THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA

CRIMINAL CASE NO CO 021/ 2024

UGANDA :: PROSECUTION

VS

A1. OKOLONG JOHN BOSCO

A2. OKURUT JAMES

A3. APIO FLORENCE

A4. AGOTE JANAT

A5. AGGOLOR DAVID :: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

RULING ON PRIMA FACIE CASE

Introduction.

The accused were jointly arraigned under charge sheet dated 19th January, 2024 and Sanctioned on the 23rd January, 2024, and charged with one count of ASSUALT OCCASSIONING ACTUAL BODILY HARM Contrary to, then, **Section 236** of the Penal Code Act Cap 120, and now **Section 219** Cap 128 Laws of Uganda, Red volumes, 2023 revised edition and 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, 2023 revised edition.

Brief facts.

On count 1, it is the prosecution's assertion that A1, on the 3rd day of June, 2023, at around 20:00hours at Onyalat village, Adododi Parish, Cherekura sub county in Pallisa district assaulted a one, Odongo Mary, an 8 year old thereby occasioning upon her actual bodily harm.

On count 2, it was the prosecution allegation that A1,A2,A3,A4 & A5, on the 3rd day of June, 2023, at around 20:00hours at Onyalat village, Adododi Parish, Cherekura sub county in Pallisa district with intent to intimidate or annoy a one, Adong Mary, an 8 year old and her mother, a one, Adong Mary threatened to injure them by beating the said victims.

When the charges were read to the Accused, they severally 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 they are 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 also aware and I have cautioned myself that the accused have no obligation to prove their innocence.

Evidence adduced:

In attempt to prove the charges, the prosecution first called the said Adongo Mary whose testimony was taken down as **Pw1.**

She told court that she knows the accused people. That on the said day, at around 8:00pm while eating supper from outside, she saw the accused come to their home armed with pangas, spears and sticks. That there was moonlight and that they had solar lighting together with a torch. That A1 hit her with a stick once while uttering ***"let's hurt the child so that the mother can come out of the house."***

That later, someone came and called the mother and they went to hospital the next day and also, the mother reported at police and Pw1 was taken to several medical facilities for treatment.

In the course of her testimony, court observed a demeanor of a witness not sure of what she is saying and also noted inconsistences in testimony when she testified as having been treated in Pallisa and later said she was treated from Kampala.

On cross-examination by learned counsel for the accused, Pw1 told court further that there has been a dispute between the accused and her family. She now departed from earlier testimony and told court that she was eating supper with her mother outside the house, that before the attack, her leg was swollen and the cuts seen were occasioned by the hospital personnel and the only time she saw the blood was when she had been taken to the hospital.

Prosecution also called Pw1's mother, with whom they share the name, Adong Mary and her testimony was taken down as **Pw2.**

She told court that on the said day, she saw the accused armed with pangas, spears and sticks stating ***"today, we have come to kill you because you don't want to leave here,"*** whereupon, she rushed inside the house and locked herself therein living Pw1 and other children outside the house. That the accused, then cut Pw1's leg and blood came out. The court also observed the demeanor of the witness and she looked unsure of what she was saying with a lot of hesitation. She testified further that she then took Pw1 to Kampala whereof they got medical attention. On application of defence counsel, receipts from Pallisa Hospital identified by Pw2 were admitted as Defence exhibit **DEX1.**

Pw3 re-echoed testimony of Pw1 and Pw2, notably, with similar observation of demeanor of a witness unsure what he was stating or one who had forgotten what he had been couched to tell court.

Pw4- a clinical officer who treated Pw1 and told court that he treated Pw1 on the 5th July, 2023. This court observed that the alleged injury had been inflicted on the 2nd July, 2023. The 3days delay to treat a cut was not explained.

The prosecution thereupon rested its case.

It is upon that evidence that this ruling seeks to address whether or not the prosecution has established a prima facie case against the accused as to require them to defend themselves.

In **WIBIRO ALIAS MUSA VS REPUBLIC (1960) EA 184** it was

held:

> *"This court is not even obliged at this time to find whether the evidence is worthy of too much credit or if believed, is weighty*

enough, beyond reasonable doubts. That conclusion can only be made after the defence case is heard".

Consideration by court:

Under **Section 2** of the Evidence Act Cap 8

"evidence" denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, ***judicial notice****, presumptions of law and* ***ocular observation by the court in its judicial capacity****. [Bolding & underlining added for emphasis].*

under **Section 101** of the Evidence Act the burden to prove a case in a criminal trial rests entirely upon the prosecution.

In **University Of Ceylon VS Fernando (1960), WLR 233** Court observed that the opportunity to cross examine the adversary witness is a fundamental one but where that opportunity is extended and the party does not take it up, does not amount to denial of that opportunity.

In this case, learned counsel for the accused duly exploited the opportunity.

