

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA KAMPALA
CRIMINAL DIVISION
CRIMINAL CASE NO. 0571 OF 2020**

5

UGANDA:::::::::::::::::::::::::::::::::PROSECUTION

VERSUS

- 10 **1. KASOLO COPORIYAMU ALIAS ARSENAL**
 2. LUBEGA JOHNSON ALIAS ETOO ALIAS MANOMANO ALIAS
 RASTA
 3. KALYANGO NASIF ALIAS MUWONGE
 4. KISEKA HASSAN ALIAS MASADDA
15 **5. MPANGA SHARIF ALIAS SHAFIQ**
 6. KATEREGA SADAT ALIAS BAROS::::::::::::ACCUSED

BEFORE HON: JUSTICE ISAAC MUWATA

JUDGEMENT

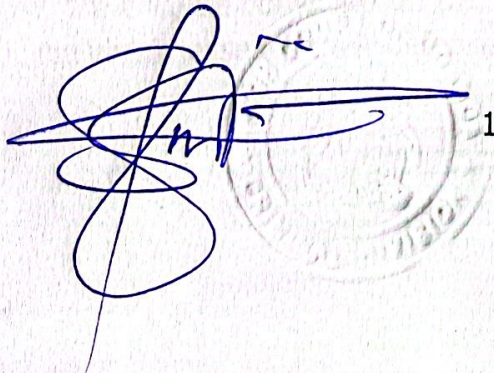
20 The accused persons are each indicted on two counts of Kidnap with intent to murder contrary to section 243(1)(a) of the Penal Code Act; two counts of Murder contrary to section 188 & 189 of the Penal Code Act; and two counts of Aggravated Robbery contrary to section 285 and 286(2) of the Penal Code Act.

25 It is alleged in count one that the accused persons on the 28th day of August 2019 at Nabisasilo Zone, Rubaga Division in Kampala District, with intent to murder, forcefully kidnapped Nagirinya Maria Gateni.

 It is further alleged in count two that the accused persons on the 28th day of August 2019 at Nabisasilo Zone, Rubaga Division in Kampala District,
30 with intent to murder, forcefully kidnapped Kitayimbwa Ronald.

 It is alleged in count three that the accused persons on the 28th day of August 2019 within areas of Kampala and Mukono district, with malice aforethought killed Nagirinya Maria Gateni.

35 It is further alleged in count four that the accused persons on the 28th day of August 2019 within areas of Kampala and Mukono district, with malice aforethought killed Kitayimbwa Ronald.



It is alleged in count five that the accused persons on the 28th day of August 2019 within areas of Kampala and Mukono district, robbed Nagirinya Maria Gatani of her motor vehicle Reg. No. UBA 570V Spacio white in color, mobile phone IMEI NO. 862953044557610, CASH 260,000/= (Two hundred and sixty thousand shillings only) and at or before or after the time of the robbery, caused the death of Nagirinya Maria Gatani.

It is further alleged in count six that the accused persons on the 28th day of August 2019 within areas of Kampala and Mukono district, robbed Kitayimbwa Ronald of his mobile phone Nokia S/No. 356839092092020, cash 24,000/= (twenty-four thousand shillings only) and at or before or after the time of the robbery, caused the death of Kitayimbwa Ronald.

Representation

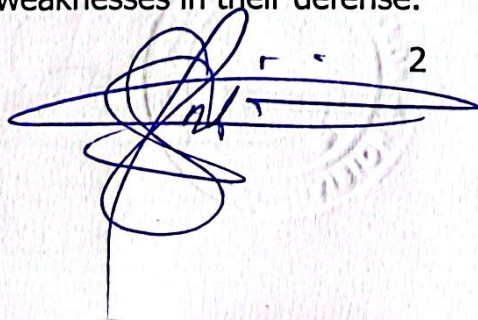
- 50 A1, Kasolo Coporiyamu alias Arsenal opted to waive his rights to legal representation and chose to represent himself.
- A3 (Kalyango Nasif alias Muwonge), A4 (Kiseka Hassan alias Masadda) and A5 (Mpanga Sharif alias Shariq were represented by Counsel Sselwanga Geoffrey.
- 55 A2, (Lubega Johnson alias Etoo) and A6, Katerega Sadat alias Barros were represented by Counsel Sselwambala Julius Caesar.

The prosecution was represented by Chief State Attorney Muwaganya Jonathan and Senior State Attorney Amerit Timothy.

Burden of proof.

In criminal cases, the Prosecution has the burden of proving the case against the accused persons beyond reasonable doubt. The burden does not shift to the accused persons. **See: Wilmington versus DPP [1935] AC 462.**

Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The prosecution evidence should be of such standard as leaves no logical explanation to be derived from the facts, except that the accused committed the offence. The accused persons should therefore only be convicted on the strength of the prosecution case and not the weaknesses in their defense.

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All the accused persons were examined and found to be of normal mental state.

I will proceed to resolve the matter.

75 **Kidnap with intent to murder contrary to section 243(1)(a) of the Penal Code Act.**

To prove kidnap with intent to murder, the prosecution had to prove the following ingredients of the offence beyond reasonable doubt.

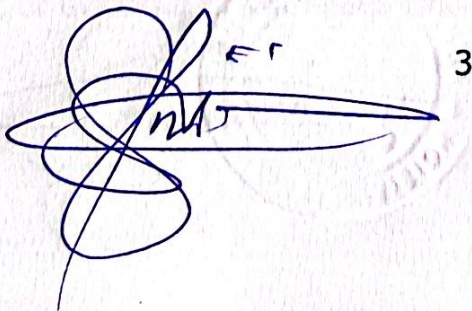
1. There was taking away of a person(s)
- 80 2. The taking away was accomplished by force or fraud.
3. The taking away was against the victim's will.
4. That the perpetrators of the offence were motivated by an intent to murder the victim(s)
5. That the accused persons were the perpetrators of the offence.

85 **Kidnap or taking away a person:**

Kidnapping may be defined as the taking away or transportation of a person against that person's will, usually to hold that person in false imprisonment, or confinement without legal authority. This may be done
90 for ransom or in furtherance of another crime. **See: Uganda vs Musimami & 2 Ors, Criminal Session 31 of 2011**

To prove this ingredient, the prosecution relied on the evidence of Ssenabulya Isaac alias Kisunsu (PW9) who testified that they found the
95 motor vehicle of Nagirinya Maria Gateni at the gate, hooting and about to enter inside. He stated that he found A1 and A2 already inside and he also joined them inside. He stated that inside the car was a male and female occupant.

100 He further stated that they forcefully laid down the occupants in the rear seats of the Motor Vehicle and they drove away from the gate. It was also the evidence of PW9 that the occupants in the vehicle were pleading with them to tell them the reason they were being captured but their pleas were ignored. Later, their bodies were recovered from Nakitutuli valley,
105 Lukojo Village, Mpoma Parish, Nama Sub county in Mukono District. I find this evidence sufficient to prove that the victims were kidnapped.



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Whether the kidnapping was by force and against the will of the victims. The 2 ingredients will be handled together.

110 According to the evidence of PW9, Ssenabulya Isaac alias Kisunsu the victims were taken away by force and against their will. That they forced them to sit in the rear seats of the motor vehicle and drove away from their gate. He also told court that the victims pleaded with them but their pleas were not heeded. The fact that the victims were later found dead
115 implies that they were taken by force and against their will. This fact was not disputed. I find that the prosecution proved that the victims were taken against their will and the same was done by force.

Whether the perpetrators of the kidnap were motivated by an intent to murder the victims.

