THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA.

Coram Hon Justice A.E.N Mpagi- Bahigeine, JA
Hon Justice S.B.K Kavuma, JA
Hon Justice A.S. Nshimye, JA

CRIMINAL APPEAL N0.5 OF 2003

BETWEEN

MURUNGI FRANCIS ::APPELLANT

VS

UGANDA ::RESPONDENT

JUDGMENT OF THE COURT

This is an appeal against both conviction and sentence. The appellant was indicted for murder contrary to sections 183 and 184 of the Penal Code by the High Court at Mbarara. He was convicted, and sentenced to death on 3.1.2003.

The following were the brief facts of the case.

On 7/2/2000, armed with a panga, the appellant hacked his own mother, the late **Kenyegamo Edrayi,** to death. The deceased, her daughter who had kids and the appellant shared a common homestead.

On the above fateful day, the deceased was lying near the kitchen feeling unwell. The sister of the appellant was in the house she shared with the mother, ironing her clothes. There were other people in the courtyard including the kids of the sister.

The appellant entered the compound of the homestead holding a panga. He came asking for his music compacts and was directed to his sister in the house of the deceased. There, he started quarrelling with his sister asking her why she had cut his bananas. On hearing, the dispute, the mother stood up and went to find out what was happening. When she entered, the appellant cut her three times on the head and once on the neck resulting into her death. The sister ran out for her dear life raising an alarm. The appellant emerged out of the house and started chasing those around including the kids of the sister. He caught up with one of the kids and cut her on the chest. He went and reported himself to Misoma Police Post.

His defence at the trial was that it was an accident. He stated that his sister picked a quarrel with him in the house and hit him with a hoe at the back of his head. In self defence he picked a panga and swung it in the door way in an attempt to escape. In the process of swinging the panga, he accidentally cut his mother who had come to see what was happening. His defence was rejected by the trial court which convicted him and sentenced him as aforementioned, hence this appeal.

Samuel Seguya appeared for the appellant on state brief, While learned State Attorney Josephine Namatovu appeared for the respondent. The appellant through his counsel raised two grounds of appeal, namely:-

(1) ***That the trial judge erred in law and fact not to have found that the killing was without malice aforethought.***

(2) ***That the trial judge ought to have convicted the appellant of manslaughter and to have sentenced him accordingly.***

Counsel preferred to argue both grounds together. He argued that judging from the evidence of P.W.I, it was clear that the appellant had not targeted the deceased. If his intention was to kill her, he would have attacked her when she was still lying outside in the compound, counsel concluded.

He contended that the deceased got injured accidentally when she intervened in the quarrel between the appellant and P.W.I. To him, the fatal injuries were accidental and without malice aforethought. He argued further that if he was guilty, he would have run away from the village. He instead surrendered to the authority.

Counsel strongly attacked the evidence of P.W.I against the appellant to the effect that the appellant warned the deceased all along that he would kill her. He concluded that those were her additions because she did not tell the police so in her statement.

He also challenged the evidence of P.W.4 that the appellant had earlier threatened to kill the deceased. He argued that the evidence contradicted that of P.W.I who said that they lived with no problem.

Learned counsel invited us to find that the trial judge should have found his client guilty of a lesser charge of manslaughter and not murder. He prayed that the appeal be allowed by substituting a conviction for manslaughter and sentence him accordingly.

In reply, learned counsel Namatovu for the respondent opposed the appeal on the ground that it was devoid of any merit. In the same way, like counsel for the appellant, she argued the grounds of appeal together.

She argued that the trial judge properly guided himself on the definition of malice aforethought. After considering all the issues before him, he rightly concluded that there was malice aforethought. She gave examples of indicators like the weapon used, the number of injuries inflicted, and the parts of the body which were hit. In her view, the medical evidence in the medical report revealed that the one who inflicted them had intention to kill. Counsel submitted

further that before the appellant killed his mother, he had uttered words like *"**all along I have wanted to kill you".*** She dismissed the claim of accident by the appellant. If it was an accident, he should have stopped on the first cutting. She concluded that the trial judge properly found malice aforethought and invited us to hold so and dismiss the appeal.

