THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL

[*Coram: Egonda-Ntende, Obura, Madrama, JJA*]

Criminal Appeals No. 247 & 239 of 2017

(Arising from High Court Criminal Session Case No.00184 of 2015 at Fort Portal)

BETWEEN

Agaba Lilian ..... Appellant No. 1
Amutuheire Patrick ..... Appellant No. 2

AND

Uganda ..... Respondent

(An appeal from the judgement of the High Court of Uganda [Oyuko, J] delivered on 21st June 2017)

JUDGMENT OF THE COURT

Introduction

[1] The appellants were indicted, tried and convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap 120. The particulars of the offence were that the appellants, together with Natukunda Mary on the 28th day of February 2015 at Musanju West LC 1 in Kyegegwa District murdered Twinamasiko Alex. The charges against Natukunda Mary were dropped because the prosecution failed to establish a case against her. On 21st June 2017, the learned trial judge convicted the appellants and sentenced them to serve a period of imprisonment of 40 years. Dissatisfied with the decision of the trial court, the appellants now appeal to this court on the following grounds:

> '(1) That the Learned Trial Judge conducted the trial irregularly when he failed to properly appoint the assessors and failed to sum up for the assessors and all these irregularities occasioned a miscarriage of justice to the appellants.

(2) That the Learned Trial Judge wrongly admitted evidence in a preliminary hearing without a memorandum of matters agreed contrary to **section 66 of the Trial on Indictments Act.**

(3) That the Learned Trial judge wrongly convicted the appellants on the basis of a charge and caution which was inadmissible and which was not tendered in evidence after a trial within a trial.

(4) That the Learned Trial Judge erred in law and in fact when he shifted the burden of proof to the appellants and when he based his conviction on the perceived weakness in the evidence of the appellants.

(5) That the Learned Trial Judge wrongly convicted the appellants without sufficient evidence against them to prove the offence of murder.

(6) That the sentence to the appellants was illegal as it contravened Article 23(8) of the Constitution or in the alternative the sentence was harsh and manifestly excessive in the circumstances.'

(6) The respondent opposes the appeal.

Submissions of Counsel

(7) At the hearing of the appeal, the appellants were represented by Mr. Bwiruka Richard and the respondent by Mr. Wasswa Adam.

(8) It is Mr. Bwiruka's submission on ground 1 that the record of the proceedings in the trial court does not have the summing up notes to the assessors which is contrary to the law. Further, that the appointment of the assessors was improper because it offends section 3 and section 68 of the Trial on Indictments Act. He contended that the particulars of the assessors ought to have been recorded and the appellants should have been given an opportunity to object to the assessors. Mr. Bwiruka argued that the trial court should have recorded each party's objection separately instead of noting a general 'no objection' to the assessors.

(9) Mr. Bwiruka further submitted that the assessors were not sworn in as required by section 67 of the Trial on Indictments Act. He was of the view that failure to swear in the assessors is a procedural irregularity that goes to the jurisdiction of this court. He cites this court's decision in Byamukama Francis v Uganda Court of Appeal Criminal Appeal No. 397 of 2015 (unreported) for this proposition.

(10) In reply to ground 1, Mr. Wasswa submitted that the record indicates that the assessors were appointed and there was no objection to the appointment. He argued that failure to record the particulars of the assessors, though irregular would not render the trial a nullity. He relied on Byaruhanga Fodori v Uganda [2002] UGCA 4 for this submission. He admitted that the failure to swear in the assessors was irregular and contrary to section 67 of the Trial on Indictments Act but the irregularity is not fatal to the trial. Mr. Wasswa agreed that there are no summing up notes on the record but avers that the trial court could not have taken the assessors' opinion without summing up to the assessors. He is of the view that failure to sum up to the assessors does not occasion a miscarriage of justice and this court must put into consideration article 126 (2) (e) of the Constitution that enjoins courts to administer substantive justice in disregard to technicalities.

(11) With regard to ground 2, Mr. Bwiruka submitted that the learned trial judge wrongly admitted evidence in a preliminary hearing without a memorandum of agreed matters which is contrary to section 66 of the Trial on Indictments Act. He stated that section 66 (2) of the Trial on Indictments Act requires that whatever is agreed upon by the parties at the preliminary hearing should be read over and explained to the accused persons who are required to sign together with their advocate and the state representatives. He claims that this was not done by the trial court yet it relied on the evidence in its decision.

