

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(SITTING AT ENTEBBE)**

**HCT-00-CR-SC-0179 -2020**

**UGANDA ..... PROSECUTOR**

**VERSUS**

**WANDA RONALD ..... ACCUSED**

**BEFORE: HON. MR. JUSTICE J. W. KWESIGA**

**JUDGMENT:**

Wanda Ronald is indicted for Murder Contrary to Sections 188 and 189 of the Penal Code Act. It is alleged that Wanda Ronald on the 14<sup>th</sup> day of May 2019 at Kitooro in Wakiso District with malice aforethought killed Mulindwa Joseph alias Isma.

The Accused pleaded not guilty. The moment an accused charged with any criminal offence pleads not guilty, the burden of proof is upon the prosecution to prove each and every material allegation.

The Accused person has no duty to prove anything including his defence. See:- (i) Article 28(3)(a) of the Constitution of Uganda. (ii) Obonyo and Another Versus Republic (1962) EA 542.

In Oketch Okale Versus Republic (1967) EA 555 it was settled that *“The burden of proof remains with the prosecution and never shifts to the defence except in a few exceptional cases provided for by the Law”*.

In a later case of Wamalwa & Another Versus Republic (1999) 2EA 358(K) with reference to same principal of Law in Sekitoleko Versus Uganda (1967) EA 53; it is settled that *“even where the accused set up a defence, they do not thereby assume the burden of proving it. It is up to the prosecution to disprove the defence by adducing evidence to show that nevertheless, the offence was committed by the accused persons”*.

The prosecution in the instant case must adduce evidence to prove the following:-

- (a) That Mulindwa Joseph alias Isma is dead.
- (b) That the death was unlawfully caused.
- (c) That the death was caused with malice aforethought.
- (d) That the accused person caused or participated in causing death. See:- Uganda Versus Okello (1992 – 1993)HCB 68.

I will address myself to each element of offence as set out above.

### **Death:**

There are many ways in which the fact of death can be proved which include oral evidence of witness who saw the deceased being killed, those who participated in burial and/or post-mortem report.

PW1 Seruyange Yusufu saw the deceased get killed on 14<sup>th</sup> May 2019 he described how it started. PW2 Sewaja corroborated PW1. PW3 Rajab Lubwama, uncle of the deceased with police took the dead body to Mulago Hospital for post mortem examination, and he participated in the burial. PW8 Dr. Karungi Sam did the post-mortem examination of the body of Mulindwa Joseph on 15<sup>th</sup> May 2019.

The Report, P.2 gave the details of the fatal injuries. With the above evidence, I have doubt whatsoever that Mulindwa Joseph is dead and died on 14<sup>th</sup> May 2019 and not by natural cause such as ordinary illness because he died from multiple injuries proved by prosecution Exhibit P.7.

### **Unlawfulness of Death:-**

Every homicide is presumed to be unlawful unless it is excused by Law. This presumption can only be rebutted by evidence that establishes that the death was accident or permissible in Law such as death caused in self defence. See:- **Uganda Versus Okello (1992 – 1993)HCB 68** and **Republic Versus Busambeiza S/o Wesonga (1948) 15 EACA 65.**

PW1 Seruyange saw Wanda, the accused hold the deceased's arm and driving away while pulling him. PW2, Sewaja Abel supported the story of PW1 and added that he heard the deceased shout *“you are killing me”*. The vehicle conduct was inside banging and telling the accused *“stop, stop, you are killing a person”*. The accused continue to drive until the deceased fell off. The accused reversed the car and drove over the deceased. The accused drove off, he was chased by people running after him and boda boda riders who arrested him and handed him to police. He was driving far away from the scene of a crime for about 2 kilometres.

PW3 Rajab Lubwama had been with the deceased, 40 minutes before this incident, he had been well. He was his Nephew, he participated in taking the body to Mulago hospital for post-mortem examination.