120 The intent to kidnap and murder maybe inferred from the fact that the victims were found murdered. In this particular case PW1 and PW2 the medical personnel gave evidence to the effect that the victims were brutally murdered. This evidence was corroborated by PW9 who testified
125 that the victims were murdered using a log and a car jack. The eventual murder of the victims is sufficient proof that there was intention to murder.

The aspect of participation shall be addressed later.

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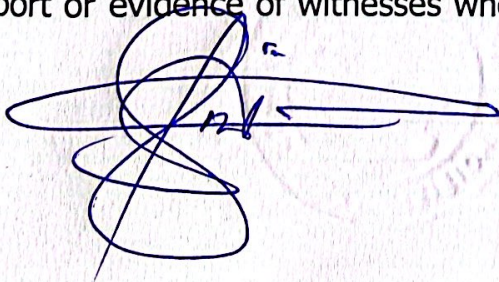
Murder

The offence of murder is said to be committed where any person who, with malice aforethought, causes the death of another person by an unlawful act or omission. The following ingredients must be proved
135 beyond reasonable doubt.

1. **Death of a human being.**
 2. **That death was caused unlawfully.**
 3. **The death was carried out with malice aforethought.**
 4. **The accused person(s) participated in the commission of the offence or, are responsible for the death.**
- 140

Death of a human being.

Death of a human being may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased



145 person and attended the burial or saw the dead body. **See: Uganda Vs Mwesigwa Jamada & 3 others High Court Criminal Session Case No.1348 of 2016.**

150 The prosecution relied on the evidence of PW1, Dr. Moses Byaruhanga, a Forensics Pathologist and a Director of Health Services in the Uganda Police Force who testified that he examined the body of the deceased on 31st August 2019. In detail, PW1 described the nature injuries which were on the body of Nagirinya Maria. He stated that the cause of death was neurogenic shock following blunt head trauma. The postmortem report
155 was exhibited in court as PEx 1.

The prosecution also relied on the evidence of Dr. William Male Mutumba (PW2) a pathologist to prove the death of Ronald Kitayimbwa. He told court that he examined the body of Kitayimbwa Ronald. He found that the
160 deceased person died as a result of head injury due to blunt force trauma. The postmortem report was tendered in court as PEx 2

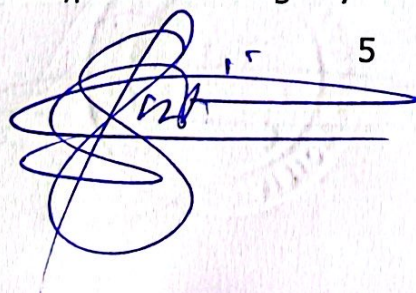
PW4 Lubowa Francis Anthony the biological father of Nagirinya Maria Gatani also confirmed that Nagirinya Maria had been killed. Mukasa
165 Lawrence (PW5) equally testified that Kitayimbwa Ronald had been killed and that they buried him.

I find that the prosecution proved the death of Maria Nagirinya and Kitayimbwa Ronald.

170 **Death was unlawfully caused**

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**
175 **65)**

To prove that the death was caused unlawfully, the prosecution adduced the evidence of Ssenabulya Isaac alias Kisunsu (PW9) who testified that when they had reached at the scene of Crime in Mukono along with A1 –
180 Kasolo Corpuriyamu and A2 – Lubega John Manomano, A1 opened the doors of the car, picked out Nagirinya Maria and hit her with a car jack on

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the head. It was also the evidence of PW9 that A2 brought a big log gave it to A1 who beat Kitayimbwa Ronald.

185 The prosecution also adduced evidence of the postmortem report of Nagirinya Maria (PEx1) tendered in by Dr. Byaruhanga Moses (PW1) which indicated that her death was caused by neurogenic shock following blunt head trauma. And the postmodern report of Kitayimbwa Ronald (PEx2) tendered in by Dr. William Male Mulumba(PW2) indicates that he died as
190 a result of head injury due to blunt force trauma with considerable magnitude given the nature of the injuries. Each of the postmortem reports clearly indicate the diverse injuries sustained by each of the deceased persons on their heads. This corroborates the testimony of PW9.

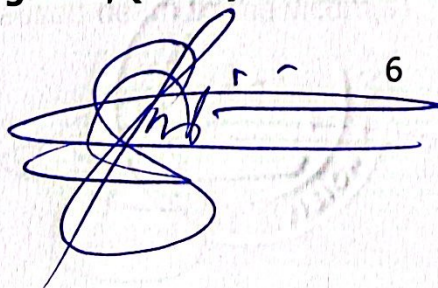
195 The evidence as a whole clearly shows that this was not a natural or accidental death but a double homicide. The death was caused unlawfully and I find that the prosecution adduced sufficient evidence to prove this beyond reasonable doubt.

Malice aforethought

200 The law in relation to what is entailed by malice aforethought is settled. Section 191 of the Penal Code Act defines malice aforethought either as an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person.

205 According to the above provision of the law, the basic element in proving malice aforethought is the existence of an intention to cause death. There must be a premeditated or planned intention to cause death. In the absence of the accused person's premeditation to kill, the conviction cannot stand.

210 Malice aforethought may be established when the harm is directed at a sensitive and vulnerable part of the body, this is because usually an attacker will not declare his intention to cause death or grievous harm so whether or not he had the intention must be ascertained from various factors which include the type and size of the weapon used in the attack leading to the death of the victim, the amount of force used by the attacker on the victim ,the part or parts of the body of the deceased where
215 the injury was inflicted. This position was restated in the cases of **R V Tubere S/O Ochen (1954) E.A.C.A 63. and Akol Patrick & Others versus Uganda, (2006) H.C.B Vol. 16.**

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Similarly, in the case of **Nanyonjo Harriet & Another vs. Uganda Criminal Appeal No. 24 of 2002 (Supreme Court)** it was held that for a court to infer that an accused killed with malice aforethought it must consider if death was a natural consequence of the act that caused the death, and if the accused foresaw death as a natural consequence of the act.

The deceased **Nagirinya** Maria Gateni sustained the following injuries as indicated in the postmortem report exhibited in court as **PEx 1**.

She had an extensive contusion of the lips with lacerations, she also had a fractured right upper jaw with fresh loss of two teeth. The report also indicated that she had a big stellate scalp laceration with a fractured skull. It was further indicated that the head and neck had multiple fractures. The cause of death was neurogenic shock following blunt head trauma.

For Kitayimbwa Ronald, the prosecution adduced evidence of PW2 who testified that upon examining Kitayimbwa Ronald's body he found the following external and internal injuries.

Kitayimbwa Ronald had a depression on the skull, the right eye socket was collapsed implying that the bones were fractured and almost inside the skull. The victim also suffered cut wounds on the face which were bone deep. He also had laceration wounds on the forehead which were skin deep. PW2 further stated that the victim suffered multiple internal fractures and the cause of death was head injury following blunt force.

The nature of the injuries sustained by the victims are consistent with the evidence of PW9 who stated that the lady was hit with a car jack on the head while the man was hit with a log. The photo exhibits of the bodies marked as PEx.15 showed the extent of the injuries. I therefore find that the prosecution proved malice aforethought

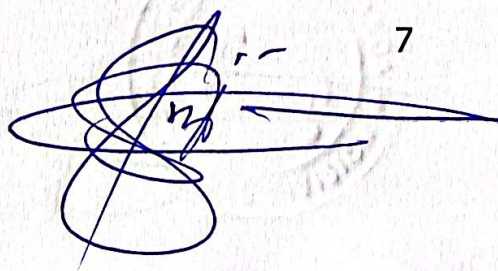
I will deal with the element of participation later.

Aggravated Robbery.

The following elements of the offence have to be proved by the prosecution:

(1) There was theft of property.

(2) Use of actual violence at, before or after the theft or that the accused persons caused death to the victim(s)



(3) The assailants were armed with a deadly weapon before, during or after the theft.

