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THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

*(Coram: Egonda-Ntende, Bamugemereire, Madrama, JJA)*

CRIMINAL APPEAL NO 128 OF 2020

DIANA LUUTU NABBENGO} ..... APPELLANT

10

VERSUS

UGANDA} ..... RESPONDENT

*(Appeal from the decision of the High Court at Kampala; the Hon. Lady Justice Jane Frances Abodo in High Court Criminal Session Case No 372 of 2018)*

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### JUDGMENT OF COURT

This is a first appeal against conviction and sentence of the Appellant by the High Court in Criminal Session Case No. 372 of 2018 in a judgment delivered by Hon. Lady Justice Jane Frances Abodo on 17<sup>th</sup> April, 2020. The facts are that the Appellant was indicted with murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. It was alleged that on 24<sup>th</sup> August, 2016 at Kazo – Lugoba Zone, Kawempe Division in Kampala District, the Appellant stabbed her husband, Musasizi Asiimwe Hannington. He was taken to Mulago Hospital where he died on 28<sup>th</sup> August, 2016. The Appellant was arrested and tried whereupon she was convicted as charged. The appellant was sentenced to 23 years, 9 months and 3 days' imprisonment.

The Appellant was dissatisfied with the decision of the High Court and appealed against both conviction and sentence on the following grounds:

1. The learned trial Judge erred in law and fact in finding that the Appellant was an active participant in the commission of the said offence.

5        2. The learned trial Judge erred in law and fact when she convicted the Appellant on the basis of weak and unsatisfactory circumstantial evidence.

10       3. The learned trial Judge erred in law and fact in rejecting the plausible defence of alibi raised by the Appellant.

4. The learned trial Judge erred in law and fact when she sentenced the Appellant to a manifestly harsh and excessive sentence.

15       The Appellant prayed that her conviction is quashed and the sentence of imprisonment set aside. In the alternative, the Appellant prayed that the sentence imposed by the trial court is reduced.

### **Representation**

20       At the hearing of the appeal, the Appellant was represented by Counsel Henry Kunya on state brief while the Respondent was represented by Mr. Oola Sam, Senior Assistant Director of Public Prosecutions. The appellant attended court via video link from Luzira Prison.

### **Appellant's submissions**

25       On ground one, learned counsel for the Appellant submitted that it was erroneous for the trial Judge to find that the Appellant participated in the murder of the deceased. He submitted that there was no eye witness account of what transpired on that fateful day and yet the trial Judge held that the participation of the Appellant in the murder was proved through credible direct or circumstantial evidence placing the Appellant at the scene of crime. Learned counsel discredited PW1's evidence on grounds that she  
30       gave three differing versions of the events that transpired on the day in question including; that the deceased was attacked by two men, secondly, that she stabbed the deceased in self-defence to ward off a sexual attack by the deceased, and thirdly, that it was the Appellant who stabbed the deceased. He referred to PW1's 3 police statements marked Exhibit 1, Exhibit  
35       2 and Exhibit 3 at page 221, 219 and 229 of the record of appeal. Counsel

5 submitted that PW2 and PW4 corroborated PW1's account that the deceased attempted to sexually assault her. He further pointed out that prosecution failed to prove a link between the items retrieved from the scene of crime and the appellant. For this submission, he referred to the evidence of PW13, the Government Analyst and a DNA Analysis Report marked P Exh 21 at  
10 page 292 of the record of appeal.

In view of the inconsistencies in the prosecution's case, learned counsel invited this court to find that the Appellant was never an active participant in the murder of the deceased and she was not placed at the scene of crime.

On ground 2 of the appeal, the Appellant's counsel submitted that the trial  
15 Judge erred in law and fact when she convicted the appellant on the basis of weak and unsatisfactory circumstantial evidence. Counsel submitted that whereas the trial Judge was alive to the principles of law in **Musoke vs. R [1958] EA 715**, she misapplied those principles to the facts. Counsel submitted that the facts on record could be explained away to weaken or  
20 destroy the inference of guilt. For instance, he pointed out that whereas PW1 testified that the appellant instructed her to go to the supermarket with her young daughters as to give the appellant sufficient time to murder the deceased, PW16 testified that the class teacher of the appellant's daughter confirmed that the appellant's daughter was picked by a tall brown man who  
25 picked her on the fateful day. This disproved PW1's account that the appellant picked her daughter from school on the fateful day. Secondly, counsel submitted that whereas PW1 testified that the appellant hurriedly locked the gate and left with the key, PW2 and PW4 stated that they saw the appellant knocking at the gate till PW1 came and opened for her. Counsel  
30 submitted that the deceased's dying declaration was suspect and uncorroborated in any material respect since the deceased was in a critical condition on life support machines and occasionally unconscious.

