**Yasamu v Uganda**

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

**Date of judgment:** 23 November 2000

**Case Number:** 2/00

**Before:** Wambuzi CJ, Oder, Tsekooko, Mulenga, Mukasa-Kikonyogo

JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Criminal law – Criminal responsibility – Advocate for the Appellant – Conceding criminal responsibility on behalf of Appellant – Whether concession proper.*

*[2] Criminal law – Robbery – Appellant arrested with two items lost in recent robbery – Complainant saying he heard Appellant’s name called during robbery – Items identified as lost in robbery – No*

*Explaining movement of items from robbery to possession by Appellant – Whether conviction proper in view of lacuna.*

*[3] Criminal procedure – Trial on indictment – Preliminary hearing – Memorandum of matters agreed to be read and explained to the accused in a language understood by the accused – Memorandum neither read to the accused no signed – Non-compliance with mandatory provisions – Whether non-compliance causing injustice – Section 64(2) – Trial on Indictment Decree (1971).*

**Editor’s Summary**

On 31 December 1994 between 8:00 and 9:00 pm a group of persons entered Wandera’s shop disguised as customers. They then robbed him of several goods including a Hitachi radio and a black bag with some red stripes. After the robbery, a voice of one of the robbers called out the name of Kwoba, a fellow robber. One of the robbers then shot Wandera on the left shoulder and Wandera lost consciousness. The police later arrived at the scene.

On the same day at about 10:00 pm, robbers attacked the shop of Charles by breaking into the shop.

They robbed Charles of, among other items, a Mekosonic Dynamic radio. Charles did not recognise any of the robbers.

On 2 January 1995 the Appellant was arrested at a taxi park while in possession of a Mekosonic

Dynamic radio and a black bag and, although he claimed they belonged to him, he could not produce any receipts for the item. Later Wandera and Charles visited the police station and identified the radio and the bag as belonging to them. The Appellant was charged with two counts of capital robbery.

The Appellant explained that the radio belonged to one of his customers, he (the Appellant), being a radio repairer. He told the High Court that he had many radios in his repair shop belonging to different people and that he was in the process of delivering the radio to the owner when he was arrested.

After the conclusion of the trial, the assessors advised for conviction. The trial Judge believed the prosecution and convicted the Appellant on both counts of capital robbery. On appeal to the Court of

Appeal, the conclusion of the High Court was upheld.

The Appellant appealed to the Supreme Court arguing that the prosecution had not proved its case beyond reasonable doubt. The Appellant urged the Supreme Court that (i) there was no sufficient proof that dangerous weapons had been held and (ii) that there was a break in the chain of event connecting the

Appellant with the robberies.

Advocate for the Appellant also pointed out that section 64 of the Trial on Indictments Decree, 1971, had not been complied with, hence occasioning injustice to the Appellant.

**Held** – There was ample evidence of the use of a deadly weapon (the gun) during the robberies. The items found in the Appellant’s possession were peculiar and had been sufficiently identified and the break in the events in the transmission of the radio and the bag to the Appellant did not affect the evidential value of the items The inconsistency of the prosecution witness about the name of the radio was minor.

The provisions of section 64(2) of the Trial on Indictments Decree, 1971 were mandatory and failure by a trial judge to comply therewith could occasion injustice to the Appellant.

The statement purportedly admitted by the trial Judge under the aforesaid section was improperly so admitted, the Judge not having complied with the said section.

It was improper for the advocate for the Appellant to concede criminal responsibility on behalf of the

Appellant; *Mawanda Edward v Uganda* Supreme Court criminal appeal number 4 of 1999 (UR), followed the non-compliance with section 64(2) of the Trial on Indictments Decree, 1971 was not fatal in the circumstances of the case.

Appeal dismissed.

**Case 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)

*Mawanda Edward v* Uganda Supreme Court criminal appeal number 4 of 1999 (UR) – **F**