(12) In reply counsel for the respondent conceded to the appellants' submission but contended that the irregularity did not occasion a miscarriage of justice. He argued that the learned trial judge relied on other evidence besides the post-mortem report to prove the element of death. He invited this court to put into consideration article 126 (2) (e) of the Constitution while considering the said ground.

(13) On ground 3 counsel for the appellants submitted that the learned trial judge wrongly convicted the appellants on the basis of a charge and caution statement that was inadmissible and was not tendered into evidence after holding a trial within a trial. He submitted that the purpose of holding a trial within trial is to determine whether the statement was taken voluntarily. He was of the view that if the trial court found that the charge and caution statement was made voluntarily, then the witness can proceed with his or her testimony and tender in the statement. He claimed that this procedure was not followed and neither was the appellant given an opportunity to cross examine the witness on the

statement. To that end, he prayed that this court renders the trial a mistrial and therefore expunge the evidence from the record.

(14) Mr Bwiruka further submitted that the charge and caution statement was recorded in a language appellant no.1 did not understand. He relied on Mumbere Edward & 3 Ors v Uganda, Court of Appeal Criminal Appeal No. 250 of 2015 (unreported) where it was held that such a statement ought to have been rejected by the trial court.

(15) Mr. Wasswa in reply submitted that the charge and caution statement was admitted into evidence and is marked on the court file as PE2. He was of the view that failure to mark it was not fatal since it was already part of the court record. He submitted that the appellants lost their right to cross examine on the statement when they were given an opportunity to do so. With regard to the issue of the admissibility of the charge and caution statement, Mr. Wasswa submitted that if there was any assault against appellant no.1 , it was not done by the police officer who recorded the charge and caution statement and that there was no indication that the alleged torture was operative at the time the charge and caution statement was recorded. He contended that the irregularities presented by the charge and caution statement were not fatal.

(16) Mr. Bwiruka contended, in relation to grounds 4 and 5 that there was no eye witness to the murder. There was no evidence of prior threats of violence by appellant no.2 to the deceased before his death which discredits the evidence of PW1. According to PW1 and PW6 appellant no. 2 was among the people who went to the scene of the crime in response to the alarm raised by appellant no.1. Counsel further submitted that there was no direct evidence pointing to the participation of the appellants in the crime. He claimed that the trial court shifted the burden of proof to the first appellant in its decision which was improper. He further avers that the learned trial judge based his decision to convict the appellants on mere suspicion and relied on the case of Agaba Joyce & Anor. v Uganda Court of Appeal Criminal Appeal No. 242 of 2010 (unreported) where this court held that suspicion however strong cannot lead to a conviction. He concluded by submitting that the circumstantial evidence was not sufficient to render the appellants guilty of the crime.

(17) In reply, Mr. Wasswa submitted that it is not true that the trial judge relied on suspicion to convict the appellants. There were pieces of circumstantial evidence corroborated by the charge and caution statement to sustain a conviction. He pointed to the evidence of PW1 and PW6 of an existing grudge between the deceased and the appellants due to the extra marital affair between

the appellants to show that there was motive for the appellants to kill the deceased. He also relied on the positioning of the bathing shelter *vis a vis* the scene of the crime and submits that it was a plot by the appellants to take the bathing water to the compound instead of the bathing shelter which was near to give appellant no.2 an opportunity to kill the deceased.

(18) With regard to ground 6, Mr. Wasswa conceded that the sentence imposed against the appellants was illegal. He submitted that upon consideration of the aggravating and mitigation factors, a sentence of 38 years of imprisonment would be appropriate. Counsel for the appellants prayed that this court invokes its powers under section 11 of the Judicature Act to impose an appropriate sentence against the appellants.

Analysis

(19) It is our duty as a first appellate court to review and re-evaluate the evidence before the trial court and reach our own conclusions taking into account of course that we had no opportunity to hear and see the witnesses testify. See Rule 30 of the Judicature (Court of Appeal Rules) Directions S.I 13-10, Bogere Moses v Uganda [1998] UGSC 22 and Kifamunte Henry v Uganda [1998] UGSC 20.

