

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CRIMINAL CASE NO. 0030 OF 2017

UGANDA :: PROSECUTION

VERSUS

**1. OKABO GEOFFREY }
2. OPIEMU RICHARD } ACCUSED
3. OKUR BOTH SINAI }**

RULING

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] The 3 accused persons; **Okabo Geoffrey (A1)**, **Opiemu Richard (A2)** and **Okur Both Sinai (A3)** were indicted of the offence of **Aggravated Robbery C/ss 285 & 286 PCA**. It is alleged that on the 21st December, 2015 at Ngara Tullow well site in the Bulisa District, the 3 accused persons stole 10 (ten) plastic chairs, 2 (two) Fire Extinguishers, 3 (three) spades and a Torch all valued at **Ugx. 700,000=** and at or immediately, before or immediately after the time of stealing used or threatened to use actual violence on **Opira Justine**, a Guard at Ngara Tullow well site. The accused persons pleaded not guilty to the offence.
- [2] At trial, the prosecution led evidence of only one witness, **Oriek Charles (Pw1)**, a security officer of Saracen (U) ltd who testified briefly that on 21st December, 2015, at around 2.05 a.m. 3 guards; **Opira Justine**, **Mukonyezi Kennedy** and **Okwaya Charles** while on duty at Ngara Tullow well site were attacked by unknown people, who jumped into the site armed with pangas, spears and arrows and stole 10 plastic chairs, 3 spades, 1 umbrella stand, 2 fire extinguishers, 1 baton, 1 re-chargeable

torch and an “occurrence book” where security report occurrences.

- [3] On the 5th March, 2016, at around 1.18 p.m., a one **Pirwot Alex**, and a one **Onwang** alerted (**PW1**) that **Okabo Geoffrey (A1)** was believed to be in possession of the stolen items which he had buried and was planning to remove and ferry them away. **PW1** also alerted Police about the same and it proceeded to **A1**'s place. Police found when the community had already arrested **A1** with the 2 fire extinguishers, 2 chairs, a baton and the torch. He was handed over to Ngara Police. **A1** was an ex-staff of Saracen (U) ltd.
- [4] The prosecution closed its case on the sole evidence of **PW1**. The issue is whether **PW1**'s evidence disclosed a *prima facie* case that would require each of the accused persons be put on their defence.
- [5] The complainant in the instant case, a one **Opira Justine** who was named in the indictment as the victim was not called upon to testify. Secondly, none of the community members who participated in the arrest of **A1** and found him with the alleged stolen properties testified in Court. Lastly none of the alleged stolen properties found with **A1** were exhibited in Court.
- [6] A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence; **R.T. Bhatt v R [1957] EA 332**. The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted.

[7] There are mainly two considerations justifying a finding that there is no *prima facie* case made out as stated in the **Practice Note of Lord Parker** which was published and reported in [1962] ALL E.R. 448 and also applied in **Uganda v Alfred Ateu** [1974] HCB 179 as follows:

a) *When there has been no evidence to prove an essential ingredient in the alleged offence, or*

b) *When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable Court could safely convict on it.*

[8] In the instant case, in the absence of the evidence of the victim **Opira Justine**, a member of community who arrested **A1** with the alleged stolen properties and generally, evidence pointing at the 3 accused persons placing them at the scene of the crime during the night of 21st December, 2015, I find that there has been no evidence to prove an essential ingredient of the alleged offence that either of the accused persons participated in the attack and robbery of the alleged stolen properties.

[9] As a result, I find that the prosecution has not made out a *prima facie* case requiring either of the accused persons being put on his defence. If they choose to keep quiet while on their defence, they would still be entitled to an acquittal. I do therefore find each of the accused persons not guilty of the alleged offence and I do in the premises find each of them not guilty, **(S.73(1) TIA)** and discharge them forth with.

Dated at Masindi this 28th day of **September, 2022.**

Byaruhanga Jesse Ruyema
JUDGE