

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF NWOYA AT ATIAK
CRIMINAL CASE NO CO 108 / 2024
UGANDA :: PROSECUTION

VS

KIIZA EMMANUEL :: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

By charge sheet dated 29TH May, 2024, and sanctioned on 30TH May, 2024, the Accused was charged with one count of THREATENING VIOLENCE Contrary to, then, **Section 81(a)** of the Penal Code Act Cap 120, and now **Section 77**, Cap 128 Laws of Uganda, Red volumes, 2024 revised edition.

Brief background.

It was the prosecution’s allegation that the accused, on the 29th day of may, 2024 at Lorikwo west Village, in Amuru District, with intent to intimidate a one, Mukisa Brian, threatened to kill the said Mukisa Brian.

When the charges were read to the Accused, he denied the Charges and a plea of NOT GUILTY was accordingly entered.

By denying the Charges, the accused placed in issue all and every essential ingredient of the offence with which he is being charged.

The prosecution bears the burden to prove the ingredients beyond reasonable doubts as laid out in the case of **MILLER VS MINISTER OF PENSIONS (1947)2 ALLER ER AT 372.**

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution evidence and not the weakness of the Accused's defence as laid out in **SEKITOLEKO VS UGANDA (1967) EA AT 531**.

Bearing the above principles in mind, I am aware and I have cautioned myself that the accused has no obligation to prove his innocence.

In attempt to prove the charge, the prosecution first called the said **Mukisa Brian** who testified as **Pw1**.

He told court that he is 24 years of age, protestant by faith, a mater of ceremonies by occupation and resident of Eegu Town council in Amuru District.

Pw1 tetified that he knows the accused person commonly called Emma, who was a bouncer (security personnel) at Asante guest house; that on the 29th May, 2024, the accused had just come back from prison and he found Pw1 sunbathing outside the said Asante guest house and he uttered towards Pw1 words that: *"You thought I was going to die in prison?"*; that the accused then followed Pw1 as he went into the guest house which prompted the other security personel present to ask him where he was going and that Pw1 did not wait to hear what the accused replied them.

Pw1 went ahead to testify that the accused did nothing to him but he was very scared because of the fact that he(accused) was following him(Pw1); that Pw1 then got a phone and called the boss whom he informed that the guy whom he(boss) had arrested for hurting Pw1 is back at the guest house, upon which, the said boss took the matters to police.

Pw1 testified further that originally, the accused was his friend and in fact, he is the one who connected the accused to the said boss who subsequently hired him a security guard. Pw1 testified further that he was scared because, previously, the accused had stabbed him with a knife in the abdomen and that was why he was detained the previous time and that is the reason why Pw1 was prompted to report the matters to police. He concluded by asking court to give the accused an appropriate punishment because he was scared that if the accused is let go, he might again cause him harm.

On cross-examination by the accused, Pw1 testified further that, *“yes, you told me, you thought I was going to die there?”* and that’s what prompted Pw1 to move away from the accused; that on that day, they had a show at Asante Guest house wand while Pw1 moved out to get some drinking water, he found girls fighting and the accused was away and when the accused later came from behind, he found Pw1 holding both girls to get out, whereupon, the accused grabbed Pw1 by the neck and stabbed him around the armpit and the accused uttered the words *“I told you I will kill you”*; that the said girls were Pw1’s friends and the accused came from behind and he stabbed him 7 times. At that point, the witness took off his shirt to show court the scars.

On re-examination by prosecution, Pw1 testified further that the accused found him outside and that’s when he asked him that question, whereupon, Pw1 went back inside crying. At that point, the witness was discharged.

Prosecution then called its next witness, a one **SAM OGWAL** who testified and his testimony was taken down as **Pw2**.

He took oath in English and told court that he is 43 years of age, protestant by faith, proprietor of Asante Guest house and is a resident of Lorikwo west, Elegu town council in Amuru district.

