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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KABALE
HCT -11-CR-SC –NO.0147 OF 2021

UGANDA: :::PROSECUTOR

10

VERSUS

RUKUNDO NICHODEMUS::::::::::::::::::::::::::::: ACCUSED

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BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

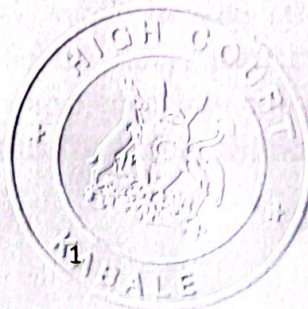
JUDGMENT

Representation:

20 The learned Director of Public Prosecutions is represented by Ms. Noeline Naggayi, State Attorney. The accused was represented by Mr. Smith Rutebemberwa on state brief. Two duly sworn assessors Ms. Mercy Kembabazi and Mr. Livingstone Ndyamutunga assisted Court.

Brief Facts:

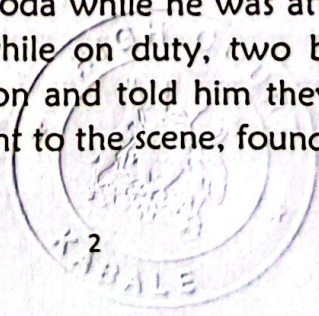
25 The accused is charged with aggravated robbery contrary to Sections 266 and 267(2) of the Penal Code Act. It was alleged by the prosecution that on June 29th, 2021, at Buhara village in Kabale district, the accused robbed Assistant Inspector of Police, Turyahisanye Crescensio of UGX 200,000/= cash and immediately before or after the said robbery used a deadly weapon to wit apanga, and caused grievous bodily harm to the
30 aforementioned, a police officer, in-charge of Buhara Police station.



5 Evidence led in Court:

Prosecution adduced evidence through the following witnesses. PW1 Dr. Odurusi Daniel, 36 years old, the Regional Police Surgeon, Kigezi Region who examined the complainant and completed Police Form 3, Medical Exam of an accused Person. PW1 examined the victim, two weeks after the
10 incident and found the following injuries; 1 laceration on the forehead, 1 laceration on the upper eyelid of the left eye, soft tissue injury to the eyebrow. The left eye had bled in itself and was swollen. He classified the injuries as grievous bodily harm, that had caused severe trauma to the victim. PW2, the victim, aged 59 years old, told court that on the fateful
15 day, at around 1900 HRS, during the Covid-19 lockdown, he was advising businesses to close to observe the curfew. He entered a bar, advised the bar owner to close. Bar patrons began shouting at him, but eventually the bar owner closed. On his way home, according to his testimony, he met the accused, who accosted him. He identified him using the moonlight and the
20 light on his phone. The accused threatened him, made him hand over 200,000/=. After robbing him, he picked a stone, hit him on the forehead on his left eye and he fell on the ground. He told court, his left eye was injured seriously. As he fell down, the accused started beating him. He told court, the accused did not use the panga on him. On cross examination,
25 PW2, told court he had known the accused for 2 years as a boda boda rider at Ruhara boda boda stage. He also told court; there was sufficient moonlight to identify the accused who was with another person whom he did not identify.

PW3, Joab Ahereza, 20 years old told court, knows the accused. His
30 testimony was that on the fateful day, at 7 p.m. he was in the bar with the accused and another person called Gilbert. The victim allegedly approached them and asked them to go home. The victim caned the accused who told him, "For us we beat police officers, we shall see each other!" PW4, Agaba Miracle 27 years old, a former police special constable told court, he used to
35 see the accused riding a boda-boda while he was attached at Buhara Police Station. On the fateful day, while on duty, two boys called Dennis and Albert came to the police station and told him they had found the victim bleeding on the ground. He went to the scene, found the victim in a pool of



5 blood with an injury on the head, eyes and his phone lay on the roadside
smashed. He took him to hospital. The local healthcare centre could not
treat him and referred him to Kabale Regional Referral Hospital. PW4
recovered the stone and handed it to PW5, Byarugaba Silver, 56 years old.
PW5, confirmed receiving the report of the incident from PW4, and
10 evacuation of the victim. He recorded the incident in the Station incident
book and received the stone.

