**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO**

**CRIMINAL SESSION CASE NO. 0087 OF 2010**

**UGANDA :::::::::::::::::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**A1. MAWEJJE IBRA**

**A2. JUMA IDDI MUBARAKA } :::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

# JUDGMENT

The accused persons **MAWEJJE IBRA** and **JUMA IDDI MUBARAKA** were indicted for the offence of aggravated robbery on four counts contrary to **Section 285 and 286 (2) of the Penal Code Act.**

On the 1st count it was alleged that the accused persons on the 1st day of January 2007 at Walusubi village, Nama Sub-county in Mukono district robbed Matovu Arafat of cash Ug. Shs.60,000/=, a jean trouser, a shirt and a pair of shoes and at or immediately before or immediately after, threatened to use deadly weapons to wit pangas and guns on the said Matovu Arafat.

On the 2nd count it was alleged that on the 1st January 2007 at Walusubi village, Mukono District the accused robbed Muwonge Hamisi of cash Ug. Shs.40,000/= and a pair of black shoes and at or immediately before or immediately after, threatened to use deadly weapons to wit pangas and guns on the said Muwonge Hamisi.

On the 3rd count it was further alleged that on 1st January 2007 at Walusubi village Mukono District, the accused robbed Lubega Rashid of a pair of black shoes and at or immediately before or immediately after threatened to use deadly weapons to wit pangas and guns on the said Lubega Rashid.

Lastly on the 4th count, it was alleged that the accused on 1st January 2007 robbed Okello Henry of a pair of black shoes and at or immediately before or immediately after, threatened to use deadly weapons to wit pangas and guns on the said Okello Henry.

The background facts to the indictment alleged that on the 1st January 2007 at about 5.00 p.m., the complainants were returning home from Namawojolo Trading Centre where they had gone for end of year Disco dance. On their way back, they were attacked by the accused who had pangas and guns. The accused threatened to cut and shoot them unless they gave up all they had in their possession. The accused ordered the victims to lie down and later to sit down. The accused proceeded to rob them of money, clothes, shoes and other petty things. Thereafter, the accused ordered them to run to the bush for their lives while they also sped off with their plunder. However, the accused were halted by a security guard at a Radio Station who suspected them of carrying stolen things. The Police were alerted and the victims were informed where upon they went and identified what the accused had robbed from them. The accused were then charged accordingly.

When the indictment was read and explained to the accused, they denied the offence. Hence, the prosecution had to adduce evidence in order to prove all the ingredients of the offence charged beyond all reasonable doubt: See **MATOVU**

**MUSA KASSIM v Uganda Supreme Court, Criminal Appeal No. 27 of 2007.**

The essential ingredients of the offence of aggravated robbery are the following:

(1) That there was theft of property.
(2) That there was use of violence or threat to use violence.
(3) That the assailants used or threatened to use a deadly weapon.
(4) That the accused participated in the offence.

See: **Uganda v Mawa alias Matua {1992-93} HCB 65.**

It is trite law that all the above ingredients ought to be proved beyond reasonable doubt since all the ingredients go hand and glove. Therefore failure to prove one is failure to prove all: See **Walakira Abas & Others v Uganda: Supreme Court; Criminal Appeal No. 25 of 2002 (Unreported).**

In order to prove the above ingredients, the prosecution relied on the evidence from five witnesses. The accused on their part made sworn defence of total denial and alibi.

**Whether there was theft of property:**

As far as the first ingredient of theft is concerned, the prosecution evidence relied upon was from Matovu Arafat $Pw_1$ who testified inter alia, that on the 1st January 2007, while returning from the new year day celebrations, in the company of Muwonge Hamisi, Tadeo Sekikubo, Rashid Lubega and Okello Henry they were accosted near Namawojjolo by two men wielding guns and pangas. That the two men ordered them to sit down. That, in the process he

was robbed of Shs.60,000/= while Amis was robbed of shs.40,000/= and Lubega Rashid lost a phone. He also lost to the robbers a pair of jeans trousers and a pair of shoes.

**Muwonge Hamis $Pw_2$**, on his part testified and confirmed that he was together with Matovu Arafat, Henry Okello, Lubega Rashid, Lwide Erisa and Sekikubo, among others, when some robbers accosted them whereby he was robbed of Shs.40,000/= and a pair of shoes.