Pw2 testified that both the victim and the accused worked with him at the said Asante Guest house and accused was working as a bouncer/ security personnel; that on the 29th May, 2024, Pw1 was at home when he received a call at around 7:00-7:30am from his manager called Emma who told him that he was very shocked that the bouncer(accused) who had been taken to prison had come back to the Guest house, now threatening the Master of Ceremonies(Pw1); that two more people called him stating the same thing and the first was the Askari(security guard) and the other was a neighbor in the nearby hotel who wondered to Pw1 how come the bouncer/accused who had been taken to prison was now back at the guest house; that Pw1 then immediately informed police, who, he later came with and they arrested the accused at Asante Guest house and he was then taken into custody and charged with threatening violence; that before all that, the masses were mobilizing themselves to conduct a mob justice and lynch the accused because they were stating that they had lost trust in the justice system as they were shocked that the man who had attempted to kill a person was already back on the streets that so fast.

Pw2 testified further that they tried to resurrect the previous case but due to lack of substantial information, they failed to prosecute that case; that Pw1 lost a lot of business at the bar after that brawl and that afterstabbing the MC(Pw1) 7 times and damaging his large intestines, Pw1 went through an operation and it cost Pw2 a lot of money, as the MC (Pw1) was to die within 3 hours if no operation had been conducted;

he concluded by asking court to hand down the maximum sentence so that the community can have trust in the justice system; he also told court that he has so far expended 2,500,000/= on treatment of Pw1 but he is not sure that the accused is in position to pay back.

On cross-examination by the accused, Pw1 testified further that he knows people by face whom the accused told that he used bribery to avoid the previous charge and that the witnesses were in court and would give testimony by themselves; that Pw1 was not present to find out why the accused had come back.

No questions were led in re-examination and the witness was accordingly discharged.

When trial resumed on the 7th July, 2024, prosecution called **OPIO ROGERS** whose testimony was taken down as **Pw3**.

He told court that he is a Pentecostal by faith, also a master of Ceremonies at Asante Guest house and resident of Lorikwo West, Elegu Town council in Amuru district.

He testified that he knows the accused person as they were working with him as a bouncer (security personnel) at Asante guest house while he (Pw3) was a master of Ceremonies(MC); that on the 29th May, 2024 in the morning at around 7:00am, he came out from watching a movie and Pw1 also came out and later moved away from Pw3 whereupon, he (Pw3) later heard the accused and Pw1 talking outside the gate; that he heard the accused utter words that *“You thought I was going to die in prison?”*; that before all that, the accused had been in prison for stabbing Pw1 7 times and to their surprise, the accused was later seen in Elegu; that it is on the 29th May, 2024 when the accused returned to Asante Guest house;

that when Pw3 stood up and turned, he realised it was the accused and he heard Pw1 ask “*what have I done?*”; that it is at that point that Pw3 decided to call their boss (Pw2) and the Askari also came out but they found when Pw1 had left, on the advice of the Askari and that the boss (Pw2) later went to police, which subsequently came and arrested him.

No questions were led in cross-examination or re-examination.

Having heard all the evidence from the prosecution this court ruled that a prima facie case had been established, hence the accused placed to his defence.

All the three modes of defence were explained to the accused. That is;

1. Give evidence on Oath, whereby he will be subjected to cross examination by the prosecution.
2. Give evidence not on Oath whereby the accused will not be subject to cross examination.
3. Elect to keep silent.

The Accused opted to give evidence on Oath.

He was sworn in and testified as his own witness, as **DWI -KIIZA EMMANUEL**

He testified that it was early morning of 24th May, 2024 when he had gone back to his former work place to change clothes, having been released from Amuru prison whereof he had served a sentence of community service; that he had been told that he had used a weapon to cause grivious bodily harm to Pw1, a charge he had pleaded guilty to and thereby sentenced to community service; that at 7:00am when he reached his former work place, its whereof he met the complainant (Pw1)

and he could not pass without greeting him and he uttered Luganda greeting words “*Wasuze otya*” but he, the complainant (Pw1) did not reply and he entered back into the premises of Asante guest house, whereof, the Dw1 also entered thereof; that he found the Askari at the gate who came close and Dw1 explained to him his predicament and asked him to go into his former room and get for him changing clothes so that he can go to Atiak and do the community service; that the Askari refused and told Dw1 to wait for their boss (Pw2) and ask for all that belongs to him.