On September 29, 2025, the accused was put on defence. His testimony
was on oath. The accused told court, he was at home washing his clothes at
night at the time the alleged incident occurred. He denied the charges. He
15 admitted on cross examination he had absconded from his home from June
29th, 2021, the fateful day to July 11th, when he was arrested. On the day he
was arrested, police found him making chapati.

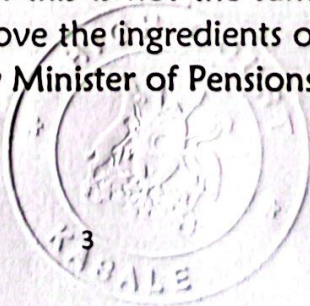
On September 30, 2025, the case was summed for the assessors. On
October 3, 2025, the assessors delivered their opinion. They found that the
20 prosecution had established the ingredients of the crime and prayed for
conviction.

Discussion and analysis:

The offence of robbery is provided for in Section 266 of the Penal Code
Act, which defines robbery and Section 267(2) of the Penal Code Act which
25 provides for a death sentence where the accused at the time of, or
immediately before, or immediately after the time of robbery, is in
possession of a deadly weapon, or causes death or grievous harm to any
person.

In this case, the accused pleaded not guilty. In such cases, the burden of
30 proof rests with the prosecution and never shifts. (See *Woolmington v DPP*,
1935 AC 462).

Secondly, the standard of proof required of the prosecution is to a level
beyond a reasonable doubt, but this is not the same as beyond a shadow
doubt. The prosecution must prove the ingredients of the offence. (See Lord
35 Denning at page 374, in *Miller v Minister of Pensions* 1947 2 ALLER 372).



5 Thirdly, the evaluation of evidence must be done as a whole, carefully
balancing or weighing all items against each other. Lastly, if there are any
defences available to the accused, they must be carefully evaluated, and not
dismissed summarily. See the decision of my brother Wagona J., in *Uganda*
10 *Abdu Ngobi v Uganda*, Supreme Court Criminal Appeal No. 10 of 1991 on
the treatment of evidence where the court held:

15 “Evidence of the prosecution should be examined and weighed against
the evidence of the defence so that a final decision is not taken until
all the evidence has been considered. The proper approach is to
consider the strength and weaknesses of each side, weigh the evidence
as a whole, apply the burden of proof as always resting upon the
prosecution, and decide whether the defence has raised a reasonable
doubt. If the defence has successfully done so, the accused must be
acquitted; but if the defence has not raised a doubt that the
20 prosecution case is true and accurate, then the witnesses can be found
to have correctly identified the appellant as the person who was at the
scene of the incidents as charged.” [Emphasis mine].

This is an important decision as it emphasizes the burden of proof always
rests on the prosecution. Second, it also places emphasis on the correct
25 identification of the accused person, and placing him or her at the scene of
the incidents as charged.

The offence of aggravated robbery while not expressly spelled out in the
Penal Code, is well developed by case law. The elements are:

- 30 (a) There must be robbery established by theft of something;
- (b) Use of violence or threat to use violence to obtain or retain a
stolen item;
- (c) The aggravation is provided in Section 267(2) of the Penal Code
Act where if at the time of the robbery, a deadly weapon is used; and
- (d) the accused participated in the commission of the offence.

35 The prosecution must prove these ingredients to discharge its burden.



5 Evaluation of the evidence:

In the prosecution's case, there was theft of 200,000/= from the accused PW2. Second, there was use of violence. PW2, the victim was beaten and fell to the ground. His injuries were corroborated by PW1, the Police Surgeon who examined him and filled out Police Form 3A; PW3 who found
10 him on the ground, PW4 the police constable who rescued him and PW5 who received the same report as PW4, and recorded the incident in the Station OB. PW2's testimony alluded to presence of a panga and also use of a stone. PW1's testimony showed the injuries were not superficial. PW2 and PW3's evidence showed there was a possible motive. PW2 had closed a bar
15 where the accused was enjoying a drink. PW3 testified that PW2 had caned the accused, prior to the incident on the fateful day.