Another witness **Henry Okello $Pw_5$** testified that he was among the victims.

The evidence of the above victims were corroborated by that of D/Corporal Bwambale $Pw_2$ and D/Sgt. Wako Stephen $Pw_3$.

D/Cororal Bwambale $Pw_2$ testified that during the morning of 1/1/2007 he was involved in investigating a robbery case at Walusubi village in which the perpetrators had been arrested near Donamisi Radio station with suspected stolen properties at around 5.00 a.m. That, he recovered some exhibits which included mobile phones, black handbag, pangas, canvas shoes, dark blue jeans plus a toy gun. That, he exhibited those items with D/Sgt. Wako Stephen $Pw_3$ who was their Police Store-man who produced them in court.

From the above evidence I am satisfied that the ingredient of theft was established by the prosecution beyond reasonable doubt.

**Whether there was use of violence or threat to use violence:**

As far as the use of violence was concerned, violence is defined in black's Law Dictionary to mean unjust or unwarranted exercise of force, usually with the

accompaniment of vehemence outrange or fury. According to Matovu Arafat $Pw_1$, Muwonge Hamisi $Pw_4$ and Okello Henry $Pw_5$ their assailants accosted them, with terror and ordered them to lie down and later sit up. After robbing them, they forced them to run to the bush and never to look behind. They had guns and pangas. I have no doubt that the above acts of the assailants constituted use of violence as it meant that the rights of the victims had been compromised fundamentally to allow the assailants easy ground to rob them.

**Use or threatened use of deadly weapons**

As for the use of a deadly weapon, under **Section 286 (3) (a) (i) of the Penal Code (Amendment) Act 2007** a deadly weapon includes any instrument made or adopted for shooting, stabbing or cutting or any imitation of such instrument.

According to Matovu Arafat $Pw_1$, Muwonge Hamisi $Pw_4$ and Okello Henry $Pw_5$ they were accosted by two men who were wielding guns and pangas. They testified that they were terrified when they saw the guns and thereafter did what the robbers ordered them to do, including lying down and allowing them to part with their property.

D/Corporal Bwambale $Pw_2$ testified that he was the investigating officer. He stated that on 1st January 2007 in the morning hours, he went to investigate a robbery case at Walusubi in which the assailants had been arrested near Donamisi Radio Station with suspected stolen items. He recovered some of the stolen items and the two suspects Mawejje and Juma Idd Mubarak.

Among the items he recovered were two mobile phones, black ladies' handbag, pangas, canvas shoes, dark blue jean trousers, and a toy gun wrapped in black cello tape. He testified that the accused took them to their village where they

recovered another toy gun from a banana plantation. All those items were tendered and exhibited in Court by the Police Store man D/Sgt. Wako Stephen $Pw_3$.

While the victims testified that their assailants had guns in reality those were toy guns made out of banana fibres. However, according to the new amendment a deadly weapon includes any imitation of such instrument adopted for shooting, stabbing or cutting. From the above evidence I am satisfied that the victims were accosted with the use of or threats to use a deadly weapon. The victims also testified that their assailants also used pangas which were also recovered from the scene. A panga is a deadly weapon and falls within the ambit of the section. This ingredient has also been proved beyond reasonable doubt as required by the law.

Before I take leave of this point it is instructive to state that the amendment of the Penal Code Act to re-define a deadly weapon to include imitation of such instrument cured a fallacy in the law as was stated in the case of **Wasajja v Uganda (1975) EA 181** where a deadly weapon was defined as follows:

> **"The vital consideration is that the weapon must be shown to be deadly in the sense of *"capable of causing death."* As we have indicated, by pistols, broken guns incapable of discharging bullets, or guns without ammunition, or imitation guns are not, and cannot be, deadly weapons. There was no evidence in this case that the gun held by the appellant was a deadly weapon. For all we know it may have been a harmless imitation....**
>
> **If a gun is fired in the course of a robbery, a Court will have no difficulty in holding that it is a deadly weapon; if it is not fired, but**

**merely its use is threatened, as in this case, a finding based on evidence that the gun was a deadly weapon is essential before its threatened use can institute aggravated robbery under Section 273 (2).”**

The ghost in Wasajja’s decision kept on haunting the court, on the 20th June 1991 when a futile attempt was made at over-ruling it and a full bench was convened for that purpose in the case of **Sgt. Shaban Birumba & Another vs Uganda; Supreme Court Criminal Appeal No.32 of 1989 (Unreported).**