255 (4) Participation of the accused persons.

That there was theft of property

Theft occurs when a person fraudulently and with intent to deprive the owner of a thing capable of being stolen takes that thing from the owner without a claim of right. See: Section 254 (1) of the Penal Code Act.

260 Under section 254(1) of the Penal Code Act, the offence of theft is sufficiently proved upon proof of the fraudulent taking or conversion of any item that is capable of being stolen.

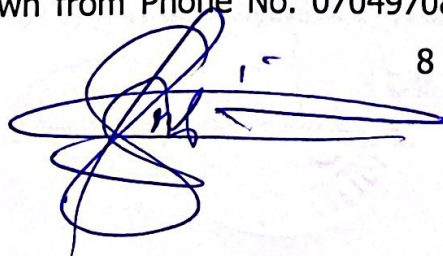
265 In proving theft there is no legal requirement to prove ownership. Once asportation of the property takes place without the consent of the one in possession, then theft has occurred. See: **Sula Kasiira v Uganda Criminal Appeal No.20 Of 1993 (SC).**

270 To prove theft of mobile phones and the mobile money, the prosecution relied on the evidence of PW9 who testified that before the victims were killed, they took their phones and forced them to disclose the pin numbers of their mobile money accounts, which they did. PW9 stated that it was A2 who went with the phones to withdraw the money. He also testified that they later withdrew money from the phones of Nagirinya and Kitayimbwa and all the accused persons shared of it the following day from Mabiito in Nateete. He also mentioned that it was A1 giving out the share of the money and also identified A3 and A5 as part of the persons who received this money were given the share of the money.

280 The prosecution further relied on the evidence of Iga Disan (PW14) who stated that he is a mobile money operator. It was his evidence that on the 29th August 2019 at around 5:00am while at his kiosk in Nateete, A2 asked him to withdraw money from a phone. That the money in the phone was 270,000/=. And upon conducting the withdraw transaction, the phone of A2 showed the names Nagirinya Maria. That the agent line he was using was 0708218948 and money was withdrawn from mobile line – 0704970863 in the name of Nagirinya Maria.

285 The prosecution also relied on the Data Analysis Report tendered by PW21 as PEx 42, which included an airtel money statement indicating that money 260,000/= (Two hundred and sixty thousand shillings) had been withdrawn from Phone No. 0704970863 on 29/08/2019 at 05:55hrs to

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agent line 0708218948 which he later identified belonged to Iga Disan a mobile money agent). (PW14) Iga Disan identified A2 as the person who came to withdraw money.

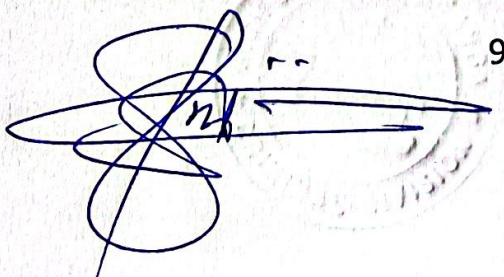
The prosecution further relied on the evidence of Wakubibwa Tom (PW13), who testified that on 31st of August, 2019, at about 6:24PM, a certain gentleman went to him and made a mobile money transaction. That he withdrew 24,000/= on the line of Kitayimbwa Ronald. That when initiating or doing that transaction the phone displayed the names of Kitayimbwa Ronald. That after completing the transaction, he gave him the 24,000/= he requested for. He stated that his mobile money agent number is 0704-835-744. And that the number of the customer from which the money was withdrawn was 0755-848-732.

The Simcard history of Kitayimbwa's Line as per the Data Analysis Report tendered by PW21 as PEx 42, indicated that after the crime, his phone number was inserted in phone handset IMEI no. 357360101817340 on 31/08/2019 at 07:48:32 AM to 1/09/2019 at 04:36:40 PM; during which money was withdrawn from it on 31st August 2019 at 18:25 Hrs. This handset according to the evidence of PW8 Frank Nyakairu was recovered from Lubega Johnson. The Airtel money statement of Tel No. 0755848732 shows that 24,000/= (twenty-four thousand shillings) was withdrawn from it on 31/08/2019 at 1825hrs to agent line No. 0704835744. This evidence corroborates the testimony of PW13 Wakubibwa Tom a mobile money agent.

To prove theft of motor vehicle Reg. UBA 570V, the prosecution relied on the evidence of Ssenabulya Isaac (PW9) who told court that on the night of 28th August 2019 they found a vehicle at the gate and forcefully accessed it and drove away with its occupants in it. The persons who drove away the motor vehicle had no claim of right over it as the occupants had been kidnapped.

PW9 further stated that it was A1 who drove away the motor vehicle up to Mukono where they later murdered Nagirinya Maria and Kitayimbwa Ronald from. The Printed image of motor vehicle Regn. No. UBA 570V was admitted as PEx14.

D/Sgt Barasa T. James (PW21), stated that the said Motor Vehicle is a Spacio, white in color under Registration No. UBA 570V belonged to Nagirinya Maria Gatani. He also testified that on the night of the 28th August 2019, it was Kitayimbwa Ronald who was driving the said Motor



Vehicle while Nagirinya Maria Gateni was seated at the in front passenger seat before they were attacked.

330 The prosecution also relied on the evidence of SP Ogwang Nixon (PW19) who testified that the Motor vehicle in the photograph admitted as - PEx14 was taken and captured by an ANPR (Automatic Number Plate Recognition) Camera at Kinawataka at 00:52:26 and the Motor vehicle was captured while it was being driven by a man towards Kireka. That man was identified by PW9 to be A1(Kasolo Coporiyamu). PW9 also told court that they abandoned the motor vehicle at Kigaga in Nateete. This
335 evidence is corroborated by the evidence of Kabuye Budalah (PW6) who informed court that on the night of 28th – 29th August 2019 at around 2:00am, he saw the motor vehicle abandoned at Kigaga Zone. He described the Motor vehicle as a white spacio.

340 From the evidence adduced by the prosecution, I find that there was theft of the motor vehicle Reg.No.UBA 570V, mobile phone IMEI NO. 862953044557610, CASH 260,000/= (Two hundred and sixty thousand shillings only) all belonging to the deceased Maria Nagirinya Gateni. I also find that there was theft of mobile phone Nokia S/No. 356839092092020, cash 24,000/= (twenty-four thousand shillings only)
345 belonging to Kitayimbwa Ronald. This ingredient was therefore proved beyond reasonable doubt.

Use of actual violence at, before or after the theft or that the accused persons caused the death of the victims.

350 The prosecution relied on the evidence of Ssenabulya Isaac (PW9) who stated that when they rode to the home of Nagirinya, where they found a motor vehicle at the gate entered it forcefully with the aid of A1(Kasolo Coporiyamu) and A2(Lubega Johnson) and they forced the occupants in the rear seats and sat on them and drove away.

355 PW9 also stated that at the murder scene in Mukono, A1 with the aid of A2 used a log to beat Kitayimbwa Ronald while A1 got a car jack from the boot and started hitting the head of Nagirinya Maria till she died. The photos of the deceased persons tendered in as PEx.15 painted a gruesome picture as to the violence occasioned on the victims.

360 The car jack was tendered as PEX28. The violence meted out on the victims led to their death as clearly indicated in PEX 1 and PEx 2 tendered in court by PW1 and PW2. The car jack and the log were deadly weapons in this case since they led to the death of the victims.

365 I find that the prosecution has proved beyond reasonable doubt that there was use of actual violence before, during and after the theft which led to the death of the victims.

