



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
CRIMINAL SESSION CASE NO 119 OF 2019

[DPP NO: IB-CO-366/2019, POLICE NO: IB CRB 313/ 2019]

UGANDA VS AINOMUGISHA DINAH & ORS

BEFORE: Hon. Justice Nshimye Allan Paul. M.

JUDGEMENT IN RESPECT OF KAGWISAGYE BRINGTONE (A4)

REPRESENTATION


Adv. Jacob Nahurira for the ODPP representing the state.

Adv. Ronald Kwikiriza on state brief.

INTRODUCTION.

The accused **Ainomugisha Dinah, Mukonyezi Sylivesta, Kacungura Expedito and Kagwisagye Bringtone** were indicted on the charge of **Murder** Contrary to section **188 & 189** of The Penal Code Act. The particulars of the offence are that; **Ainomugisha Dinah, Mukonyezi sylivesta, Kacungura Expedito, Kagwisagye Bringtone** and others still at large on 20<sup>th</sup> February 2018 at Vatican Village Mabonwa in Ibanda District murdered Gordon Ahimbisibwe.

In this case **Ainomugisha Dinah (A1)** pleaded guilty and was convicted, **Mukonyezi Sylivesta (A2)**, also pleaded guilty under plea bargain and was convicted, **Kacungura Expedito (A3)** jumped bail and his bail was canceled and an arrest warrant issued

  
Page 1 of 7

against him, he is therefore yet to stand trial. Lastly Kagwisagye Bringtone (A4) pleaded not guilty and this case proceeded with only him in the dock in a murder trial. The accused person took Plea on 15<sup>th</sup> June 2023, and he pleaded not guilty.

## 5 **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  
10 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  
15 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, a medical examination of a person accused of serious crime. **A4 Kagwisagye bringtone** was examined and a form was exhibited as PEX1. In the form a medical officer confirmed on 7<sup>th</sup> August 2018 that the accused  
20 person was of normal mental condition to stand trial.
2. Police Form 48B, a postmortem report. The form was exhibited as PEX2. In the form a medical officer confirmed on 14<sup>th</sup> June 2018 that the that the body was identified by Kamugyendera Rober as that of Ahimbisbwe Gordon Kashenya. The cause of death was stated as blunt force Trauma. That the  
25 head had multiple fractures at the frontal bone, Right parietal, Ethmrid and the right lower jaw.

## WITNESSES

The prosecution called five witnesses, while the defence produced two witnesses.

## ASSESSORS' OPINION

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

## SUBMISSIONS

- 10 The court issued out a schedule on 17<sup>th</sup> 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

- 15 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**.

- 20 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.
- 25 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*) Police Form 48B, a postmortem report that was exhibited as PEX2 confirmed that on 14<sup>th</sup> June 2018 a body was identified by Kamugyendera Robert as that of Ahimbisbwe Gordon Kashenya. The cause of death was stated as blunt force Trauma. That the head had multiple fractures at the frontal bone, Right parietal, Ethmoid and the right lower jaw. The Postmortem report proves 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*). Police Form 48B, a postmortem report that was exhibited as PEX2 confirmed the cause of death as blunt force Trauma. That the head had multiple fractures at the frontal bone, Right parietal, Ethmoid and the right lower jaw.

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 evidence in the postmortem report (PEX2), 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. Police Form 48B, a postmortem report that was exhibited as PEX2 confirmed the cause of death as blunt force Trauma. That the head had multiple fractures at the frontal bone, Right parietal, Ethmoid and the right lower jaw.
2. PW2 Mukonyezi Sylivesta , a convict in Jinja main Prison , testified on oath that he knows A4 Kagwisagye Brington since they are from the same village. That the deceased was killed on 20th February 2018. On that day A1 Ainomugisha Dinah and Kabasita made a plan, and they called them for a job. That kagwisagye brigton brought the Axe that was used in the attack. that when they finished to kill the deceased. that they were given drinks.

I find that the mental element of malice afore thought is proved, from the testimony of Pw2 and the evidence in the postmortem report PEX2, that shows that the accused used weapons such as an axe on the deceased .The resultant injuries on the head a sensitive part of the body caused death, 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 of participation.

**PW2** Mukonyezi Sylivesta , a convict in Jinja main Prison , testified on oath that he knows A4 Kagwisagye Brington since they are from the same village. That the deceased was killed on 20<sup>th</sup> February 2018. On that day A1 Ainomugisha Dinah and Kabasita made a plan, and they called them for a job. That kagwisagye brigton brought the Axe that was used in the attack. that when they finished to kill the deceased. that they were given drinks.

