



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
CRIMINAL SESSION CASE NO 638 OF 2019

[DPP NO: SHM-CO-790/2017, POLICE NO: SHM CRB 844/ 2017]

UGANDA VS ATWIJUKIRE MARVIN

BEFORE: Hon. Justice Nshimye Allan Paul. M.

JUDGEMENT

REPRESENTATION

Adv. Jacob Nahurira for the ODPP representing the state.

Adv. Suwaya Matovu on state brief.

INTRODUCTION.

The accused **Atwijukire Marvin** was indicted on the charge of **Murder** Contrary to section **188 & 189** of The Penal Code Act. The particulars of the offence are that;

Atwijukire Marvin and ors at large on the 25th day of August 2017 at Rugonji cell in shema District murdered Kakuru Apollo.

The Accused person took Plea on 19th June 2023 and he pleaded not guilty.

BURDEN AND STANDARD OF PROOF.

It is a principle of law that in criminal cases that the Prosecution has a burden of proving all the ingredients of the offence (**Nandudu Grace & anor Vs Uganda Supreme Court Criminal Appeal No 4 Of 2009, Section 101 & 103 of the Evidence Act**). In Criminal cases the standard of proof that is required is to prove all the ingredients beyond reasonable doubt (**See Miller Vs Minster of Pensions [1947] 1 ALLER 372, Uganda vs Monday Wilson high court Criminal case 22 of 2017**)

PRE-HEARING

The prosecution and defence during the pre-hearing agreed on some facts under section 66 of the Trial on Indictments Act. The documents that were agreed upon by both parties were exhibited and made part of the evidence; they are:

1. Police Form 24, for medical examination of a person accused of serious crime. The form was exhibited as **PEX1**, In the form a medical officer (**Dr Asiimwe Denis**) confirmed on **26th August 2017** that the accused person was of normal mental condition to stand trial.

WITNESSES

The prosecution called four witnesses, **PW1 Yafesi Turyamiryabe, PW2 Prossy Ainomugisha, PW3 Ainomugisha Justus and PW4 Juliet Tebiejuka**. The defence produced one witness, the accused person, **Atwijukire Marvin**.

ASSESSORS' OPINION

The assessors gave a joint opinion, where in they recommended that the accused, be convicted.

SUBMISSIONS

The court issued out a schedule on 9th August 2023 for the parties to file written submissions. The parties did not file any, so the court will consider the evidence on the court record.

DETERMINATION

It is a principle of law that the prosecution has a duty to prove all the ingredients of the offences as is stipulated in the law in **Section 101 & 103 of the Evidence Act** and confirmed in case law in **Nandudu Grace & anor Vs Uganda Supreme Court Criminal Appeal No 4 Of 2009**.

The question for determination is whether the prosecution has proved all the ingredients of the offence of murder beyond reasonable doubt against the accused person. In **MATOVU FRANK & ANOR VS UGANDA COA CRIMINAL APPEAL NO. 111 OF 2018** the ingredients of the offence of murder were stated as;

1. Death of a human being;
2. The death of the deceased was caused unlawfully.
3. The death of the deceased was caused with a malice aforethought.
4. The accused participated in causing the death of the deceased.

Ingredient 1

Death may be proved by production of a postmortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. (*Uganda v Endrio & 3 Ors high court Criminal Session 172 of 2016*). **PW1 Yafesi**

Turyamiryabe testified that that Kakuru Appollo was his son that was killed. That on 28th August 2017 he was called by police at Kabwohe Police station, and he was told the son had been killed. That on 29th August 2017 he went with the police to Kabwohe Hospital where he found the body of his son, who had been badly beaten, the head was cracked, and the neck was cut. The witness testimony of Pw1 confirms the death of a Human being, which is a requirement to prove ingredient 1 of death of a human being.

Ingredient 2

It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law (*see R v. Gusambizi s/o Wesonga (1948)15 EACA 65, Uganda Vs Bosco Okello [1992-93] HCB 68*) the testimony of **PW1 Yafesi Turyamiryabe the father of deceased , identifying the body** on 29th August 2017 and stating that that the son was badly beaten, the head was cracked, and the neck was cut proves a homicide.