I will now deal with participation in respect to all the counts

370 Participation of the accused persons may be proved by direct or circumstantial evidence placing them at the scene of crime at the material time. The direct evidence would be the testimonies of witnesses who claimed to have seen or identified the accused persons in the course of commission of the said offences.

375 In determining this issue, the court must examine all evidence closely, bearing in mind the established general rule that an accused person does not have to prove his innocence. It is up to the prosecution to disprove the defense of the accused persons by adducing evidence that shows that, despite the defense, the offence was committed and was committed by the accused persons. **See: Sekitoleko Vs Uganda [1967] EA 531.**

380 In their defense, A1(Kasolo Coporiyamu) raised an alibi and stated that on the 28th August, 2019, the day the alleged offences were said to have been committed he was at his work place at Mabiito in Natete. He told court that he is a hawker who works in the night. It was his evidence that he came to Mabiito at 7. 00p.m, and left the place at 7. 00a.m the following morning. He also denied knowing the rest of the accused persons except Katerega Sadat(A6) whom he was living with.

385 A2 raised an Alibi and stated that on the 28th day of August, 2019 when the alleged offences took place, he was singing at Laza Pub in at Salama Road in Kampala District between 10:00pm– 12:00 after which he went to VOX in Makindye to relax up to around 6:00 am after which he went home.

390 A3 (Kalyango Nasif Alias Muwonge) testified that on that day he was at Alex's shop, and one of the boda-boda riders by the names of Kiseka Hassan came to him with 4 people who and wanted him to carry them but he was alone. He admitted riding A1, A2 and PW9 but stated that he did not know their motive.

395 A4 (Kiseka Hassan Alias Masadda) opted to keep quiet.

A5 (Mpanga Sharif Aliais Shariq) testified that on that day, he was coming back from taking a passenger to Bulenga, when Kalyango Nasif called him using a phone number which was not known to him informing him that

435 he had some passengers to carry and need help as he could not carry
400 them all. He admitted carrying A1 and A2 and PW9 but stated that he did not know their motive.

A6 denied knowledge of the charges against him and stated that he was arrested because A1(Kasolo Coporiyamu) had had led the police to his place.

405 The legal position with regard to an alibi is that there is no onus on an accused person to prove it. Once the accused person raises it, the evidential burden shifts back to the prosecution to disprove it.

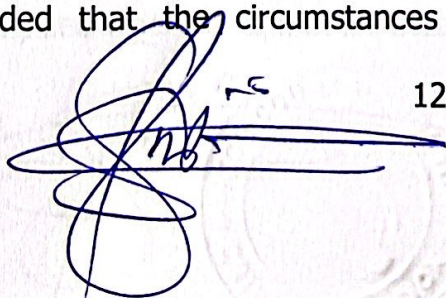
410 The accused person therefore has only to raise it but has no duty of proving it. Prosecution bears the duty of destroying the defense by putting the accused at the scene of crime at the time (it) was being committed.
See: Bogere Moses v Uganda Supreme Criminal Appeal No. 1 of 1997)

415 The defense of alibi does not have to be considered in isolation. The court must consider the alibi in the light of the totality of the evidence. The defense of alibi naturally dissipates upon adducing evidence of the identifying witnesses placing the accused persons at the scene of crime at the material time.

420 To disprove the defense of alibi, the prosecution relied on the evidence of PW9 (Ssenabulya Isaac alias Kisunsu) who testified that while at Natete, Kasolo Coporiyamu (A1) together with Manomano John (A2) went to him and told them to join them and get money. That they went along on motor cycles with Muwonge (A3) and Mpanga Sharif (A5). That they found the motor vehicle of Nagirinya Maria Gatani at the gate, hooting, and about to enter in the home.

425 PW9 further testified that he found A1(Kasolo Coporiyamu) and A2(Lubega Johnson) already in motor vehicle and they told him join them inside. He said that inside the car was a male and female. He stated that, they lay the male and female occupants down in the rear seats of the Motor Vehicle, and they sat on them together with A2. He further told
430 court that it was A1 driving the motor vehicle. It was also his evidence that the victims pleaded with them, but A1 silenced them until Mukono, where they were later murdered from.

The prosecution acknowledged that the offence occurred at night, but contended that the circumstances were favorable for the correct

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435 identification of the assailants. In the case of **Moses Bogere and Another Vs Uganda (Supreme Court Criminal Appeal No. 1 1997)** the court outlined the factors for correct identification to include the length of time the accused was under observation, the distance, the light and the familiarity of the witness with the accused.

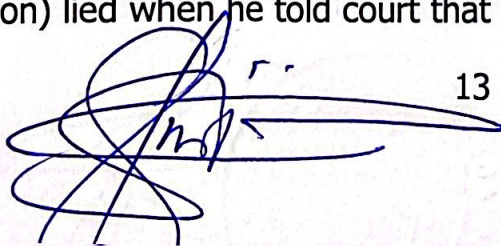
440 In this case, PW9 was an eye witness and part of the assailants who directly participated in the commission of the offences right from the planning, the movements, and execution. He knew each of them, how they were dressed and gave a detailed account of the role played by each of them. At both the scene of kidnap and murder, his testimony was that
445 he was aided by light from the motor vehicle to see whatever was taking place. He was physically present at each event and was in close proximity. The direct evidence of PW9 is therefore relevant to the defense of alibi raised by A1, A2 as it places them at the crime scene and positively identifies them as the persons who committed the offences.

450 To support the testimony of PW9, A3(Kalyango Nassif) testified that he met A1(Kasolo Coporiyamu), A2(Lubega Johnson) and PW9 on the night. It was his evidence that he rode A1 and A2 while PW9 and another still at large sat on A5's motorcycle. That when they reached Busega, A1 and A2 went and sat on A5's motorcycle because his had developed a mechanical
455 problem. He stated that he closely followed them with PW9 to Lungujja

A3(Kalyanago Nassif) further testified that at Lungujja, a motor vehicle came flashing lights and stopped them. That A1 was inside the vehicle which stopped them. He added that this vehicle stopped and A1 opened the door and told PW9 to enter and A1 immediately drove away. In his
460 evidence he clearly described how A1, A2 and PW9 were dressed. He was able to properly identify A1, and A2 as he had met them earlier.

Furthermore, A5(Mpanga Sharif) testified that at about 10pm on that night, he rode A1 and A2 on his motorcycle to Lungujja. He told court that on the night after carrying A1 and A2, he received a call from someone
465 asking him to go to Namanve and pick them up. He told court that he wasn't sure who it was but the person introduced himself as the people he had earlier on carried to Kalerwe and Lungujja. That he rode up to Bweyogerere and when he reached they him that they informed him that they had gotten someone else to carry them.

470 A5(Mpanga Sharif) testified that A1(Kasolo Coporiyamu) A2(Lubega Johnson) lied when he told court that he had never carried them on that



night the offences were committed and that he was not known to them. To the contrary, A5 sufficiently described how A1(Kasolo Coporiyamu), A2(Lubega Johnson) and PW9 were dressed on the night. His evidence
475 contradicts the claim by A1 and A2 that they had never seen him and directly places them at the crime scene contrary to their defense of alibi. I found his evidence credible as he properly described A1 and A2 as the people he carried.

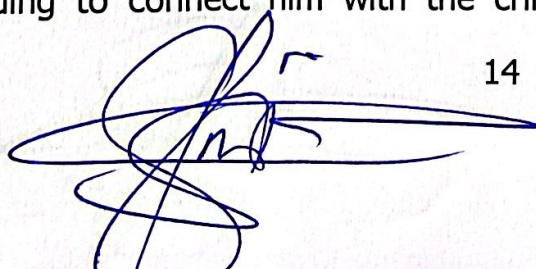
In an attempt to dispute PW9 evidence in chief implicating them, A1 and
480 A2 testified that they did not know him. They stated that that PW9 was a police officer who had tortured them while in custody at Katwe Police station. I have found this not to be true because the evidence of PW9 is corroborated by that of A3 and A5 who stated that they had carried the three of them that night on their motorcycles. They unequivocally stated
485 that PW9 has never been a police officer. I therefore consider this claim by A1 and A2 a false hood not supported by any evidence.