In that case, the complainants were forced at gun point to surrender their property to the appellants. It was established that the gun was a pistol as seen by the witnesses. The 1st appellant made his escape but was kept in sight during the chase until he was arrested. He was found in possession of a biretta type of pistol – No.025049N, loaded with 5 rounds of ammunition. The trial Judge was of the view that the identification of the weapon by SIP Mathias Mugirima $Pw_7$, was proved beyond doubt and concluded that the pistol found in the possession of the 1st appellant was the same pistol as that seen by the complainants at the time of the robbery. It did not matter that the pistol was not produced in evidence. The Judge held that the evidence before Court was sufficient to prove that the pistol was a deadly weapon in the sense that it was capable of causing death. It being a deadly weapon it was sufficient if the pistol had been used to threaten the complainants.

The Supreme Court observed inter alia that

**“as the pistol was not fired at the time of the robbery nor examined and test fired, we cannot say in what condition it was. The presence of the ammunition, though suggestive of the fact that the pistol could be used, is not conclusive. For all that is known, the pistol may have been**

**out of order, and incapable of discharging the ammunition. A weapon of this nature, when taken into custody should always be carefully examined and test-fired, if it has not been fired at the scene of the crime. It was in fact impossible on the evidence, to find that the gun was a deadly weapon, within the reasoning of Wasajja's case.**

The above passage formed the central point in that appeal whether the pistol was a deadly weapon within the reasoning of **Wasajja's** case. In reliance on **Wasajja's** case Counsel for the appellant asserted that the pistol was not a deadly weapon. On the other hand the Ag. DPP countered that submission by referring to **Section 3, of the Fire Arms Act (Act No. 23 of 1970)** which provides as follows:-

**"(4) A firearm or imitation firearm shall not withstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile, be deemed to be a dangerous weapon or instrument for the purpose of Section 273 and 274 of the Penal code Act.**

**(5) In this section, imitation firearm means anything which has the appearance of a firearm whether it is capable of discharging any shot, bullet or other missile."**

The Ag. DPP argued that **Section 31 of the firearms Act** had not been brought to the attention of the Judges in Wasajja's case. He submitted that had **Section 31** been brought to the attention of their Lordships, they would have been bound to conclude that it did not matter what kind of gun it was, whether usable or not usable; these were by definition all guns deemed to be those referred to in **Section 273 and 274 of the Penal Code Act.** Consequently he asked that Wasajja's decision be overruled.

According to the Counsel for the appellants dangerous weapons within **Section 31 of the Firearms Act** was not the same thing as *"deadly weapon"* within the terms of **Section 273 of the Penal Code Act.** The Ag. DPP on the other hand contended the dangerous weapon must be the same as a deadly weapon; or at all events, as **Section 31** must be included in the definition of a deadly weapon contained in **Section 273 of the Penal Code Act.**

In a majority judgment the Supreme Court declined to apply **Section 31 of the Firearms Act** to **Section 273 of the Penal Code Act** arguing that the matter was ambiguous and the intention of Parliament to apply that Section to **Section 273 of the Penal Code Act unclear.** It held that unless Parliament directed otherwise, the decision in Wassajja's case was still good law and should be upheld.

In a minority, Judgment, **Wambuzi CJ** (as he then was) was of the contrary view which I share with greatest respect. His Lordship's view is as stated below:

The sub-section defines what is a deadly weapon as follows,

**"Deadly weapon includes any instrument made or adopted for shooting, stabbing, or cutting and any instrument which, when used for offensive purposes is likely to cause death."**

Learned Counsel for the Respondent submitted, quite rightly in my view, that the definition is inclusive and not exclusive. It does not say a deadly weapon means any instrument made or adopted for shooting, etc but says "included".