I therefore conclude that the that the homicide was not authorized by law or accidental, yet the law presumes any homicide (the killing of a human being by another) to be unlawful (*see R v. Gusambizi s/o Wesonga (1948)15 EACA 65, Uganda Vs Bosco Okello [1992-93] HCB 68*). Therefore based on the testimony of Pw1 , the prosecution proved ingredient number 2 that the death was unlawful.

Ingredient 3

Ingredient 3, requires the prosecution to prove that the death of the deceased was caused with a malice aforethought. Malice aforethought is a mental element which can be established from the surrounding circumstances, the parts of the body injured and the nature of the injuries (*see Uganda Vs Bosco Okello [1992-93] HCB 68*). I will summarize the evidence on court record.

1. PW1 Yafesi Turyamiryabe testified that that Kakuru Appollo was his son that was killed. that he found the body of his son, who had been badly beaten, the head was cracked and the neck was cut.

2. PW2 Prossy Ainomugisha testified that on 25th August 20217, while at home she heard people running in the banana plantations, when she went to see she saw Marvin there (she pointed out to the accused in the dock) chasing a young boy, she said when they reached my house the boy fell down and Marvin caught him and started beating him. That Marvins sister called Maureen came and Marvin sent her for a panga which she brought, and Marvin started beating the boy with the panga. That Robina the mother of Marvin also came, then Marvin sent Maureen for an iron bar which she brought, and Marvin gave the panga to the mother. That Marvin (accused) told PW2 that he was beating him because he gave Marvin a counterfeit Uganda shilling note at his shop. During cross examination PW2 stated that the people that beat the boy were Marvin, Andrew, and Robina the mother of Marvin. That when Marvin heard the PW2's husband call police they left. That the deceased was unconsciousness and had been dumped in a ditch where police picked him. That the deceased was hit with an iron bar on the head, and later Marvin took the iron bar and the panga.

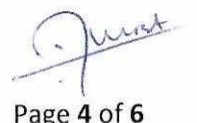
I find that the mental element of malice afore thought is proved, from the testimony of Pw1 and Pw2 that shows that the accused used weapons such as a panga and an iron bar on the deceased. The resultant injuries on the head caused his unconsciousness, therefore ingredient number 3 was proved.

Ingredient 4

The fourth ingredient that the prosecution is duty bound to prove relates to participation of the accused. I will summarize The evidence of on the court record on this matter.

PW2 Prossy Ainomugisha testified that she heard people running in the banana plantations, when she went to see she saw Marvin there (she pointed out to the accused in the dock) chasing a young boy, she said when they reached my house the boy fell down and Marvin caught him and started beating him.

PW3 Ainomugisha Justus testified that he knows The accused person who is his neighbor. That when PW3 arrived at home he found a man he did not know in the ditch. Marvin when asked said that the man given him a counterfeit note, that the man looked weak. During cross examination he saw Marvin alone beating him from the ditch.



PW4 Juliet Tebiejuka testified that she knows the accused, that on 25th August 2018 her daughter told her that they were beating a thief at the Justus's place, that when she went there, she found when Marvin was beating him with a panga.

5 **DW1 Atwijukire Marvin**, that he does not know Kakuru Appollo the deceased. That on 25th August 2017 at around 8.30pm while at his shop a man he didn't know came and ordered for Leading waragi and cigarettes. That he gave the accused a Twenty thousand counterfeit note, that when the accused confronted him the man held his neck and they struggled out of the shop prompting the accused to make an alarm then
10 Prosy and Andrew helped pull the man off of the accused. That the accused fell down unconsciousness, when he regained his consciousness, he called a crime preventer called Justus and Robina his mother. later he was arrested. He further stated that it is true that the man was beaten from Prosy's compound, but for him he stayed at his shop so prosy (Pw1) was telling lies in court, the accused claimed that he last saw the
15 man when he was not beaten. During cross examination the accused stated that he was unconscious for about 10 minutes after he fell

In the analysis of the evidence above, shows that the accused denied beating the deceased or reaching the home where the accused was allegedly beaten, in fact the
20 accused stated that he was unconscious when the deceased was beaten. This is tantamount to an alibi.

