**Besigensi v Uganda**

**Division:** Supreme Court of Uganda at Mengo

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**Date of judgment:** 21 December 2005

**Case Number:** 9/04

**Before:** Oder, Tsekooko, Karokora, Mulenga and Kanyeihamba JJSC

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*[1] Appellate procedure – Duty of a first appellate court – Re-evaluation of evidence on record –*

*Whether Court of Appeal had adequately re-evaluated the evidence.*

*[2] Criminal law – Aggravated robbery – Elements of the offence – Theft, or attempted theft, of property*

*an essential ingredient – Whether theft by appellant had been proved – Sections 285 and 286*(*2*) *– Penal*

*Code Act.*

*[3] Criminal procedure – Constitutional law – Sentencing – Mandatory death sentences – Whether*

*mandatory death sentences were constitutional.*

**Editor’s Summary**

The appellant was tried and convicted in the High Court on a charge of aggravated robbery. Evidence was adduced at his trial to the effect that on the night of 4 September 1999, the appellant had gained entry into the complainant’s house-cum-shop, on the pretext that he had come to clear a debt he owed to the complainant. Once in the house, he attacked the complainant who fled the house, raising an alarm as he ran. Some of his neighbours, including the appellant’s two step-brothers, came to the complainant’s rescue. They found him bleeding profusely from the wounds that had been inflicted on him and heard him mention the appellant’s name as the person who had attacked him. A search for his assailant proved fruitless. In order to raise money to take him to hospital, the complainant directed some people present to retrieve UShs 195 000 that was wrapped in a sweater in his bedroom. Neither the money nor the sweater was found. Ultimately, other means were found and he was taken to hospital for treatment. The appellant was later found, arrested and charged with aggravated robbery. In his defence, the appellant pleaded an alibi and argued that his step-brothers, who had testified for the prosecution, held a grudge against him and were out to frame him.

The trial court found that the prosecution had proved its case against him and convicted him accordingly. His first appeal to the Court of Appeal was dismissed. He now appealed to the Supreme Court on the ground that the Court of Appeal had failed to subject the evidence to fresh scrutiny. In a supplementary ground, he challenged the mandatory sentence imposed on him. In his written submissions, counsel for the appellant admitted everything alleged against his client, except for the taking of the money and sweater. He argued that the prosecution had failed to prove the taking of the money and sweater and that this not only weakened the prosecution case, it meant that he could not be convicted of aggravated robbery. Counsel for the respondent argued in reply that the courts below had taken into account all the circumstances and had properly evaluated the evidence adduced at trial.

**Held** – The question of who took the money and the sweater had not been one of the four grounds of appeal before the Court of Appeal. On the issues before them, the justices of appeal had correctly and adequately re-evaluated the evidence and come to the correct and same conclusion as the trial judge.

Theft, or attempted theft, of property was an essential ingredient of the offence of aggravated robbery.

The trial judge had been alive to all the ingredients of the offence and, after considering the evidence presented at the trial, had found that there had been a theft. The Court of Appeal had accepted and confirmed those findings and there were no grounds for interfering with this conclusion.

The confirmation of sentence would await the determination of the intended appeal against the decision of the Constitutional Court in Constitutional Petition number 6 of 2003; *Zahura v Uganda* (*supra*) followed.

Appeal against conviction dismissed, confirmation of sentence deferred.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

*Kigula and others v Attorney-General* Petition number 6 of 2003