Dw1 testified further that at that point, he moved out of the premises and remained loitering around the nearby supermarket as he waited for the boss to arrive and in about 10 minutes, the boss’ car passed by which prompted Dw1 to walk back to the premises of the Asante guest house; that on reaching there, Dw1 realised that the boss had come with police officers who then handcuffed him; that Dw1 was not allowed to say anything and he was told to sit on a motorcycle which whereupon he was taken to police, later arraigned in court and subsequently remanded to prison.

On cross-examination by the prosecution, Dw1 testified further that he did not try to talk to the boss when he went back to Elegu as the people he found at the guest house did not allow him to enter the premises and he did not feel bad about being stopped from entering and neither did he touch or occasion any violence upon any one.

On being examined by court, Dw1 testified further that he had only spent 3½ months as an employee of Pw2 and the place was called Asante guest house; that he originally worked at a bar called H15, still as a security personnel and he also worked for 2 months at High 5. The

witness was thereupon discharged and the defence case closed. This is therefore the judgment of court.

THE LAW AND ANALYSIS

The offence of Threatening violence is created Under **Section 81(a) of the Penal Code Act**, Cap 120, Laws of Uganda.

Under that section, the offence of threatening violence is committed by any person who with intent to intimidate or annoy any person, threatens to injure, assault, shoot or kill any person or burn or injure any property.

Essential ingredients:

- a) Words or conduct that threatens another
- b) Intention to intimidate or annoy
- c) Participation of the accused.

Ingredient 1: Words or conduct that threatens another

The accused's defence was denial. An accused who sets up a defence does not have a duty to prove it, but it's the duty of the prosecution to disprove it as held in ***Vicent Rwamaro v. Uganda [1988-90] HCB 70***.

In Criminal Appeal No. 0010 OF 2018 - Acaya Wilson Vs Uganda, JUSTICE STEVEN MUBIRU discussed as follows:

“Mere words are not enough; it is constituted by utterances coupled with actions causing imminent threat of harm” **(see also *Mugenyi James v. Uganda [1974] H.C.B 83 and Uganda v. Racham Daniel [1977] 52*)**.

There must be a threat to assault coupled with intention to intimidate (**see *Ofwono Benedicto v. Uganda [1977] H.C.B 210***). it must be shown that words were uttered or that at least there were gestures made that could clearly be interpreted as a threat (**see *Uganda v. Onyabo Stephen and three others [1979]H.C.B39***).

The intention to intimidate may be gathered from the utterances, conduct, and surrounding circumstances (**see *Uganda v. No.39 PC Lochoro [1982] H.C.B. 80***).

Court should also be satisfied that none of the witnesses was motivated by malice or grudge to implicate the accused. In the instant case, Pw1 testified that:

*“on the 29th May, 2024, the accused had just come back from prison and he found me sunbathing outside the said Asante guest house and he uttered towards me that: **“You thought I was going to die in prison?”**”*

“... that the accused then followed me as I went into the guest house which prompted the other security personnel present to ask him where he was going and I did not wait to hear what the accused replied them...”

In corroboration of that testimony, Pw3 testified that:

*“on the 29th May, 2024 in the morning at around 7:00am, I came out from watching a movie and Pw1 also came out and later moved away from me and later, I heard the accused and Pw1 talking outside the gate. I heard the accused utter words that **“You thought I was going to die in prison?”**”*

In reply to that testimony, Dw1 testified that:

*“... it was at 7:00am when I reached my former work place, whereof I met the complainant (Pw1) and he could not pass without greeting him and **I uttered Luganda greeting words “Wasuze otya”** but he, the complainant (Pw1) did not reply and he entered back into the premises of Asante guest house instead.*

From the above testimonies, it is for certain that both the accused and the complainant had an encounter on the morning of **29th May, 2024**. Clearly, there were some words which were uttered by the accused towards the complainant.

I find the prosecution testimony believable as regards what the accused uttered towards the complainant to the effect that the accused uttered **“You thought I was going to die in prison?”** The said words, *per se* are not threatening on a literal face of it. But what makes them threatening is the circumstances surrounding their utterance and the conduct of the accused.