(20) The case for the prosecution was that appellant no.1, the wife to the deceased were staying together with their 2 children. The deceased and appellant no.1 were constantly quarrelling because appellant no.1 was having an extra marital affair with appellant no. 2. That upon this background, the appellants hatched a plot to kill the deceased. To that end, on 28th February 2015, the deceased returned home at around 7:00 pm after packing his sacks of maize at his brother's house (PW1). On arrival at home, he found that his wife (appellant no. 1) and his children had already had supper and were preparing to sleep. The deceased asked appellant no.1 to prepare his bath whereupon she put a basin of water and jerry can in the compound instead of the bathing shelter for the deceased to take his bath. That while the deceased was bathing appellant no. 2 cut him on his neck and he bled to death. That after the deceased had been murdered, appellant no.1 came out of the house and made an alarm that attracted many people to the scene of the crime.

Ground one

(21) Mr. Bwiruka contended that the particulars of the assessors were not recorded and it was not indicated whether each of the appellants had an opportunity to object to the assessors assigned to the appellants' case at the trial.

(22) Section 3 (1) of the Trial on Indictments Act requires the High Court to conduct all criminal trial with the aid of the assessors. It provides as follows;

> (1) Except as provided by any other written law, all trials before the High Court shall be with the aid of assessors, the number of whom shall be two or more as the court thinks fit.

(23) Section 68 (1) of the Trial on Indictments Act gives the accused persons a right to object to any of the assessors appointed by the court on any of the grounds provided thereunder. It states:

> '(1) The accused person or his or her advocate, and the prosecutor
> may, before an assessor is sworn, challenge the assessor for cause on any of the following grounds-
> 1. presumed or actual partiality;
> 2. personal cause such as infancy, old age, deafness, blindness or infirmity;
> 3. his or her character, in that he or she has been convicted of an offence which, in the opinion of the judge, renders him or her unfit to serve as an assessor;
> 4. his or her inability adequately to understand the language of the court.'

(24) Upon perusing the record of proceedings of the trial court of 20th April 2017, it is indicated that the assessors were appointed and their names are recorded as Sylvia and Richard. It was recorded in general that the appellants did not object to the assessors. In our view though the style of recording was irregular it is clear that the assessors were appointed and the accused persons had no objection to them. Failure to record separately that each of the accused persons / appellants had no objection to the assessors and to state the proper particulars of the assessors does not occasion a miscarriage of justice to render the proceedings a nullity. See Byaruhanga Fodori v Uganda [2002] UGCA 4.

(25) Further Mr. Bwiruka faulted the learned trial judge for failing to administer the oath to the assessors as required by the law. Section 67 of the Trial on Indictments Act states;

> 'At the commencement of the trial and, where the provisions of section 66 are applicable, after the

preliminary hearing has been concluded, each assessor shall take an oath impartially to advise the court to the best of his or her knowledge, skill and ability on the issues pending before the court.,

(26) Having perused the record of proceedings of the trial court we find that the learned trial judge did not administer the oath of the assessors to the assessors.

(27) Section 34 (1) of Criminal Procedure Code Act permits this court to ignore procedural errors and omission if no substantial miscarriage of justice has been caused. It states:

> '34 (1) The appellate court on any appeal against conviction shall allow the appeal if it thinks that the judgment should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that it should be set aside on the ground of a wrong decision on any question of law if the decision has in fact caused a miscarriage of justice, or on any other ground if the court is satisfied that there has been a miscarriage of justice, and in any other case shall dismiss the appeal; except that the court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.'

(28) Section 139 of the Trial on Indictments Act would likewise render some omissions and errors not fatal. Section 139 provides:

> **'139. Reversability or alteration of finding, sentence or order by reason of error, etc.**
> a) Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.
> b) In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice, the court shall have regard to the question whether **the objection could and should have been raised at an earlier stage in the proceedings'**

(29) In Ndaula v Uganda [2002] 1 EA 214, the Supreme Court at page 217 stated:

'It is undoubtedly erroneous for a criminal trial in the High Court to proceed without the assessors taking oath as required under section 65 of the Trial Indictment Decree of 1971. That section provides that at the commencement of the trial, after the preliminary hearing, if any, has been concluded, "each assessor shall take an oath impartially to advise the court to the best of his knowledge, skill and ability on the issues pending before the court". It follows that to omit the oath and proceed to trial with unsworn assessors constitutes an irregularity in the proceedings of the trial. The omission, however, contrary to Mr Nyamutale's argument, does not go to competence or jurisdiction. An assessor does not become an assessor by reason of taking the assessor's oath.