**"A gun is a deadly weapon according to this definition because it is made or adopted for shooting. According to Section 31 of the firearms Act an imitation firearm shall be deemed to be a dangerous weapon for the purpose of Section 273 of the Penal Code Act, even though it is not made or adopted for and is not capable of discharging anything. The effect is to include an imitation firearm as a dangerous weapon amongst deadly weapons. I see no other way of giving effect to the intention of the legislative in enacting Section 31 of the Firearms Act."**

**"....Apparently Wasajja's case and many others do not require proof that the gun was loaded at the time of the robbery. To that extent I see no difference between an unloaded gun and an imitation firearm. Their effect is the fear induced in the victim to part with his or her property. Very few victims will want to see whether the weapon facing them is a loaded gun or a mere imitation firearm. This must have been the intention of the legislature in enacting sub-section (4) and (5) of Section 31 of the Fire Arms Act, 1970. It is to be noted also that the Firearms Act, 1970 is later at time than the provisions of Section 273 of the Penal Code which were enacted in 1968. The later provisions of an Act of Parliament cannot be rendered ineffective by earlier provision which Parliament must have been aware of in enacting the new provisions."**

With greatest respect, I do agree that the essence of aggravated robbery is the fear induced in the victim by a deadly weapon to force him or her to part with property. Once a gun is wielded there is little or no time for the victim to determine whether the same is a loaded gun or a mere imitation firearm as that would tantamount to gambling with life which is always lost only once. I do agree that this was the intention of the legislature in enacting **Sub-section (4) and (5) of Section 31 of the Firearms Act 1970.** I also agree and state that it is

an elementary rule of Statutory interpretation that a later provision of an Act of Parliament cannot be rendered ineffective by earlier provisions which Parliament must have been aware of in enacting the new provisions. With greatest respect to the majority decision I find that the learned Chief Justice was correct in my view, to dissent and hold that the decision in Wasajja's case was per incuriam in the circumstances. All in all, the above amendment exposed the rigidity and unfairness of the common law doctrine of Precedent. It took more than a decade to sort out the quagmire brought about by the decision in Wasajja's case.

**Whether the accused participated in the theft:**

The evidence implicating the accused was again from Matovu Arafat $Pw_1$, Muwonge Hamisi $Pw_4$ and Okello Henry $Pw_5$. All the above witnesses testified that they were robbed between 2.00 – 4.00 a.m. as they were returning from New Year day celebration. A few hours after the robbery, a boda boda man called Stephen who was their friend, informed them that some robbers had been arrested with stolen items from near where they had been robbed. They rushed to Walusubi village where they had been robbed and established that the accused had been arrested by a security guard at Donamisi Radio Station after being suspected of carrying stolen property and when they were asked to identify themselves they tried to run away resulting into their arrest. The victims testified that they managed to identify the accused because of the bright moonlight and also because the accused had torches. They concluded that there was identification parade where they identified the accused. In essence, the evidence implicating the accused were in three categories:

(i) Visual identification.
(ii) Identification parade and

(iii) Doctrine of recent possession.

**(i) Evidence of visual identification:**

Let me begin with the evidence of visual identification. **The Supreme Court of Uganda** and its predecessors have in a number of leading cases elaborated on the principles to apply in cases where the guilty of the accused person depends on evidence of visual identification. A few of those leading cases are:

**Abdalla bin Wendo & Another v R (1953) 20 EACA 116;**

**Rovia v Republic (1967) EA 583;**

**Tomasi Omukono & Another v Uganda, Criminal Appeal Case No. 4 of 1977;**

**Abudala Nabulere & Others v Uganda, Criminal Appeal No. 10 of 1977;**

**Moses Kasa v Uganda, Criminal Appeal No. 12 of 1981.**

The above principles were rehearsed by the Supreme Court in **Walakira Abas & Others v Uganda, Supreme Court Criminal Appeal No. 25 of 2002 (Unreported).**

> **"the Court may rely on identification evidence given by an eye witness to the commission of an offence, to sustain a conviction. However, it is necessary, especially where the identification be made under difficult conditions, to test such evidence with greatest care, and be sure that it is free from possibility of a mistake. To do so the Court evaluates the**

**evidence having regard to factors that are favourable, and those that are unfavourable, to correct identification. Before convicting solely on strength of identification evidence, the Court ought to warn itself of the need for caution, because a mistaken eye witness can be convincing, and so can several such eye witnesses."**

Generally, the following factors have been said to affect the quality of identification:

(1) Length of time the accused was under observation by the witness.

(2) Distance during observation.

(3) A type of light aiding visualization.

(4) Familiarity of the witness with the accused person: See **Abdulla Nabulere v Uganda {1977} HCB.**

Conditions which may not favour correct identification include;

(a) Where assailant covered the whole of his or her face with a hat or camouflage.

(b) Where the assailant was said to have threatened the victims with death so much so that in fear or panic, they could not recognize their assailant.