The evidence of PW9(Ssenabulya Isaac), A3(Kalyago Nassif) A5(Mpanga Sharif) is essentially accomplice evidence. In a criminal trial, a witness is said to be an accomplice if he participated as a principal or an accessory
490 in the commission of the offences subject of the trial. One of the clearest cases of an accomplice is where the witness has confessed to the participation in an offence, or has been convicted of the offence either on his own plea of guilty or on the court finding him guilty after the trial.
See:Nasolo V Uganda Criminal Appeal No.14 of 2000 (SC) [2003]
495 **EA 181,189**

The law with regard to accomplice evidence is provided for under section 132 of the Evidence Act. It provides that;

**An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds
500 upon the uncorroborated testimony of an accomplice.**

While the court may convict on uncorroborated evidence of an accomplice, it is normally desirable that such evidence is corroborated with some other independent evidence. The corroboration which should be looked for is, as laid down in the case of **R v Baskerville [1916] 2**
505 **KB 658**, some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. It must be independent evidence which affects the accused by connecting him or tending to connect him with the crime, confirming in some material



510 particular not only the evidence that the crime has been committed but also that the accused committed it.

The prosecution relied on the evidence D/ASP Nakatudde Winfred (PW15), who recorded a charge and caution of A1. The court conducted a trial within a trial and came to a finding that the Charge and Caution Statement of A1 was obtained voluntarily and that the accused was not
515 tortured and coerced to record it, as he claimed. The original Luganda version of the Charge and Caution statement and the English translated version were tendered in court and admitted as Exhibits in Evidence and accordingly marked as PEx19 & PEx 20 respectively.

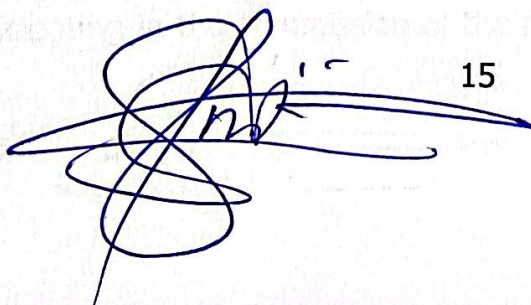
In that charge and caution statement, A1 confesses unequivocally his
520 participation in the kidnap, murder and robbery of Nagirinya Maria Gatani and Kitayimbwa Ronald. A1(Kasolo Coporiyamu) also stated that A2(Lubega Johnson), A3(Kalyango Nassif), A4(Kiseka Hassan), A5(Mpanga Sharif), A6(Katerega Sadat) all fully participated in the commission of the offences, and he disclosed the roles of each participant.

525 D/Sgt Barasa (PW21) testified that he interviewed each of the accused persons and A1 admitted to have led his colleagues into the commission of kidnap and murder. He testified that A1 mentioned Lubega Johnson, commonly known as Rasta(A2), Mpanga Sharif(A5), Katerega Sadat, (A6) Kalyango Nasif(A3), Kiseka Hassan Masada(A4), Senabulya Isaac
530 Kisunsu(PW9) and a one Fred whose whereabouts are unknown.

PW21 also testified that he interviewed Kalyango Nasif(A3) alias Muwonge, who admitted taking part in the kidnap and murder of Nagirinya and Kitayimbwa Ronald. He further testified that he interviewed
535 A2 who revealed to him one of the pangas which was used in the commission of this crime and where it was kept. PW21 also testified that A1, Kasolo identified to them Kisekka Hassan (A4) as one who was part of them.

PW21 also testified that A5 admitted taking part in the kidnap and murder of Nagirinya Maria and Kitayimbwa Ronald. He further testified that
540 Kalyango Nasif (A5) revealed having used a motor cycle to carry Kasolo Coprium and Lubega Johnson to the scene of kidnap.

No. 40132 D/CPL Osekenye Michael (PW12) joined a team of investigators who were led by the accused persons for a scene reconstruction. He recorded the video which captured A1, A2 and A3



545 making voluntary narrations of how they committed the offences at the various scene of crime.

Section 29 of the Evidence Act provides that,

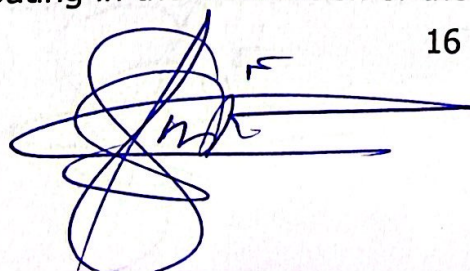
550 **Notwithstanding sections 23 and 24, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, so much of that information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved**

555 The flash containing the video of scene reconstruction was admitted and tendered as PEx 18. Therein the accused persons revealed the spot at ABC stage where they converged. They also revealed information as to how they kidnapped Nagirinya Maria Gateni and Kitayimbwa Ronald at the gate of Nagirinya's home, they also revealed the incidences at Mukono where they killed Nagirinya Maria Gateni and Kitayimbwa Ronald and dumped their bodies, and also reveal where A1 threw the red jacket which
560 was given to him by Kisekka Hassan (A4) so as to conceal the toy pistol, it also reveals where they abandoned the motor vehicle of Nagirinya Maria Gateni and where A2 withdrew mobile airtel money from – from the phones of Nagirinya Maria Gateni and Kitayimbwa Ronald. A transcribed copy of the scene reconstruction video was tendered in court and
565 admitted as PEx 21.

In the case of **Serunkuma Edirisa & others vs Uganda Criminal Appeal No. 0147 of 2015** it was stated that a 'co-accused's confession statement may be relied upon as against the maker and his/her other co-accused in the joint trial.' *See also - Festo Androa Asenua & another vs Uganda, Supreme Court Criminal Appeal No. 001 of 1998.*
570

A confessional statement includes not only admission of the offence, but also admissions of substantially all incriminating facts which constitute the offence. Apart from A1 and A2, none of the accused persons complained of being tortured and as already noted the question of torture was
575 determined during the trial within a trial. Accordingly, the charge and caution statements both the one recorded in Luganda and translated in English were admitted as PEX19 & PEX20 and contained sufficient evidence to implicate A1, A2, A3, A4, A5, in the kidnap of Nagirinya Maria and Kitayimbwa Ronald.

580 A1 repudiated the confessional statement he made and denied participating in the commission of the alleged offences. The law relating



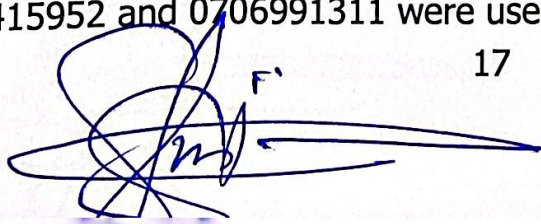
to retracted and repudiated confessions is that a trial court should accept any confession which has been retracted or repudiated or both retracted and repudiated with caution, and must before founding a conviction on such confession be fully satisfied that in all the circumstances of the case the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not mandatory in law and the court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true. See: **Tuwamoi vs Uganda (1967) E.A. 84 at page 91**

The charge and caution of A1 and video of scene reconstruction of the accused persons which was tendered as PEx 18 could only be made by persons who were active participants and eye witnesses to much of what occurred on the night the offences were committed. They seemed to be familiar with what had transpired. It is true that A1 and A2 gave sworn evidence in which they repudiated the confession and the statements made during the scene reconstruction. However, a number of factors exist to discredit any claim that this repudiation affected the facts and events of the scene reconstruction. They were consistent with the versions of the other witnesses.