In Count1, A1 is charged with ***ASSUALT OCCASSIONING ACTUAL BODILY HARM*** *Contrary to, then, Section 236 of the Penal Code Act Cap 120, and now Section 219 Cap 128 Laws of Uganda, Red volumes, 2023 revised edition.*

In **UGANDA VS GBONGA DIMBA & 2 OTHERS CRIMINAL APPEAL No. 0005 OF 2015 (Arising from Koboko Grade One Magistrate's**

Court Criminal Case No. 0026 of 2013), Hon. Justice Stephen Mubiru laid out that the prosecution has to prove each of the following essential ingredients beyond reasonable doubt;

Ingredients

1. there was an unlawful assault of the complainant,
2. as a result of which the complainant sustained bodily injury.
3. The accused caused or participated in causing the bodily injury

In count 2, A1,A2,A3,A4 &A5 are jointly charged with ***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, 2023 revised edition.*

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.

In the interest of judicial economy, I will address the ingredient of participation in both counts, since, it is alleged the offences were committed in concert and simultaneously.

Evidence of identification is a cause for unease, given the fact that the offences were allegedly committed at night. Prosecution witnesses Pw1, Pw2 & Pw3 testified that it was around 8:00 pm.

The rules regarding identification on offences allegedly committed at night were laid down in **Roria vs. Republic [1967] E.A. 583.**

The reason for this is that there is greater danger of convicting an innocent person on such evidence, than is the case with other forms of evidence.

While even the evidence of a single identifying witness can suffice to found a conviction, it is less safe to do so than is the case with multiple identification witnesses. Therefore the Court is under duty to satisfy itself that in all the circumstances of the case, it is safe to act on such evidence of identification.

These principles were followed by the Supreme Court of Uganda in **Bogere Moses & Anor. vs. Uganda – S.C. Crim. Appeal No. 1 of 1997**; which cited with approval, the case of **Nabulere vs. Uganda – Crim. Appeal No. 9 of 1978; [1979] H.C.B. 77,** in which the Court had clarified that;-

> *"…the need for the exercise of care arises both in situations where the correctness of disputed identification depends wholly or substantially on the testimony of a single or multiple identification witnesses; and that the Court must warn itself and the assessors of the special need for caution before arriving at a conviction founded on such evidence…"*

The Court further stated that:

> *"…The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, and that even a number of such witnesses can all be mistaken. The Judge should then examine closely the circumstances in which the identification came to be made particularly the length of time, the distance, the light, the familiarity of the witness with the accused."*

In the instant case, the only evidence attempting to place the accused at the crime scene is that of Pw1 and Pw3 who are both minors. They testified as follows:

Pw1 told court that:

> *"… on the said day, at around 8:00pm while eating supper from outside, I saw the accused come to our home armed with pangas, spears and sticks…"*
>
> *"…there was moonlight and we had solar lighting together with a torch…."*

Besides other observations made by court on the demeanor of the witnesses, it is unclear why Pw1 and others needed a torch when there was moonlight and solar lighting. This appeared to court to be a rehearsed testimony and untruthful.

Pw1 while under cross-examination by learned counsel for the accused, departed from earlier testimony when she told court that

> *"…we were eating supper with our mother outside the house…"*

Yet, she had earlier told court the mother was eating from inside the house.

While Pw2 testified that she was locked up inside the house, she also testified that it is the accused who occasioned harm upon Pw1. This court wonders how she managed to see the happenings outside the house.

Yet, further, on the contrary, Pw1 had told court that:

> *"…before the attack, my leg was swollen and the cuts seen were occasioned by the hospital personnel and the only time i saw the blood was when I had been taken to the hospital..."*

All that evidence taken as a whole, this court is not satisfied that the evidence attempting to place the accused holds any credibility. It is tainted with lies.

For example, it is hard to believe Pw2 who lied that the injuries on Pw1 were occasioned on the said night of attack, yet, she waited 3 days to seek medical attention!

That is besides the fact that Pw1 told court that the injuries were occasioned upon her by medical personnel. Similarly, both Pw1 and Pw2 did not know which hospital they sought medical attention!! Pw2 told court that it was in a hospital in Kampala whereas; her own receipts exhibited as **DEX1** show Pallisa hospital!

All in all, this court is not satisfied that the accused's participation was proved to the acceptable standard.

In **Uganda Vs Tweyanke (1975) HCB 143,** it was stated that where the prosecution fails to establish a prima facie case, the accused must be acquitted.

As prosecution failed to prove to this court the participation of the accused, it would be moot to examine other ingredients.

I am not satisfied that the prosecution has established a prima facie case as to require the accused to enter defence and I order as follows;

1. The A1, A2, A3, A4 & A5 are found NOT GUILTY and stand acquitted of the charges leveled against them.
2. A1, A2, A3, A4 & A5 are hereby discharged and set free henceforth unless they are being held on other lawful charges.
3. Bail money any deposited should be refunded.

I so order.

Date at PALLISA this _____17th_____ day of _____JUNE_____2025

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H/W KYEMBE KARIM ESQ

Magistrate G.I