In **Uganda v Kayinamura (high court Criminal Session 238 of 2019)** it was stated that;
25 "it is the position of the law that where an accused raises an alibi he bears no obligation to justify it. The burden lies on the Prosecution to discredit the alibi through cogent evidence placing the accused at the scene of the crime as the perpetrator of the offense he is charged with"

30 In **Buhingiro v Uganda (supreme court Criminal Appeal No. of 2014)**, the Supreme court stated that:

overwhelming evidence of the identifying witnesses placing the accused at the crime scene makes the defence of alibi was not sustainable.

5 The prosecution evidence from **PW2 Prossy Ainomugisha**, PW3 Ainomugisha Justus and PW4 Juliet Tebiejuka discussed above places the accused at the crime scene as an active participant during the crime. This evidence discredits the alibi set up by the accused and instead places him at the crime scene as an active person beating the deceased. I find that the 4th ingredient regarding the participation of the accused is proved.

10 The prosecution has proved all the four ingredients of the offence of murder that they are duty bound to prove, to lead to the conviction of the accused.

15 In the circumstances I convict **Atwijukire Marvin** of the charge of murder of **Kakuru Apollo** Contrary to section 188 & 189 of The Penal Code Act.



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Nshimye Allan Paul M.

JUDGE

06-09-2023



THE REPUBLIC OF UGANDA
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[DPP NO: SHM-CO-790/2017, POLICE NO: SHM CRB 844/ 2017]

UGANDA VS ATWIJUKIRE MARVIN

BEFORE: Hon. Justice Nshimye Allan Paul. M.

SENTENCING OF ATWIJUKIRE MARVIN

BACKGROUND

Atwijukire Marvin was on 06th September 2023 convicted of the offence of murder of **Kakuru Apollo** contrary to section 188 & 189 of The Penal Code Act.

I have considered the aggravating and mitigating factors before sentencing.

SENTENCE

In sentencing it is important to consider the following;

Nature of the offence, whether the case went to a full trial or not, the aggravating factors put forward by the state, mitigating factors put forward in favor of the convict and The need for consistency in sentencing as can be inferred from appeal decisions of the higher hierarchal courts.

I will now consider sentences as prescribed by the law or given by courts of law in similar matters. These include;


1. In wasaja Fred vs Uganda COA CRIMINAL APPEAL NO.49 OF 2011. The Court of appeal found a sentence of 35 years' imprisonment would meet the ends of justice in a murder conviction.
2. In Befeho Iddi vs Uganda SC Criminal appeal 15 of 2017. The supreme court upheld a sentence of 30 years on a conviction of murder.

3. In Ndyomugenyi vs. Uganda, Supreme Court Criminal Appeal No.57 of 2016, the Supreme Court confirmed a sentence of 32 years' imprisonment for a murder.
4. In Mpagi Godfrey vs. Uganda Supreme Court Criminal Appeal No 63 of 2015, the Supreme Court confirmed a sentence of 34 years for Murder.

In this case the convict mercilessly attacked a person that led to his death in an apparent attempt to deliver his own kind justice rather than report to authorities. The young man that was the victim, suffered a brutal murder at the hands of the convict. I have considered the sentences given by the Court of Appeal and the supreme court in the cases highlighted above where the convicts had been convicted of murder. I have also taken note of the constitution (sentencing Guidelines for courts of Judicature (practice directions) of 2013 that provide for a sentencing range for Murder to 30 years to death.

I sentence the convict to 27 years from the date of conviction, On the sentence, I deduct the period of 4 years and 7 days spent on remand up to the date of conviction. The convict will therefore serve a sentence of 22 years, 11 month and 23days Starting from the date of conviction on the 06th September 2023.

The convict is informed of his right of appeal against the conviction and sentence within 14 days from today.



Nshimye Allan Paul M.

JUDGE

12.10.2023