## THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA CRIMINAL APPEAL NO.7/99

TOO OKEMA MOSES :::::::APPELLANT

**VERSUS** 

**CORAM:** HON. MR. JUSTICCE C.M. KATO, JA.

HON. MR. JUSTICE G.M. OKELLO, JA.

HON. MR. JUSTICE J.P. BERKO, JA.

## JUDGMENT OF THE COURT:

The appellant was convicted of murder and sentenced to death by the High Court at Gulu on 19/2/99. He appealed against conviction and sentence.

The brief facts of the case are that on 7/6/96 the appellant went to the home of the deceased, Yose Lunyera, where people who had gone to assist the deceased in digging his shamba had gathered to drink "kwete" (local brew) which the deceased had provided. The appellant was permitted to participate in the drink although he did not take part in the digging of deceased's garden. He took one calabash full of "kwete" and drunk it but he poured the second and third calabashes on the ground. The deceased asked him why he was doing that and asked him to leave if he was already drunk. He did not reply instead he got up and pulled out a pocketknife and started piercing the central pole in the house. The deceased grabbed him with the intention of leading him out. A struggle ensued during which the appellant stabbed the deceased twice: on the stomach and on the right thigh. The deceased was referred to Kitgum hospital where he died 5 days later. The appellant was arrested on 11/6/96 and charged with the offence. At the trial he put up a defence of alibi which was rejected by the trial judge.

There were 2 grounds of appeal. The second ground was abandoned, and quite rightly in our view, as it was not a proper ground of appeal.

At the hearing of this appeal the counsel for the appellant informed the court that the appellant

had abandoned his defence of alibi and admitted having killed the deceased when he was

intoxicated.

We agree that there is enough evidence on record to show that the appellant had taken some

alcohol before he came to the home of the deceased and he was already drunk. The learned

counsel for the state concedes to these facts.

The learned trial judge considered the defence of intoxication but he appears to have misdirected

himself to the law applicable. He seems to have relied on section 13(2) of the Penal Code Act

instead of subsection 4 of the same section. Had he done so he would have found that malice

aforethought had not been proved having regard to the evidence of intoxication on record.

We therefore allow the appeal, quash conviction for murder and set aside sentence of death. We

substitute therefore a conviction for manslaughter under section 182 of the Penal Code Act and

sentence him to 10 years imprisonment having regard to the period he had been on remand

before conviction. This sentence of 10 years takes effect from date of conviction.

Dated at Kampala this 28 day of October, 1999.

C.M. KATO

JUSTICE OF APPEAL

G.M. OKELLO

JUSTICE OF APPEAL

J.P. BERKO

JUSTICE OF APPEAL