Rather, he takes that oath because he is an assessor, duly listed and selected to serve as such, under the Assessors Rules. In our view, the irregularity fails within the ambit of section 137 of the Trial on Indictments Decree which reads: "137 Subject to the provisions of any written law, no finding sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless such error, omission irregularity misdirection has, in fact, occasioned a failure of justice:

Provided that in determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage of the proceedings".

In the instant case it has not been suggested that there was a failure of justice by reason of the assessors not having taken oath at the trial. We are satisfied that no such failure of justice was occasioned'

(30) Ndaula v Uganda (supra), a Supreme Court decision, definitely overrides Byamukama Francis v Uganda (supra), a Court of Appeal decision, over the question of whether failure to swear assessors at the beginning of the trial is fatal or not to the proceedings. We are obliged to hold that failure to swear the assessors in this case did not render the trial a nullity.

(31) Counsel for the appellants also faulted the learned trial Judge for not having summed up to the assessors at the close of the trial. Counsel for the appellant concedes to this contention. There is also no indication on the record of the

proceedings of the trial court that summing up the evidence and law to the assessors was done by the learned trial judge although their opinion was taken. The fact that the assessor's opinion cannot lead to the conclusion that the trial court summed up the law to the assessors. The summing up notes must be included on the record of the proceedings.

(32) Section 82 (1) of the Trial on Indictments imposes a mandatory obligation on trial courts to sum up to the assessors before recording their opinion. It states as follows:

> 'When the case on both sides is closed, the judge shall sum up the law and the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. The judge shall take a note of his or her summing up to the assessors.'

(33) In Sam Ekolu Obote v Uganda [1995] UGSC 7 the Supreme Court while considering section 81 (1) of the Trial on Indictment Decree now section 82 (1) of the Trial on Indictments Act stated:

> 'We think that these provisions impose a statutory obligation on a trial Judge to sum up the law and the evidence in a case to the assessors. The provision are different from those of *section* 283(1) of the Tanzanian Criminal Procedure Code, in which the word "may" was used instead of the word "shall", used in Section 81(1) of our T.LD. The Tanzanian Statute was considered in Miligwa s/o ***Mwinje and Another V. R.*** (1953), 20, E.A.C.A., 255; ***Washington s/o Odinga V. R.*** (1954) 21. E.A.C.A. 392, and ***Andrea s/o Kuhinga and AnotherKR.***(1958)E.A.684.
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> In these cases it was decided that the Tanzanian Statute imposed no such obligation.
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> In the instant case there is no evidence on the record that the learned trial Judge summed up the case to the assessors after the close of the case of both sides. This in our view amounted to a failure to comply with the obligatory requirement of Section 81(1) by the learned trial Judge. It **was a procedural error, which was fatal to the appellant's** conviction.'

(34) In light of the above we find that the failure to sum up to the assessors is an irregularity that is fatal and incurable under section 139 of the Trial on Indictments Act. For that reason the trial is rendered a nullity.

(35) We quash the conviction of both the appellants and set aside the sentence imposed against them. It is not necessary to consider the rest of the grounds of appeal.

(36) Whenever a trial is rendered a nullity, it is upon the discretion of the court to determine whether to order a re-trial or not. This discretion must be exercised judiciously based on principles that have been developed over time by the courts. See Fatehali Manji v Republic [1966] EA 343. One of the considerations for ordering a retrial is if the original trial has been rendered illegal or defective as in the instant case. However, a re-trial should not be ordered unless we are of the opinion that a conviction may result upon a proper consideration of the admissible or potentially admissible evidence. See Ratilal Shar v Republic [1958]1 EA 3.

