

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

**HCT-00-CR-SC- 0168 -2019**

**(ARISING FROM MKN. COURT, CRIMINAL CASE NO.0043/2016)**

**UGANDA ..... PROSECUTOR**

**VERSUS**

**KASULE IBRAHIM ..... ACCUSED**

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

**JUDGMENT:**

Kasule Ibrahim alias Mayanja Junior hereinafter referred to as the Accused person is charged with Aggravated Robbery C/s. 285 and 286(2) of the Penal Code Act.

It is alleged that the Accused person and others still at large during the year 2012 at Namanve in Mukono District robbed Mukasa Erisa of cash Ug. Shs. 15,000,000/=, a mobile phone all worth Ug. Shs. 15,150,000/= and at or immediately before or immediately after the time of the said robbery, threatened to use deadly weapons to wit knives and pangas on the said MuKasa Erisa.

The Accused pleaded not guilty and the state proceeded to call witnesses to prove it's case.

The prosecution, to get a conviction must prove the following:-

- (a) That there was theft of the alleged money and telephone set.
- (b) That there was use of a deadly weapon.
- (c) That the Accused person participated in this theft.
- (d) That the Accused person participated in this theft.

From the outset, the Accused person is presumed innocent until he is proved guilty. Article 28(3)(a) clearly states that **"(3) Every person who is charged with a Criminal offence shall;-**

- (a) ***Be presumed to be innocent until proved guilty or until that person has pleaded guilty".***

The state called two witnesses PW1, Mukasa Erisa and PW2 Mayinja Walugembe Samuel. Significant is that there was no evidence of the Investigation Officer and no evidence of an Arresting Officer and the trial amounted to a private contest that had a shadow of a fish trade business gone wrong.

The opinion of the joint Assessors is that the Prosecution proved the case beyond reasonable doubt and advised that the Accused be found guilty.

I will summarise the evidence as a whole for evaluation before I reach any conclusion. A guideline on evaluation of evidence was settled by the house of Lords in **Woolmington Versus DPP (1935) AC 462** that **"----- it is not till the end of the evidence that a verdict can properly be found**



***and that at the end of the evidence it is not the Prisoner to establish his guilt just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the Prisoner which may cause a doubt as to his guilt”.***

PW1 Evidence is that he got Ug. Shs. 15,000,000/= from PW2 to buy fish from the Accused person. That the Accused had negotiated with the Accused. That PW2 gave PW1 the money and instructed him to take the money to the Accused and to handover the money after seeing the fish which had been said to be at Entebbe.

PW1 told PW2 that the Accused used a knife while seated in a car, threatened him and took the money.

The two witnesses, PW1 and PW2 did not tell court on which day or place. It is said to be sometime in 2012. The Complainant made first report to police on 3<sup>rd</sup> May 2016, perhaps (4) four years later. See witnesses' Police Statement D1. He alleges that Mukasa reported the theft immediately at Bweyogerere Police.

This was contested by the Defence and the State did not prove evidence of:-

- (a) Case report or reference from Bweyogerere Police or any other police.
- (b) No Investigating Officers' evidence.
- (c) No Arresting Officer's evidence.

The above is considered with the Accused person story that this case is fabricated due to political conflicts he had with his area member of Parliament who alleged that he damaged the MP's vehicle that cost Ug. Shs.

15,000,000/= to repair. That Mukono Police had arrested him, detained him, prepared a confession which he refused to sign. He denied knowledge of PW1 and PW2 or what they alleged.

I have assessed the circumstances of this case and I have considered the following matters:-

- (i) The movement of the whole Sum of Ug. Shs. 15,000,000/= from PW2 to PW1 is doubtful. There is no record of its existence or being given to PW1.
- (ii) It is surprising that robbery took place and no alarm was made, no report made to police and no evidence that it was investigated.
- (iii) It is surprising that robbery took place in 2012 and was reported in 2016 as PW1 and PW2 claimed.
- (iv) The importance of the evidence of the Investigating Officer was settled by Sir Udo Udoma C.J (as he then was) in **Bwanika Versus Uganda (1967) E.A 768** where he held:- ***"It is the duty of the prosecution to make certain that the Police Officer, who Investigated and charged and Accused person do appear in court as a witness to testify as to the part they play and the circumstances under which they had decided to arrest and charged the Accused person.***



***Criminal prosecution should not be treated as if they were contests between two private individuals”.***

I have already examined the gaps left in the prosecution story and the doubt created both by the Defence story and the above fatal omission of Investigating Officer, therefore, there is high likelihood that this is a fabricated criminal case to serve settlement of other conflict and not criminal justice. In the circumstances, I find the Accused person not guilty and he is hereby acquitted.

Dated at Kampala this **3<sup>rd</sup>** day of **July 2019**.

  
J. W. Kwesiga

**Judge**

3<sup>rd</sup> /07/2019

In the presence of:-

- Mr. S. Ssenkezi for defence
- Ms. Ainebyona holding brief for Miss Nareeba – State Attorney
- Mr. Irumba Atwooki – Court Clerk