The consistency on the events leading up to the commission of the offences as shown by the video of scene reconstruction would reasonably denote such knowledge as it could only have been informed by the accused persons' participation in the commission of the alleged offenses. It also further underscores the authenticity of the said confessional statements as they are consistent with the other testimonies of PW9, PW21, A3 and A5.

The prosecution also relied on the evidence of PW21 who adduced evidence of call data analysis he established from his investigations. The report was tendered in and marked as PEx 42 and it revealed the following;

That the user of the phone number **0700415952** was Kasolo Coporiyamu. That the NIN number which was used to register simcard 0706991311 was used in phone IMEI No. 357435107724870 recovered from Kasolo Coporiyamu at the time of arrest. This phone was not exhibited in court but the report confirmed that Both Phone Nos. 0700415952 and 0706991311 were used by Kasolo Coporiyamu.



620 The report also revealed that Phone number 0700415952 was used in an itel handset IMEI no. 356020097329920. The said Simcard (0700415952) was on the 1/09/2019 inserted in an itel handset which had three simcard pots, namely; SIMCARD Pot IMEI no. 357360101817360, SIMCARD Pot IMEI no. 357360101817340 and SIMCARD Pot IMEI no. 357360101817350. SIMCARD Pot IMEI no. 357360101817360 is where the Phone No. 0700415952 was inserted on the 1/09/2019. SIMCARD Pot IMEI no. 357360101817340 is also where Kitayimbwa's line was inserted and money withdrawn.

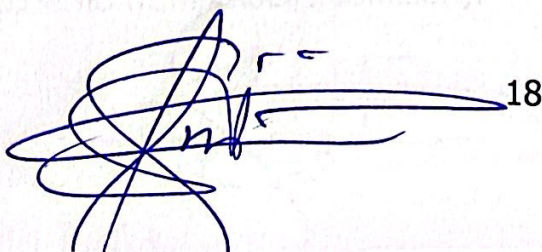
630 Call data records show that the user of the phone number 0700415952; (that is Kasolo Coporiayamu), had voice communications with Mpanga Sharif (0758111216) prior the commission of the offences, on 28th August 2019 at 17:48:14 hrs, 21:32:27 hrs, 21:33:04 hrs.

635 Call data records show that the user of the phone number 0700415952; (that is Kasolo Coporiayamu), was based in Nateete, Busega areas and was there on 28/08/2019 by 22:16:09hrs of the night the Kidnap was committed and came back to the same location at 0336hrs on 29/08/2019 after the crimes were committed.

640 During the very night of 29/08/2019 at 02:28:20 hrs, the call data also indicates that phone number 0700415952 (used by Kasolo Coporiayamu) was in location captured by Airtel site Mast named ATL Mbuya (located at Mbuya and covers areas of Kinawataka, Mbuya) when he received a phone call from phone No. 0758111216 (used by Mpanga Sharif) who was at location of Bweyogerere. Mbuya and Bweyogere are along the route the suspects used that very night to go to Mukono where the victims were allegedly murdered from and their bodies dumped.

With regard to A2, Lubega Johnson the Know Your Customer (KYC) details shows that the **0788662014** number was registered in the names of Emmanuel Mpiya under NIN CM87013103TNXF. This phone number (i.e. **0788662014**) was recovered from Lubega Johnson on arrest.

650 Call data shows that the user of the number 0788662014 was based in areas of Nateete, Busega and the number was used in itel handset of three SIMCARD pots, specifically, SIMCARD pot IMEI no. 357360101817340. The second phone number used by Lubega Johnson i.e. 0708373340 was also used in the same itel handset in SIMCARD pot IMEI no. 357360101817350 which line Lubega always used to

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communicate to 0700415952 used by Kasolo Coporiyamu as per annexure D of the report.

660 After Lubega was arrested on 8th September 2019, he used Phone No. 0708373340 to call Kasolo on phone No. 0706991311 while leading police to arrest Kasolo Coporiyamu, at 23:08:00 hrs and 23:09:34 for 22 and 33 seconds respectively as per annexure D2 of the report.

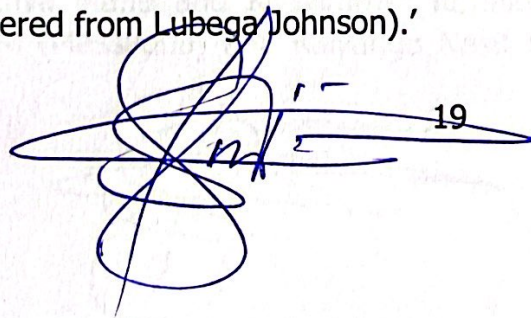
665 The report revealed that Phone No. 0788662014 was inserted in the same handset pot IMEI No. 357360101817340 on 21st August 2019 at 1:39:33PM and was used in the same handset up to 30th August 2019 when it was removed and re-inserted on 1st September 2019 then later used until 9th September 2019 as per annexure D4 of the report. The report also indicated that between 30th August 2019 and 1st September 2019, the line of the deceased Kitayimbwa was inserted in the same handset in the pot where the phone No. 0788662014 was (i.e. IMEI No. 670 357360101817340).

675 The call data record of 0708373340 as per annexure marked "D2" of the report shows that it was in the same itel handset with the phone number of Kitayimbwa Ronald on 31/08/2019 at the time money was withdrawn from it. IMEI print of this phone handset as per annexure marked "D3" of the report indicates that the deceased Kitayimbwa's line was inserted in the handset Simcard pot IMEI No. 357360101817340 on 31st August 2019 at 7:48:32 AM to 1st September 2019 at 4:36:40PM.

680 The phone number 0700415952 used by Kasolo was inserted in the same handset in simcard pot IMEI No. 357360101817360 on 1st September 2019 at 4:15:15PM to 1st September 7:15:34PM

While the line of Kitayimbwa (0755848732) was in the same handset (in one of the simcard pots) as of 4:36:40PM, the line used by Kasolo (0700415952) was inserted into the same handset (in a different simcard pot) at 4:15:15PM.

685 Suffice it to say, from the data analysis report admitted as PEx 42, it indicates that 'the Simcard history of Kitayimbwa's Line (i.e. **0755848732**). It indicates that after the crime, his phone number was inserted in phone handset IMEI no. 357360101817340 on 31/08/2019 at 07:48:32 AM to 1/09/2019 at 04:36:40 PM; during which money was 690 withdrawn from it on 31st August 2019 at 18:25 Hrs (This handset was recovered from Lubega Johnson).'



In respect of Kalyango Nasif A3, Know Your Customer particulars show that the number **0753565028** was registered in the names of Nassuna Robbina under NIN CF92098104MHAC. It was being used in handset imei no. 358588088868220 recovered from Kalyango Nasifu on arrest.

Call data records show that the user of phone number 0753565028 was based in areas of Nateete, Busega and had voice communications with Kasolo Coporiyamu (0700415952), Katerega Sadat (0708190112), Lubega Johnson (0708373340) and Mpanga Sharif (0758111216) after the crime.

For Mpanga Sharif A5, his Know Your Customer (KYC) details show that the number **0758111216** was registered in the names of Mpanga Sharif under NIN CM95045103MQNA. It was being used in phone handset IMEI no. 351702096903980. Call data shows that the user was based in areas of Nateete and Busega.

