**

**UGANDA ..... PROSECUTOR**

**VERSUS**

**A1- AMITINGO ROBERT**

**A2- OKESA JOHN**

**A3- MEHUVA NORMAN**

**..... ACCUSED**

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

**JUDGMENT:**

Amitingo Robert, Okesa John and Mehuva Norman are jointly indicted for Aggravated Robbery contrary to Section 285 and 286(2) of the Penal Code Act. It is alleged in the particulars of the offence that the three accused persons on the 24<sup>th</sup> day of November 2016 at Kigowa, Ntinda, Nakawa Division, Kampala robbed one Laboke Regina of a bag containing 2 passports, driving permit, a phone, US\$ 370, a phone charger, cash and at or immediately before or immediately after the time of the said robbery used a deadly weapon to wit, three big stones on the said Laboke Regina.

The Accused persons pleaded not guilty and in final defence their evidence states a case of mistaken identity. By virtue of Article 28(3)(a) of the

Constitution of the Republic of Uganda and the criminal Justice system of Uganda, the Accused persons are presumed innocent until his guilt is proved. The burden of proof is always upon the prosecution and the material facts must be proved beyond reasonable doubt. In the instant case the prosecution evidence must prove the following essential elements of offence:-

- (a) That there was theft or Robbery.
- (b) That there was the use of or threat to use a deadly weapon or that there was actual violence used in the said theft.
- (c) That the Accused participated in the said theft or Robbery.

In the event that the prosecution fails to prove any one of the three essential elements of the offence, the state case fails.

I will now summarise the prosecution evidence adduced to prove the above case.

PW1, Regina Laboke, 65 years old was the victim of the robbery while returning from Entebbe between 2 and 3 a.m on 24<sup>th</sup> November when almost reached her gate at Kigowa, Ntinda, being driven by Kigozi, her car was hit and she heard a big bang. The attackers threw a stone at the car breaking the window glass. She saw three (3) attackers. One of them took her bag with it's contents. She did not identify any of the attackers.

PW2, Beatrice Akira, 65 years was in the robbed car. She stated that she recognized A1 and A3 at the time of the attack. She did not know them before.

PW3, Laboke Icoke, heard the alarm of either PW1 or PW2 by the time he opened the gate, the thieves had gone. The next day he reported the case to police, the police introduced a snifer dog. PW3 and police followed the dog from the scene for ½ kilometres up to a gated property which they entered and the 3 Accused were arrested.

PW5, D/C Emojong John, a police constable stated:- ***"I do basic dog handling and care. For 4 years now I have an award in basic dog handling and care given on 15<sup>th</sup> October 2015". "-----Laboke referred from Ntinda Police requested for a snifer dog. I went with a snifer dog called PEPPER born in 2017. It was in training for 6 months at Nsambya Police Training School"***

The above quoted evidence shows that the experience of both the dog and it's handler . He told court that the dog from the scene of crime branched and led him to a house which had three doors, he found there A1, A2 and A3. The dog entered the house, got out and rotated around the house, where A2 was, it came back into the house and stopped inside the house under cross-examination he told court:-

The offence was committed about 2:00 a.m and he introduced the dog to the scene next day at 9:30 a.m.

- The home of A1 was 800 metres away from the scene.
- The dog stopped in the verandah where Norman was seated.

PW6, D/C Bahati Isma told court that the dog entered the house and sat. That he picked from the houses pieces of glass that resembled glasses of the smashed car at the scene of crime.

He arrested the occupants of the house, took photographs of the stone used in the attack.

- He did not take any photographs of pieces of glass before he recovered them.

Under cross-examination, he revealed:- The scene to which the dog was introduced was not protected, it was open to anybody including the Accused person to pass through this village path or road. It was a public access road which also served the home of the Accused some metres away. For instance, from the defence evidence one of the Accused person (A2) had come through that access road on foot after he left Nakawa taxi stage to check on A3 who was his Nephew and was sick.

Despite the fact that the defence alleges that the police detectives came with the alleged pieces of glass wrapped in paper this is a doubt created by the defence and the prosecution evidence on this point it would have been helpful if:-

- (a) The scene of crime Officer had taken photographs of the glasses which he said he found before he picked them from the house.

- (b) There should have been an acceptancy at the scene by the Accused persons by signing an exhibit slip showing what was at the scene. No search certificate available. No exhibit recovery slip available.

In absence of the above two controls renders the integrity of the exhibits questionable. In my assessment there is a missing link between the smashing of the victim's car and the Accused person.

The attempt to connect the Accused person with the offence using the sniffer dog and the glass pieces is extremely unreliable circumstantial evidence. Although circumstantial evidence is often the best form of evidence, caution must be exercised before acting on it. This is well explained.

In **TEPER Vs. r. (1952) AC 489** where it was stated that "***---Evidence of this kind (circumstantial) may be fabricated to cause suspicion on another. It is also necessary before drawing the Accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference***".

In the instant case, the circumstantial evidence has other probable inferences other than the Accused person's guilt.

The opinion of the Assessors is that the prosecution has not succeeded to prove the guilt of the Accused persons beyond reasonable doubt and I agree and acquit the three Accused persons.

Dated at Kampala this **27<sup>th</sup>** day of **June 2019**.

J. W. Kwesiga

**Judge**

27/06/2019

In the presence of:-

1. Mr. Wanda holding brief for Defence.
2. Ms. Amina holding brief for State.
3. Mr. Irumba Atwooki – Court Clerk.