(37) In this case the prosecution mainly relied on the contested charge and caution statement and circumstantial evidence to prove their case. It should be noted that the appellants challenged the admissibility of the charge and caution statement on the ground that the statement was not taken voluntarily and that it was recorded in a language the appellant does not understand. A trial with a trial was held and the learned trial judge in his ruling faulted the appellant no.1 for not reporting her torture to court while accepting that she had been subjected to some form of violence. In the ruling he stated:

> 'I have had the benefit of carefully and attentively listening to both the submissions, observed the demeanor of both the officer who recorded the statement and A1. Read the statement of the I.O a one called Anganya Joseph who testified in court and visited the scene of crime on the 1st March 2015. I looked at the charge and caution statement made on the 2nd March 2015 and the offence took place on the 29th February 2015. Listened to all the witnesses and had the benefit of looking at all the documents before me not limited to the case cited of Lutwama quoted by the state counsel.
>
> The accused alleged that she was tortured by a one called Joseph Anganya who she purported that he is the one who recorded the statement not Pw6. That the said officer beat her, kicked her and slapped which proof cannot be adduced medically. I agree though would have been done

photographically which could not also have taken place due to the circumstances and probably the torture the accused could have gone through. I do agree that there is no way she would have brought any evidence whatsoever. However, she could have told court about it. Secondly, if possible that the police could have cooked or heard from what the witnesses said, made the statement, forced her to sign, it could be possible. I have no reason to doubt but still she would have come to court and told court through her lawyer to cross examine that officer who came to court but she chose to keep quiet. Probably she didn't know

Thirdly, much as I agree that the case cited by the state is distinguishable from the instant one, in that case the charge and caution statement was made voluntarily but the issue was on the translation. It wasn't translated. It was not fatal that the justice pronounced themselves that it was not fatal because it was just a mere translation. This should be in line with the recent case where the victim of torture in the case of **Kawesi's case**, when they appeared before the honorable court, they raised their arm up and said court, we have been tortured and even went ahead and showed their back. Indeed it was glaring. Court took note of it. Much as that case is not the same as this in the sense that here there was no real torture, it was kicking and slapping, but never the less they brought their case straight to the magistrate.

Whereas on the issue of languages, the accused made it very clear, my clerk interpreted to her and she spoke in Rutooro properly, court put it to her the language was not a problem. It is only for a simple reason that the accused person did not bring to the attention of court whatsoever about her torture. Only for that reason, the charge and caution statement herein admitted and marked PE11.'

(38) During the trial within a trial, DW1 stated that PW5 did not record the confession but rather, she signed the statement before the previous officer (PW4). It should be noted that the prosecution never disputed this evidence. She also stated that she was assaulted by the police officer who was in court on 16th May 2017 (PW4) and forced her to sign the statement. On cross examination, she stated that she did not complain of the beating to the magistrate because she feared the police officer. The learned trial judge in his ruling admitted the charge and caution statement on the ground that the appellant failed to report the torture to court. With due respect, this was erroneous.

(39) The primary task of the learned trial judge in a trial with a trial was to determine whether or not the charge and caution statement had been made voluntarily.

Once there was evidence to the contrary such a statement ought to have been rejected as was the case here.

(40) In Sekitoleko & 2 Ors v Uganda [2017] UGSC 40 while considering the propriety of the charge and caution statement, the Supreme Court stated as follows:

> 'The propriety of a confession is provided by Section 24 of the Evidence Act which provides as follows:
> 'a confession made by an accused is irrelevant if the making of the confession appears to the courts, having regard to the state of mind of the accused person and to all the circumstances to have been caused by any violence, force, inducement or promise calculated in the opinion of court to cause an untrue confession to be made.'
> The above section was interpreted by the Supreme court in the case of Walugambe v Uganda, Criminal Appeal No. 39 of 2003.
> Where an accused person objects to the admissibility of the confession on grounds that it was not made voluntarily, the court must hold a trial within a trial to determine if the confession was or was not caused by any violence, force, threat, inducement or promise calculated to cause an untrue confession to be made. In such trial within a trial, as in any criminal trial, the onus of proof is on the prosecution to prove that the confession was made voluntarily. The burden is not on the accused to prove that it was caused by any of the factors set out in S.24 of the Evidence Act. See **Rashidi VS Republic (1969) EA 138.**

(41) In light of the above the prosecution failed to prove that the confession was obtained voluntarily and besides the learned trial judge also agreed that appellant no.1 was kicked and slapped which amounts to torture. This alone renders the confession inadmissible. Failure to report the matter to court has never been a ground for rendering a retracted charge and caution statement admissible.