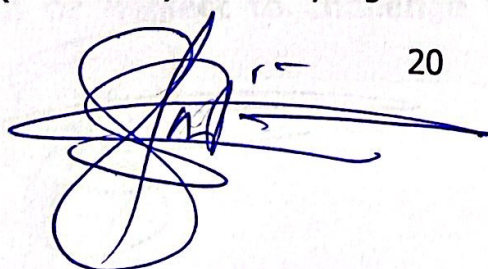
Mpanga Sharif (0758111216) while at the location of Nateete taxi park at 00:36:45 hrs on 29/08/2019 received a voice call from Kasolo Coporiyamu (0700415952) who was at areas of Seyani. Seyani is an airtel mast at Seyani Brothers Company along Ggaba road.

At 01:23:27 hrs on 29/08/2019, 0758111216 (used by Mpanga Sharif) while at areas of Bweyogerere received a voice call from 0700415952 (used by Kasolo Coporiyamu) whose call was captured by the mast named ATC Kibooba. Kibooba is a village in Mpoma parish, Nama subcounty Mukono along Kayunga road.

0758111216 (used by Mpanga Sharif) moved that very night from areas of Bweyogerere to areas of Lunguja Kosovo where he was at 03:36:04 hrs when he made another a voice call to Kasolo Coporiyamu (0700415952) who was at areas of Busega at the time.

As for Katerega Sadat A6, PW21 obtained call data records of number **0708190112** was being used in phone handset IMEI no. 353737104489410. IMEI Print (**ANNEXURE MARKED "G1"**) of IMEI no. 353737104489410 indicates that Kasolo used the same handset on 2nd July 2019 from 11:34:22AM to 3rd July 2019 at 12:35:52PM. On the night of the kidnap and murder, the phone number was in the areas of Nateete and Lunguja from 28/08/2019 at 2030hrs to 29/08/2019 at 0538hrs.

PW21 stated that he established that after the eventual murder of Nagirinya Maria and Kitayimbwa Ronald; Katerega Sadat and Kiseka Hassan (Massadda) and Kalyango Nasif received back their colleagues



730 Kasolo Coporiyamu, Lubega Johnson and Senabulya Isaac who had gone to Mukono to complete the mission, and they all shared the money which they had robbed from the deceased persons.

735 The conclusions from the above evidence of PW21 were that Lubega Johnson (0708373340), Mpanga Sharif (0758111216), Kalyango Nasif (0753565028), Fred (0706991311) and Katerega Sadat (0708190112) had voice communications with Kasolo Coporiyamu (0700415952) before during and after the crime.

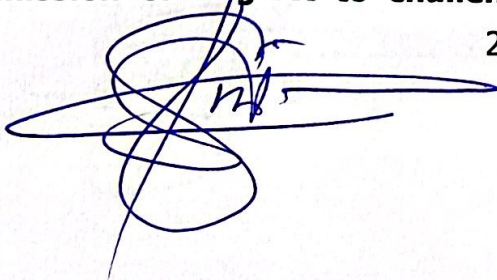
740 Secondly that, during the 5hrs between 28/08/2019 at 2200hrs and 29/08/2019 at 0336hrs, Kasolo Compuriyamu moved from areas of Nateete(Rubaga) to areas of Kibooba (Nama S/cty Mukono) and back to Nateete. Within the same time, Mpanga Sharif moved from areas of Nateete to areas of Bweyogerere and back to Nateete.

745 Thirdly that the phone number 0708373340 of Lubega Johnson was in the same handset with Kitayimbwa Ronald's phone number 0755848732 on 31/08/2019 at 1825hrs when money was withdrawn from it. The line used by Kasolo (0700415952) was also used in the same handset while the line of Kitayimbwa was still in.

750 I am aware that the evidence of the call data tendered in by PW21 is purely of a circumstantial nature. Circumstantial evidence must be a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do no admit of any inference but of his guilt. Circumstantial evidence should not only be consistent with the guilt of the accused, but should not be consistent with his innocence.

755 The way to deal with circumstantial evidence was stated in Topher V. R. (1952) A.C. at Page 489 as follows: - **"Circumstantial evidence must always be narrowly examined, if only, because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."**

760 A4 (Kiseka Hassan) opted to keep quiet. The implication of keeping silent in a criminal trial was stated in the case of **James Sawoabiri & Another V. Uganda Criminal Appeal no. 5 of 1990** it was stated; **"An omission or neglect to challenge the evidence in chief on a**



765 **material or essential point by cross- examination would lead to**
an inference that the evidence is accepted, subject to its being
assailed as inherently incredible or possibly untrue."

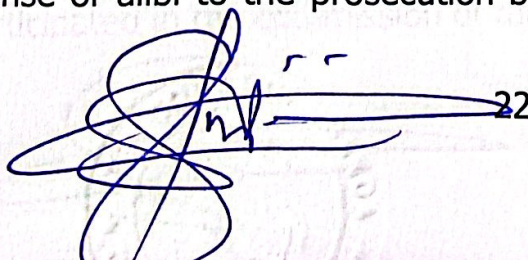
It can be said that although the accused has a right to silence in criminal
proceedings, this silence is not absolute as an adverse inference can be
770 drawn when the accused fails to challenge the evidence of the prosecution
in cross examination. However, a conviction cannot be based on inference
alone drawn from silence. There must be some other evidence because
inference is weak evidence and it might be too easy to jump to wrong
conclusions. This means that inference must be backed by other types of
775 evidence.

Kalyanago Nassif (A3) in his evidence implicated A4 (Kiseka Hassan) and
stated that it was him Kiseka Hassan (A4) who brought A1, A2 and PW9
to him on the night and asked him to carry them. There was also evidence
from PW21 who stated that A1(Kasolo Coporiyamu) mentioned A4(Kiseka
780 Hassan) as a part of the people involved in the commission of the alleged
offences and that A4 was evasive at the time he was arrested. I find A4
(Kiseka Hassan) culpable in the absence of any explanation.

Kasolo Coporiyamu (A1), Lubega Johnson (A2), put up the defense of
alibi. This was however only brought up at the point they were giving their
785 defense evidence. At no point in time was any of the prosecution
witnesses cross- examined on the alleged defenses of alibi. Neither did
they raise this defense in their police statements or even notify the
magistrate at the stage of committal to the High Court.

790 In the case of **Festo Androa Asenwa and Another vs. Uganda SC**
Crim App. No. 1 of 1998, the Supreme Court held among other things
that 'If an accused does not bring forward the defence of alibi until months
afterwards, there is naturally a doubt as to whether he/she has not been
preparing it in the interval. To raise the alibi at the earliest opportunity,
795 gives the prosecution an opportunity to inquire into the defense.

It is my considered view that where an accused person fails to give notice
to the prosecution and the court of his intention to rely on the defense of
alibi before the hearing of the case or fails to furnish particulars of the
800 defense of alibi to the prosecution before the close of the case for the



prosecution, as it was in this case, the Court has discretion not to accord weight to that defense.

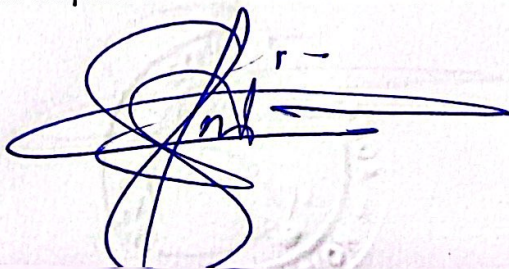
805 Be that as it may the prosecution adduced sufficient evidence discrediting the defense of Alibi raised by Kasolo Coporiyamu (A1), Lubega Johnson (A2). The prosecution through the evidence of PW9, and defense witnesses of A3, A5 squarely placed Kasolo Coporiyamu (A1), Lubega Johnson (A2) at the scene of the crime. The prosecution also adduced evidence which directly contradicted A1 and A2's testimonies that they
810 were in some other place.