This being a 1st appellate court, we have a duty under Rule 30 of the Judicature (Court of Appeal Rules) Direction and under numerous authorities like **PANDYA V R [1957] EA 336** AND **BOGERE MOSES V UGANDA SUPREME COURT CR. APPL N0. 1 [1999] (unreported) SIRAJE KISEMBO V UGANDA CR APPEAL 13/1998 (SC)** unreported, to reappraise all the evidence which was adduced in the trial court and came to our own conclusion whether the decision of the lower court should be supported or not. We have, of course, to bear in mind that we did not have the same opportunity as the trial court had of seeing the witnesses testify and assessing their demeanour.

After hearing both counsel, for and against the grounds of appeal and reappraising the evidence on record, we find that there is one important issue to be decided. That is whether the learned trial judge was right in finding that malice aforethought was proved. The appellant agreed that he cut the deceased and that it is the said cutting that caused the death of the deceased. However he pleaded that it was accidental and that he did not intend to cause her death.

Section 191 of the Penal Code defines malice aforethought as follows:-

> ***"Malice aforethought shall be deemed to be established by evidence providing either of the following circumstances:-***
>
> (a) ***an intention to cause the death of any person, whether such person is the person actually killed or not or***
>
> (b) ***knowledge that the act or omission causing death will probably cause death of the same person, whether such a person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not or by a wish that it may be caused"***

Bearing in mind the above definition, the learned trial judge in his judgment on page 4 had this to say.

> ***" The court in arriving at a fair conclusion has to look at:***
>
> (a) ***The number of injuries inflicted.***
> (b) ***The part of the body where the injury was inflicted***
> (c) ***The number of the weapons used.***
> (d) ***The number of times the weapon is used or the manner of usage and***
> (e) ***The conduct of the killer both before and after the attack. "***

He relied on the authorities of **UGANDA V JOHN OCHIENG (1992-1993) HCB 80** and **UGANDA V N0. 13026 PC WAKHASA SOLOMON & 2 OTHERS (1984) HCB 29.**

After considering the evidence of eye witnesses like P.W.I and IV as against the defence he came to the following conclusion:

> ***"A person frantically waving a panga as described could not have inflicted such well placed injuries on the parts of the body making them so deep. The accused's story must be an after thought. For if he was frantic in his actions, how was he able to observe where he was cutting and how many times as he has himself described? It leaves no room for doubt as to the accused's intention when he inflicted these injuries He must have reasonably known that with such injuries the victim had no chance of survival, the malice aforethought has been established."***

Basing on the evidence on record, we are unable to fault the conclusion of the trial judge that malice aforethought was proved beyond reasonable doubt. We also find the conduct of the appellant before and after the incident inconsistent with innocent intentions. Both P.W.I and

P.W.4 were blood relatives of the appellant. Although we did not have the opportunity of observing their respective demeanors, we disbelieve their evidence, like the trial judge did, that the appellant made utterances of a desire to kill the deceased before the incident.

Secondly if he was to be believed that he cut his mother accidentally and in self defence, he would not have run to report himself to the police. A prudent person who knows that cut wounds ooze blood, should have thought of rushing her for medical treatment to save her life. Like the trial judge found, we also find no provocation to justify reduction of the charge to that of manslaughter as the learned defence counsel was persuading us to find. Both grounds of appeal fail. In the result, the entire appeal is dismissed. The conviction and sentence are sustained.

Dated this 23rd day of April 2010.

A.E. N MPAGI- BAHIGEINE
JUSTICE OF APPEAL

S. B.K KAVUMA
JUSTICE OF APPEAL

A.S. NSHIMYE
JUSTICE OF APPEAL