(42) Other than the charge and caution statement there is no direct evidence implicating the accused in the murder of the deceased. PW1, Mugarura Didas, a brother to the deceased stated in his testimony that he arrived at the scene of the crime after the deceased had been murdered. He did not witness the murder. The evidence he gave of the appellants having an affair is hearsay and inadmissible. He stated that the deceased had told him that the second time Natukunda Mary caught the appellants having an affair, the matter was reported to the LC1 chairperson who resolved the case.

(43) PW2 stated in her testimony that she does not know who killed the deceased. PW3, a neighbor to the deceased stated that he went to the scene of the crime upon hearing the alarm raised by appellant no.1. He found the deceased already dead. He also stated that appellant no.1 and the deceased used to quarrel every day and this was so because people used to say that appellant no.2 used to befriend appellant no.1. This is also hearsay evidence that is inadmissible. Upon cross examination, he stated that he does not know who killed the deceased. PW6, the chairperson of the local area stated that he arrived at the scene of the crime after the deceased had been murdered. He stated that he got to know that the appellants were in a love affair from Natukunda Mary. He tried to reconcile appellant no.1 and the deceased but his efforts were fruitless because the appellants continued with the extra- marital affair.

(44) DW1 denied having had an extra-marital affair with appellant no.2. However, she admitted to having been reported to the local area chairman on that matter. She also stated in her testimony that she does not know the person who killed her husband. She testified that on the night her husband was murdered, the deceased came back at home at around 7:30 pm. He arrived when appellant no.1 and the children had already had supper and were preparing to sleep. She gave him food to eat but he told her that he wanted first to take a bath. She put water in the basin outside the house in the compound for him to bathe. When she heard footsteps outside the house, she called the deceased who did not respondent. She went out of the house and found him dead. She raised an alarm and appellant no.2 plus other people came to the scene of the crime.

(45) DW2 denied having had an extra-marital relationship with appellant no.1 and had never appeared before PW6 on this issue. He also denied having killed the deceased.

(46) It is well established that in all criminal cases the burden of proof is upon the prosecution to prove the guilt of the accused person beyond all reasonable doubt. The burden never shifts save in exceptional cases provided by the law. See Woolmington v D.P.P (1935) AC 462, Miller v Minister of Pensions [1947] 2 ALL E.R372. The accused does not have any obligation to prove his innocence. By his plea of not guilty the accused puts in issue each and every ingredient of the offence with which he is charged and the prosecution has the onus to prove each and every ingredient of the offence before a conviction is secured. See Ssekitoleko v Uganda [1974] EA 531

(47) Upon evaluating the evidence on record we find that the evidence available is insufficient to prove the participation of the appellants in the murder of the deceased beyond reasonable doubt. The prosecution case is entirely dependent on circumstantial evidence which stems from the suspicion that the appellants had a motive to kill the deceased because of an alleged extra-marital affair.

(48) In Obwalatum v Uganda [2017] UGSC 26, the Supreme court stated:

> 'As already indicated the case against the appellant is dependant on circumstantial evidence and the question is whether the Courts below subjected it to close scrutiny as is required. The requirement to subject circumstantial evidence to close scrutiny was emphasised in the case of Katende Semakula vs. Uganda (Supreme Court Criminal Appeal No. 11/ 1994) where it was stated as follows:-
> "Another requirement concerning circumstantial evidence is that it must be narrowly examined, because evidence of this kind may be fabricated to cast suspicion on another. It is therefore necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference..."'

Decision

(49) For the foregoing reasons we find that a re-trial would occasion a miscarriage of justice. We order the immediate release of the appellants unless they are held on some other lawful charge.

Dated, signed and delivered at Fort Portal this 30th day of July 2019

Fredrick Egonda-Ntende
Justice of Appeal

Hellen Obura
Justice of Appeal

Christopher Madrama
Justice of Appeal