This case also calls for additional caution. The victim was alone when he was attacked. The attack happened at night. See the decision of the Court of Appeal of Uganda (now the Supreme Court) in Abdallah Nabulere and 2
20 others v Uganda, Criminal Appeal No. 9 of 1978, where the Ssekandi, J.A., at page 5, cited the ratio decidendi, in Abdallah bin Wendo and another v R. 1953 EACA 20 EACA 166,

(a) The testimony of a single witness regarding identification must be tested with the greatest care.

25 (b) The need for caution is even greater when it is known that the conditions favoring a correct identification were difficult.

(c) Where the conditions were difficult, what is needed before convicting is 'other evidence' pointing to guilt.

(d) Otherwise, subject to certain well-known exceptions, it is lawful to
30 convict on the identification of a single witness so long as the judge advises himself to the danger of basing a conviction on such evidence alone. [emphasis mine].

These landmark decisions are still good law in Uganda.

In this case, there was a single identifying witness, PW2. The conditions
35 favoring a correct identification were difficult; it was at night. PW2 told court he relied on moonlight but also used the light on the phone to



5 identify the accused. Secondly, he told court, he was familiar with the accused, as he had seen him before on that but had also known him for 2 years while stationed in Buhara village. I agree with the assessors' opinion, that there was enough light, and the victim knew the accused very well.

10 Third, there was other evidence pointing to the guilt of the accused. PW3's testimony pointed to a motive, the accused promised to beat up the police after he was caned by PW2. I find that these circumstances allow relying on a single identifying witness.

15 I agree with the assessors, prayer for conviction, although I will hasten to add the following. The assessors did not exercise the same caution of a single identifying witness. In all of the testimony and 5 witnesses, there was a single identifying witness. Their opinion was swayed by a blanket statement from the accused, that the people of Buhara kept saying he is the one who beat the police officer. Such blanket condemnations can encourage mob justice. PW2, the victim and PW3, pointed to a motive in their
20 testimony. I find their testimony believable, and it withstood scrutiny during cross examination. The panga was not recovered, and the stone exhibit poorly handled, leading to court's refusal to admit it in evidence. This was the laxity of police, a surprise itself as they were investigating the robbery of their colleague.

25 Weighing the evidence of the prosecution, that of PW2, against that of the defence, DW1, PW2 is believable compared to the DW1's claim that he was at home washing clothes. There was a motive, and violence, using at minimum a stone to cause deep issue injury, scarring and permanent damage in PW2's eye is corroborated by the evidence of PW1, the medical
30 officer, and PW3, the first responder, PW4 and PW5 the police constables who responded to the report.

The prosecution has made its case, established the ingredients of the offence. I agree with the assessors. I accordingly convict the accused of the offence of aggravated robbery.

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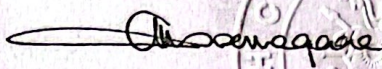


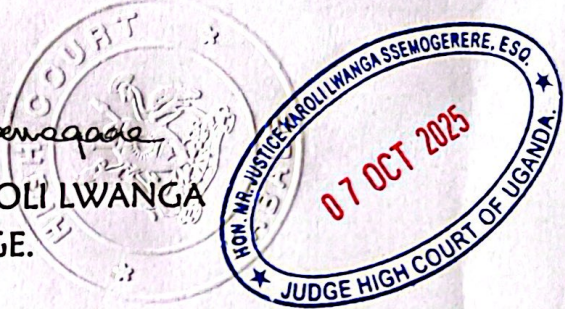
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I SO ORDER

DATED AT KABALE THIS 7th DAY OF OCTOBER 2025

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SSEMOGERERE, KAROLI LWANGA
JUDGE.



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Judgment read in open court. Ms. Noerine Naggayi for the prosecution. Mr. Felix Bakanyabonera holding brief for Mr. Smith Rutebemberwa for the accused. Accused is in court. Sentencing is fixed for October 13, 2025.