(c) Where the assailants were too brief at the scene to be recognized by any one:

See: **Kasibante Yahaya v Uganda; Court of Appeal Criminal Appeal No. 65 of 1998.**

**Nyanzi Stephen v Uganda; Court of Appeal.**

From the evidence on record, I cannot be certain whether the identification was free from possibility of mistaken identity. According to Matovu Arafat $Pw_1$ the attack was brief. The assailants flashed their eyes with torches. The above evidence was corroborated by that of Henry Okello $Pw_5$ who also stated the assailants flashed their eyes. The impact of the flashing of torch light might have dazzled the witnesses. Moreover, the assailants were said to have covered their faces according to Matovu Arafat $Pw_1$. An assailant who covers his or her face is difficult to identify positively without the risk of mistaken identity. It was only Muwonge Hamis $Pw_4$ who testified that there was moonlight and that he identified the assailants because they did not flash directly on his eyes. He did not mention how bright the moonlight was to enable him identify the assailants he had not known before. But if one considers that the attack was brief but harsh and the assailants ha covered their faces, I find that factors favouring correct identification were lacking. It would therefore be risky to base any conviction on the above evidence of visual identification.

**Identification Parade:**

An identification parade is very important because it enables a witness who did not know the suspect before or did not see him during or after the offence to confirm his identification. It is not necessary to hold an identification parade where the witness knew the accused before. Where it is necessary, the procedure for conducting identification parade was laid down in the case of **Sentale v Uganda {1968} EA.**

In the instant case Matovu Arafat $Pw_1$, Muwonge Hamisi $Pw_4$ and Okello Henry $Pw_5$ all testified that they were showed the suspects from Mbalala Police Post

where they had been detained and later they saw them again from Lugazi Police Station as they were paraded for identification. Since the witnesses had already seen the accused persons at Mbalala the purported identification parade was a hoax since it did not follow the rules set in Sentale's case. In any case, the prosecution should have produced the officer who conducted the parade to establish the procedure he or she followed in conducting the parade. Mr. Bwambale Kezekia $Pw_2$ who testified that identification parade was conducted was a stranger to the same as he was not the one who conducted the parade. The parade was allegedly conducted by one D/AIP Odoi who was not produced in Court. All in all the purported identification parade did not have any evidentiary value in law.

**Doctrine of recent possession:**

The doctrine of recent possession is a cardinal evidence especially in proof of offence against property like theft and robbery. The doctrine was well stated in the case of **KASAIJA V UGANDA; Supreme Court Criminal Appeal No. 12 of 1991** as follows:-

> **"The doctrine of recent possession, a species of circumstantial evidence, is that if an accused is in recent possession of stolen property, for which he has been unable to give reasonable explanation, the presumption arises that he is either the thief or the receiver of the stolen goods, according to the circumstances. Hence once the appellant has been proved to have been found in recent possession of stolen property, it is for the accused to give reasonable explanation. He will discharge this onus on the balance of probabilities, whether the explanation could reasonably be fine, if he does so then an innocent**

**possibility exists which negatives the presumption to be drawn from the other circumstantial evidence."**

In **Mbaziira siragi & Another v Uganda {2007} HCB Vol. 1 HCB 9** the Supreme Court held inter alia that:

*"*

*(a) The doctrine of recent possession of stolen goods is an application of the ordinary rule relating to circumstantial evidence. The fact that a person is in possession of goods soon after they are stolen raises a presumption of the fact that, that person was the thief or that that person received the goods knowing them to be stolen, unless there is a credible explanation of innocent possession.*

*(b) The starting point for the application of the doctrine of recent possession is proof of two basic facts beyond reasonable doubt, namely that the goods in question were found in possession of the accused and they had been recently stolen.*

*(c) In re-evaluating the evidence adduced against each appellant (accused) Court must consider it from two perspectives; namely whether the evidence proves that the found items (or any of the items) were stolen during the robbery in question, and whether any of the appellants was in possession of any of the found items."*

In relying on the doctrine of recent possession the prosecution adduced the evidence from the victim Matovu Arafat $Pw_1$ who testified that after he had been robbed of his jeans trousers, a pair of shoes and money, those who robbed him were arrested shortly after the incident, by a guard who was

guarding Donamisi Radio Station. He stated that he was able to identify the items which had been robbed from him. Muwonge Hamisi $Pw_4$ who had also been robbed, testified that immediately after the robbery, they were informed that the assailants had been arrested. They went and found the two accused already arrested. They also recovered the instruments the robbers used for robbing them i.e. pangas and toy guns.