In ***Mugenyi James v. Uganda [1974] H.C.B 83 and Uganda v. Racham Daniel [1977] 52) supra***, it was stated that *“Mere words are not enough; it is constituted by utterances coupled with actions causing imminent threat of harm”*

On cross-examination by the accused Pw1 testified that:

“...you grabbed me by the neck and stabbed me around the armpit and you uttered the words “I told you I will kill you”;

From the above analysis, I am satisfied that prosecution proved that not only did the accused utter words, but also, given the surrounding

circumstances, the said words were threatening in nature. I am also satisfied that the prosecution proved that the said words were also accompanied by conduct by the accused that threatened the complainant. Prosecution proved this ingredient beyond reasonable doubts.

Ingredient 2: Intention to intimidate or annoy.

In **Shubadin Merali & Anor Vs Uganda (1963) EA 647** Court stated that:

“the circumstances must be such as to produce moral certainty to the exclusion of any reasonable doubt. It is necessary before drawing the inferences of the accused’s responsibility for the offence from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”

It was the testimony of all prosecution witnesses, including the accused himself as Dw1 that previously, he had been in prison owing to violent acts of stabbing the complainant (Pw1). Those facts were not in issue and this court has no reason to believe otherwise.

The question that lingers in my mind therefore is, given those circumstances, how is it humanely possible for the accused to seek to greet the person who caused him to be sent to prison, and when he rejected his greetings, he followed him back into the scene of crime (*the Asante Guest house*) whereof the previous stabbings had taken place.

What was his motive? In his testimony as Dw1, I did not hear him testify that he followed Pw1 with intentions of seeking reconciliation or to apologize to Pw1 for the previous stabbings. It is also evident from the

testimonies of Pw2 –(the boss) that ever since the stabbings, the accused had not returned to the said Asante Guest house.

In ***Owono Benedicto v. Uganda supra***, it was stated that there must be a threat to assault coupled with intention to intimidate. It must be shown that words were uttered or that at least there were gestures made that could clearly be interpreted as a threat **see also, *Uganda v. Onyabo Stephen and three others [1979]H.C.B 39***.

In ***Uganda Vs Wanyama Steven Criminal Session Case NO 0405/2015*** Hon. Justice Steven Mubiru held that:

“the court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.”

I am not convinced with the accused’s explanation to the effect that he had gone to collect his changing clothes. And even if indeed he was, I have no doubt in my mind that he exploited the opportunity to commit the offence with which he is being charged. In a nutshell, am also satisfied that prosecution proved this ingredient beyond reasonable doubts.

Ingredient 3: Participation of the accused.

Fortunately, for this court, the question of identification of the accused is also not in issue as to stand the risk of error or mistake as stated in ***Abdalla Bin Wendo v. R (1953) 20 EACA 106; Roria v. R [1967] EA 583 and Abdalla Nabulere and two others v. Uganda [1975] HCB 77***.

All prosecution witnesses and even the accused himself, testifying as Dw1 proved that he was at the scene of crime on the mentioned morning of 29TH May, 2024 when the offence was allegedly committed.

It is my finding that all the ingredients were proved by the prosecution to the required standard of, beyond reasonable doubts.

The accused's general defence of denial is hereby rejected.

While in **Abdalla Bin Wendo & Anor Vs R (1953) EACA AT 166** and **Roria V Republic (1967) EA AT 583** and also, in **Bogere Moses & Anor V Uganda SC** or **Appeal no.1 of 1997** court stated that:

“where prosecution does not produce credible identifying witnesses, the court must exercise the greatest care so as to satisfy itself that it is free from the danger of mistaken identity”

This court is fully satisfied that the prosecution witnesses were credible, the accused was found at the scene of crime, he also had previous criminal conduct towards the complainant and his own sworn testimony, inspite his defence of a general denial, duly placed him at the scene of crime.

The evidence before me does establish that the accused fully participated that substantially contributed to or had a substantial effect on the consummation of the offence with which he is being charged.

I find that the prosecution has proved all ingredients beyond reasonable doubts and accordingly, I find the Accused guilty and Convict him of the offence of THREATENING VIOLENCE Contrary to, then, **Section 81(a)** of the Penal Code Act Cap 120, and now **Section 77**, Cap 128 Laws of Uganda, Red volumes, 2024 revised edition.

The Accused is further remanded until when he will be heard on allocutus and subsequent sentencing.

I so order.

Dated at Atiak this _____ day of _____ 2024.

HW. KK

HW Kyembe Karim Esq.

Magistrate G.I