The defence story is on 14<sup>th</sup> May 2019, a person fell from the car he was driving, then he (accused) saw people chasing after the car he was driving. He did not stop, he abandoned the car and ran away for safety. The accused confirmed he was the driver that killed the deceased. The accused person's defence is that this was accidental killing. The defence of the accused person must be

considered together with the prosecution evidence. Even if the accused did not specifically plead an accident, this court has the duty to consider all the alternative defences. See:- **Republic Versus Sharmipalsingh (1962) E.A 13.**

This is important to resolve the issues of participation and the criminal mind of the accused person if any.

In the case of **Oloke Versus Uganda (1992 – 1993) HCB 43**, Manyindo D.C.J (as he then was) held that *“accident means the unforeseen consequences of a conscious act. It is in-adventent without culpability. The defence is that the accused did the act while acting lawfully and through in advertence and without culpable negligence and is therefore, a complete defence to an offence”*.

Black’s Law Dictionary, 8<sup>th</sup> Edition defines accident as *“an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events, or that could not be reasonably anticipated”*.

In the instant case, the available evidence shows that following a disagreement between the accused and the deceased regarding enforcement of taxi park regulations which the accused was defying and the deceased was enforcing, the accused held the deceased’s arm and drove off as he dragged him. The deceased fell down. The accused reversed the mini-bus and drove over his victim.

Prosecution Exhibit P7, a post-mortem report dated 15<sup>th</sup> May 2019, one day after the incident, listed several abrasions and injuries which are consistent with the described manner in which the deceased was dragged on the road being pulled by the accused as he drove. Significantly, the doctor found the chest cavity to contain 1000 m/s of blood, both left and right lungs were

perforated. He suffered fractured ribs, fractured spinal code and the cause of death was multiple injuries.

I have examined the prosecution evidence summarized above together with the defence version, my conclusion is that the accused person participated in causing the deceased's death. It is trite that every homicide is unlawful unless sanctioned by Law or was an accident and the circumstances make it excusable. See:- **Gusambizi S/o Wesonga Versus Republic (1948) 15 EACA 65**. The post-mortem gives detailed multiple trauma injuries that could not be as a result of an accident. PW1, PW2 and PW3 clearly testified that the accused dragged the deceased on the road and when he let him fall off, he reversed and drove over the victim. The damaged ribs, damaged lungs and spinal code were consistent with the witness's testimony. The conduct of the accused person constituted by driving such a long distance while inflicting the injuries, refusing to take heed to people's calls and warning to stop amounted to intentional acts or omissions with knowledge that these would result into death of the victim. This was malice aforethought as defined in Section 191 of the Penal Code Act.

Subject to circumstances of each individual case, it was settled that malice aforethought can be deduced from *"the nature and number of injuries inflicted, the part of the body injured, the type of weapon used and the conduct of the accused before and immediately after the infliction of injuries"*. See:- Ogwang Versus Uganda (1999)2 EA 254 (SCU).

However, in this particular case the emphasis is on the conduct of the accused rather than the parts of the body that were inflicted because of the manner in which the death was caused. There was no specifically targeted vulnerable part. In my view, the accused person acted with total disregard to value of human life. He refused to stop despite the call of the people, the yelling of the deceased and the calls of his own bus conductor to stop because he was killing a person.

It took a great deal of chasing the accused as he was fleeing from the scene of crime. He fled passed the police station, a normal step that he would have taken if he was avoiding mob action.

It was settled in **Remigious Kiwanuka Versus Uganda – Criminal Appeal No. 41 of 1995** (unreported) that the act of an accused fleeing from the scene of crime is incompatible with innocence.

The joint opinion of the Assessors is that the prosecution proved beyond reasonable doubt that accused unlawfully and with malice aforethought cause death of Mulindwa Joseph. I agree with the Assessor's opinion and advice.

I hereby find Wanda Ronald guilty of murder of Mulindwa Joseph alias Isma Contrary to Sections 188 and 189 of the Penal Code Act and I accordingly convict him.

Dated at Entebbe this **16<sup>th</sup>** day of **December 2020**.

J. W. Kwesiga

**Judge**

16<sup>th</sup> /12/2020

**In the presence of:-**

1. Miss Joan Keko – Chief State Attorney for Prosecution.
2. Mr. Ivan Sekyanda for defence on state brief.

3. Miss Gorette Boogere – Court Clerk.

J. W. Kwesiga