**PW3** Kwetegyeka Benjamin, 55 years testified that he is the LC1 chairman and he knows the deceased. That the deceased had problems with his wife A1 Dinah, following disagreements after the wife sold family house. That he received a phone call from Kacungura wife who told him to go see Kcungura Expedito to tell him something about the missing person. that when he saw expedito .he said that they are going to exhume the body of missing village mate and rebury him . that PW3 told the relatives and the police who laid an ambush and at 3 am Kacungura and Dinah came with a Spade and hoe to exhume the body. That when arrested at the scene , A1 Dinah said that they the deceased when they are six people , who she listed as

1. Ainomugisha Dinah
2. Mukonezi Sylivesta
3. Kacungura Expedito
4. Kagwisagye Bringtone
5. Kabasita
6. Mwesigye Kelesio

During cross examination he stated that he learnt from A1 Dinah that Kagwisagye Brington participated. Secondly that the hoe that was used to kill was from kagwisagye Brington.

**DW1** Kagwisagye Brinton , the accused NO 4 testified on oath that he did not have any grudge with the deceased, that he was arrested on 3<sup>rd</sup> August 2018. That he had a hoe which was taken by the police and they stayed with it . that he knows Mukonyezi sylivesta. he then denied killing the deceased. During cross examination he stated that he had a grudge with Mukonyezi after he made him lose a job and he had promised to get back at him.

**DW2** Ainomugisha Dinah, former A1 and now convict, testified on oath that she knows A4, Kagwisagye . that he did not participate in the murder of the



deceased. That kagwisagye had a disagreement with Mukonyezi about cement he stole, that is when A4 reported him. That she did not mention the Accused A4 at the police. During Cross examination she stated that she was tortured at police by beating her , but she admitted that she did not report it even when she came to court. that in the statement she stated that she committed the offence with other but the accused was not part of it. the defence exhibited her plain statement, additional statement and Charge and caution statement as DEX1, Dex2 and DEX3 respectively.

The analysis of the evidence above, shows that the accused denied participation in the killing of the deceased, this assertion is supported by A1 who is already a convict in the same murder. This evidence is nonetheless contested by PW2 , who is also a convict in the same murder. PW2 testified that when they were killing the deceased, the accused, **KAGWISAGYE BRINGTON** who is standing trial in this case was with them and actually he is the one that brought the murder weapon, the axe used in the killing of the deceased. Pw3 in this case also testified that A1 (DINAH) told them that the **KAGWISAGYE BRINGTON** also participated in the Murder. This evidence corroborates the one of PW2 , who stated that **KAGWISAGYE BRINGTON participated along with them in the killing of the deceased.** I therefore find that the prosecution has provided the participation of **KAGWISAGYE BRINGTON in the murder** of Gordon Ahimbisibwe.

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. In the circumstances I convict **KAGWISAGYE BRINGTON (A4)** on the charge of murder of Gordon Ahimbisibwe Contrary to section 188 & 189 of The Penal Code Act.



**Nshimye Allan Paul M.**

**JUDGE**

**12-10-2023**



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
CRIMINAL SESSION CASE NO 119 OF 2019  
[DPP NO: IB-CO-366/2019, POLICE NO: IB CRB 313/ 2019]  
UGANDA VS AINOMUGISHA DINAH & ORS

BEFORE: Hon. Justice Nshimye Allan Paul. M.

SENTENCING OF KAGWISAGYE BRINGTON (A4)

**BACKGROUND**

**KAGWISAGYE BRINGTON (A4)** was on 12<sup>th</sup> October 2023 convicted of the offence of murder of Gordon Ahimbisibwe 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 along with others planned and participated in the killing of a  
business man to facilitate the taking of his house. the convict was responsible for  
carrying a murder weapon which was an axe that was used to kill the victim. This was  
a merciless murder.

The state has proposed a sentence of 40 years while the convict's lawyer has suggested  
a sentence of 8 years.

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 30 years from the date of conviction, On the sentence, I  
deduct the period of 5 years and 22 days spent on remand up to the date of conviction.  
The convict will therefore serve a sentence of 24 years, 11 months and 8 days Starting  
from the date of conviction today 12 October 2023.

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



**Nshimye Allan Paul M.**

**JUDGE**

**12.10.2023**