

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*[Coram: Egonda-Ntende, Barishaki Cheborion & Musota, JJA]*

**Criminal Appeal No. 107 of 2017**

(Arising from High Court Criminal Session Case No. 152 of 2016)

**BETWEEN**

1 Mubiru Hassan  
2 Sserumaga Nicholas  
3 Kanyolo Joshua  
4 Kiseka Anatoli



Appellants

**AND**

Uganda Respondent

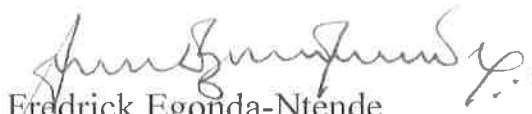
*(On appeal from the Judgment of the High Court (Murangira, J., ) sitting at Kampala and delivered on the 4<sup>th</sup> April 2017)*

**Reasons for Judgment of the Court**

- [1] The appellants were tried and convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to 37 years imprisonment. Dissatisfied with the decision of the trial the court the appellants appealed against both conviction and sentence. At the hearing of the appeal, Ms Sherifah Nalwanga, Senior State Attorney, appearing for the respondent, conceded the appeal, quite rightly in our view. She stated that there was no evidence on record implicating the appellants as having participated in the commission of the offence with which they were convicted of.

- [2] Ms Nalwanga prayed that we should order a re-trial.
- [3] We immediately allowed the appeal, quashed the conviction, set aside the sentences imposed upon the appellants, and ordered their immediate release. We declined to order a re-trial and promised to provide our reasons later. We now do so.
- [4] Ms Nalwanga cited Kawoya v Uganda [2001] UGSC 4 in support of her submission that we should order a retrial. We have had occasion to study this judgment. We need not reproduce the facts of that case. The Supreme Court concluded that the appellant had not had a fair trial before the High Court. It stated in part, ‘Because there was a mistrial, we order that the appellant be tried de novo before another judge.’
- [5] A re-trial was ordered in that case because the trial had been a mistrial. That is not the case before us. In the case at hand the appellants were tried and the learned trial judge erroneously convicted them when there was no evidence incriminating them at all. The appellants ought to have been acquitted on the evidence adduced in the court below.
- [6] In our view ordering a re-trial would amount to exposing the appellants to double jeopardy given that they were entitled to an acquittal in the court below. A re-trial is not permissible. It would contravene article 28 (9) of the Constitution.
- [7] For those reasons we declined to order a re-trial of the appellants.

Signed, dated and delivered at Kampala this <sup>2<sup>nd</sup></sup> day of July 2019

  
Fredrick Egonda-Ntende  
**Justice of Appeal**

*[Signature]*

Barishaki Cheborion  
Justice of Appeal

*[Signature]*

Stephen Musota  
Justice of Appeal

2<sup>nd</sup> / 7 / 19.

Appellants v.   
 State: *[unclear]*

Cm: The respondent of the appeal has  
not been duly served with the  
notice. The appellants are  
entitled to have their case  
heard in the presence of the  
judge. *[unclear]*  
*[Signature]*