Lastly Okello Henry $Pw_5$ also confirmed that immediately after the robbery, the accused persons were arrested with their stolen items. That the accused took them to where they had hidden a toy gun and a panga.

The evidence from the victims were corroborated by those of the Police Officers who investigated the case. D/Corporal Bwambale Kezekia $Pw_2$ testified that on 1/1/2007 he went together with Jackson Tumwine, O/C Lugazi Police Station, to investigate a robbery case at Walusubi. Upon reaching Mbalala Police Post, they found the two accused persons in Police cells. Mbalala Police informed them that the accused persons had been arrested at Walusubi near Donamisi Radio station for involving in robbery that morning at 5.00 a.m. At Mbalala Police Post they got the victims who included Muwonge, Amisi and others, who identified the items which the accused had robbed from them. These included two mobile phones, black handbag, pangas, canvas shoes, dark blue jeans plus a toy gun wrapped in cello tape. That they took the accused persons to their village where they recovered another toy gun in a banana plantation. Those items were tendered in Court by D/Sgt. Wako Stephen $Pw_3$ who was the Police Store man.

Mawejje $A_1$ made a summon defence of total denial and Alibi. He stated inter alia, that he was arrested for nothing. After his arrest he was tortured

with pliers. Later they brought him some papers to sign accepting the offence. He denied knowing his colleague Juma Iddi Mubaraka $A_2$.

Juma Iddi $A_2$ also made a sworn defence denying the offence totally and also relying on alibi. He stated that on 31/12/2001 he took taxi going to Walusubi from Spear Motors. On his way, he got some boys who demanded his Poll tax tickets and Identity Card. Later they told him that some robbery had taken place around that area. Later some people came and arrested him. They took him to Kireka and later VCCU where he was tortured very badly. He denied the offence totally.

The evidence of Matovu Arafat $Pw_1$, Muwonge Hamisi $Pw_4$ and Okello Henry $Pw_5$ show that an act of robbery had taken place to their prejudices. They were robbed of a number of items. From the above witnesses the items stolen from them as victims were recovered immediately after the incident from the accused persons after they were arrested near Donamisi Radio Station which was near the scene. The victims were informed immediately and they went and identified their stolen items. The above evidence was corroborated by that of D/Corporal Bwambale $Pw_2$ who went to the scene in the course of investigating this case and got the accused already arrested with stolen items which the victims identified as theirs.

In their defence the accused did not make any explanation as to how they came by those items to negative the presumption drawn for their recent possession. Looking at the prosecution evidence therefore I do agree with the assessors that the prosecution has proved this case to the required standard. That the accused persons participated in the theft. I accordingly

find the accused guilty as charged and they are convicted accordingly on only three counts.

**HON. MR. JUSTICE RUBBY AWERI OPIO**
**JUDGE**
**28/10/2010**

**29/10/2010**

Accused present.

Masede for the State.

## Judgment read in Open Court.

**HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGE**

**29/10/2010**

**29/10/2010**

Accused present.
Masede for the State.

**Mr. Masede:** I have no previous record of the accused. However I pray that they be given a deterrent sentence because of the increase in robberies as well as terror committed on the victims.

**Mr. Seryazi:** The accused are the 1st offenders. They have spent 4 years on remand. They are still young. They appear remorseful. We pray for leniency. They have families with children. We pray for sentence that can enable them return home and look after their children. I so pray.

**Mawejje:** I leave it to Court.

**Mubarak:** I have nothing to add.

**Court:** This offence is rampant in the area. The accused are young men who should have known that the benefits of living by their seat. They started their criminal acts a bit too early at 18 and 20 respectively. However Court should be informed that such age brackets are very dangerous because it is age of mischief. Court will also consider the value of the things stolen and the fact that they were recovered. Court will also take consideration of the period of about 4 years they spent on remand. Furthermore, the accused need to be given a chance as they can still reform

and be useful citizens. For the above reasons, they are sentenced each to 5 years imprisonment in each of the three counts the sentence to run concurrently.

**HON. MR. JUSTICE RUBBY AWERI OPIO**
**JUDGE**
**9/11/2010**