With regard to Kalyango Nasif (A3) and Mpanga Sharif (A5) they admitted that on the night, they carried A1, A2, and PW9 to the scene of crime where Nagirinya Maria and Kitayimbwa Ronald were kidnapped from. A5
815 admitted to having seen A1 in a vehicle which had stopped them. He admitted having carried A1, A2 and PW9 while A3 also admitted to having carried A1, and A2.

Ssenabulya Isaac (PW9) also stated that after the commission of the
820 alleged offences, they met with Kasolo Coporiyamu (A1), Lubega Johnson (A2), Kalyango Nasif (A3) and Mpanga Sharif (A5) in the early morning of 29th August 2019 and they shared the proceeds of crime.

I am unable to believe that Kalyango Nasif (A3) and Mpanga Sharif (A5)
825 were merely transporting Kasolo Coporiyamu (A1), Lubega Johnson (A2) and Ssenabulya Isaac (PW9) and that their motives were not known to them. Why then would they communicate with strangers and meet up to share the proceeds with A1, A2 and PW9 if they were ordinary boda boda men. The circumstantial evidence of the call data records, their own
830 admissions coupled with the evidence of PW9 points to a deliberate scheme orchestrated by them.

I find that the evidence adduced by the prosecution witnesses specifically PW9, and defense witnesses of A3 and A5 destroys the alibi of A1 and A2. The alibi set up by the A1 and A2 is false. I find that the each of the
835 accused persons. Kasolo Coporiyamu (A1), Lubega Johnson (A2), Kalyango Nasif (A3), Kiseka Hassan (A4) and Mpanga Sharif (A5) participated in the commission of the said offences.



840 To convict the accused persons on the joint charges, there must be proof of a common intention held by all the accused persons at the time the offenses were committed.

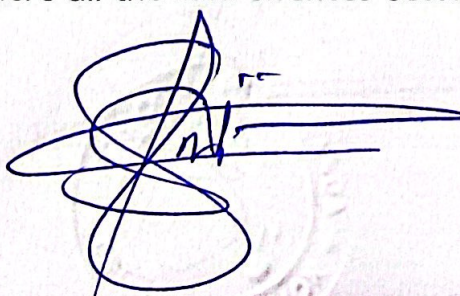
Section 20 of the Penal Code Act provides that,

845 **When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.**

850 Common intention is the meeting of the mind of the accused persons which is necessary to be present in joint charges. However, common intention may be inferred from the presence of the accused persons, their actions and the omission of any of them to disassociate himself from the assault/act. However, it should be noted that the mere presence of the accused person in the scene of crime is not final and conclusive prove of common intention.

855 In the case of **Kasumba Kenneth & others vs Uganda CoA Criminal Appeal No. 23 of 2016** it was stated that in order to make the doctrine of common intention applicable it must be shown that the accused had shared with the perpetrator of the crime a common intention to pursue a specific unlawful purpose which led to the commission of the offence. If
860 this can be shown, then the doctrine of common intention would apply irrespective of whether the offence committed was the one intended or not. The court also emphasized that it is now settled that an unlawful common intention does not imply a pre- arranged plan.

865 Amongst Kasolo Coporiamu (A1), Lubega Johnson (A2), Kalyango Nasif (A3), Kiseka Hassan (A4) and Mpanga Sharif (A5) none of them disassociated themselves from the alleged offences. None of them reported the incidents to police. But rather they all went into hiding until they were arrested. They were in direct communication at all times and even shared the proceeds from the crime. Kasolo Coporiamu (A1),
870 Lubega Johnson (A2), Kalyango Nasif (A3), Kiseka Hassan (A4) and Mpanga Sharif (A5) are culpable for all the offences of Kidnap, aggravated robbery and murder even if they may not all have been at all the scenes where all the said offences occurred. What is vital is that the acts of the

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accused persons were done in pursuance of a criminal purpose held in common between them.

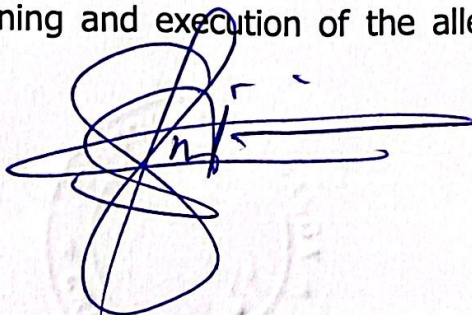
I have also considered the conduct of the accused persons after the commission of the offences. Frank Nyakairu (PW8) in his evidence described in great detail the chaotic atmosphere under which A1 was arrested. That it involved fist fighting between A1 and the security officers who arrested him and that it was rough and as a result, A1 sustained injuries captioned in PEx 3. A4(Kiseka Hassan) was also evasive at the time of his arrest. This information was supported by PW21, the investigating officer. The court may in some instances determine the culpability of an accused persons by considering the conduct of the accused before and after the act.

In the case of **Uganda VS Sunday Herbert High Court Criminal Case No.162 of 2021**, it was stated that 'The conduct of the accused can corroborate the complainant's testimony. For example, if the conduct of the accused indicates a sense of guilt on his part; such as escaping from arrest or running away. That can add strength to the prosecution case.

I have noted the deliberate untruthfulness in the evidence of A1 and A2 when they denied knowing PW9 A3 and A5 while A3 and A5 and PW9 demonstrated to court through their evidence that they were together that night. A1 and A2 also lied when they claimed that they were tortured while in custody and that they were tortured by PW9 who was police officer yet they knew him before and he was an accomplice.

They lied when they claimed not to have talked or coordinated with any of the accused persons on phone yet the call data records in the Data analysis report tendered by PW21 indicated that they were in constant touch. There is sufficient evidence that A1 participated in the preparation, planning of the offences committed by them. Lies are inconsistent with innocence. Proved lies can be used to corroborate prosecution evidence. **See: Juma Ramadhan Vs Republic Cr. App. No. 1 of 1973 (unreported)**

With regard to Katerega Sadat A6, I find that there was no evidence to show that he participated in the events that led to the commission of the alleged offences. Except for his close association with Kasolo Coporiyamu A1, there was no sufficient evidence to show that he participated in the planning and execution of the alleged offences. The call data records

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910 tendered by PW21 indicated that their communication with Kasolo
Coporiyamu (A1) was way before the offenses were committed.

Neither was he identified by any of the witnesses as having participated
in the commission of the said offences. Other than PW8 who states that
he was arrested as a result of human intelligence, the evidence of PW21
915 did not directly link him to the participation. Although he was mentioned
by A1 in his charge and caution, there was no other independent evidence
linking him to the alleged offences.

I find that the prosecution proved beyond reasonable doubt that the
Kasolo Coporiyamu (A1), Lubega Johnson (A2), Kalyango Nasif (A3),
920 Kiseka Hassan (A4) and Mpanga Sharif (A5) participated in the
commission the said offences. There was sufficient evidence corroborating
the evidence of PW9, A3 and A5 who were accomplices. A3 positively
identified A1, A2, PW9 and A4. A5 positively identified A1, A2, PW9, and
A3.

925 There was also other evidence of call data records, the evidence of PW21
the communication matrix, scene reconstruction video and the charge and
caution Statement of A1(Kasolo Coporiyamu) which indicates that at all
times the accused persons acted together and were in constant
communication with each other, and shared the proceeds from the crime,
930 while A1, A2, and PW9 directly committed the alleged offenses in this
case.

In the result, Kasolo Coporiyamu (A1), Lubega Johnson (A2), Kalyango
Nasif (A3), Kiseka Hassan (A4) and Mpanga Sharif (A5) are accordingly
convicted as charged. Katerega Sadat (A6) is acquitted and should be set
935 free unless being held on other lawful charges.

I so find.



JUDGE

940 **19/10/2023.**