On ground three of the appeal, the appellant's counsel submitted that the trial Judge erred in rejecting the appellants' plausible alibi which was raised  
35 at the earliest possible moment following her arrest. Counsel submitted that the appellant's alibi that she was at her work place on the fateful day

5 was proved through a CCTV footage and the testimony of DW2, the appellant's workmate who confirmed having seen the appellant on the material day as they had lunch at their workplace.

On ground four of the appeal, the appellant's counsel submitted that the trial Judge erred in law and fact when she sentenced the appellant to 23 years,  
10 9 months and 3 days' imprisonment which sentence is harsh and manifestly excessive sentence. He referred to **Kiwalabye Bernard vs. Uganda, Supreme Court Criminal Appeal No. 143 of 2001** where it was held that the appellate court is not to interfere with the sentence imposed by the trial court which has exercised its discretion unless the exercise of the  
15 discretion resulted in a harsh or manifestly excessive sentence or where the sentence imposed is so low as to amount to a miscarriage of justice or where the sentencing Judge proceeded on a wrong principle. Counsel further relied on section 11 of the Judicature Act which grants the Court of Appeal the same powers of sentencing as the trial court if it considers  
20 invoking such powers justifiable in the circumstances. He submitted that according to paragraph 6(i) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 every sentencing court must take into account any circumstances which the court considers relevant. He submitted that in the present case, it was submitted during the  
25 allocutus at the trial court that the appellant is a first time offender, of youthful age, a mother of three children and a primary health care giver with family responsibilities. These should have been taken into account to impose a more lenient sentence. Learned counsel submitted that while sentencing, the courts have a duty to maintain consistency and uniformity  
30 in similar cases. He relied on **Kalibobo Jackson vs. Uganda, Court of Appeal Criminal Appeal No. 45 of 2021** for the principle on uniformity in sentencing and **Tuhumwire Mary v Uganda, Court of Appeal Criminal Appeal No. 353 of 2015** where the appellant, upon filing an appeal, was sentenced to 10 years' imprisonment for murdering her husband by cutting his hand and neck with  
35 a panga.

- 5 Counsel prayed that this court quashes the conviction of the appellant and sets aside the sentence imposed by the trial court, and in the alternative, if the conviction is upheld, that this court reduces the sentence imposed on the appellant appropriately.

### Respondent's submissions

- 10 In reply, the Respondent's counsel submitted that the mere fact that there was no eye witness to the incident does not exonerate the appellant since the present case was wholly or substantially based on circumstantial evidence.

- 15 Further, counsel submitted that the trial Judge properly evaluated the circumstantial evidence on record which all pointed to the guilt of the appellant. He submitted that the conduct of the appellant throughout the incident proves that she killed the deceased.

- 20 Counsel further submitted that the trial Judge considered the appellant's alibi and rejected it on its merits as the evidence showed that the appellant was placed at the scene of crime as an active participant in causing the death of the deceased.

- 25 Lastly, counsel submitted that the trial Judge was alive to the principles on sentencing and considered both the aggravating and mitigating factors in imposing the sentence on the appellant. He submitted that the sentence imposed by the trial Judge is consistent with the range of sentences that have been imposed by the courts for similar offences. Counsel referred to **Rwabugande Moses vs. Uganda, Supreme Court Criminal Appeal No. 25 of 2014**, where the appellant was sentenced to 21 years' imprisonment for murder, and **Wafula Robert vs. Uganda, Supreme Court Criminal Appeal No. 42 of 2017**, where the appellant was sentenced to 25 years' imprisonment for the murder of his paternal grandmother, and lastly, to **Nashimolo Paul Kibolo vs. Uganda, Supreme Court Criminal Appeal No. 46 of 2017** where the appellant was sentenced to 30 years and 6 months' imprisonment for murder. Counsel submitted that the sentence imposed by the trial Judge was therefore appropriate in the circumstances and should not be
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5     disturbed. He prayed that the appeal be dismissed and conviction and sentence of the trial Court be upheld.

### **Appellant's submissions in rejoinder**

10     In rejoinder to the respondent's submissions on ground one, the appellant's counsel reiterated that that in the absence of an eye witness account of what transpired on the material day, it is inconceivable to adjudge that the appellant actively participated in the murder of the deceased.

15     Secondly, counsel reiterated that there were glaring inconsistencies in the evidence of PW1 which were left unexplained. These inconsistencies were major as they go to the root of identifying the actual assailants. Counsel relied on the case of **Kagyenzi Stephen vs. Uganda, Court of Appeal Criminal Appeal No. 228 of 2012.**

20     Thirdly, learned counsel reiterated that prosecution did not furnish evidence to corroborate the deceased's dying declaration contrary to the principles on admissibility of a dying declaration espoused in **R vs. Baskerville [1916] 2 KB 658**, which was cited with approval in **Uganda vs. George Wilson Simbwa, Supreme Court Criminal Appeal No. 37 of 1995.**

Learned counsel reiterated that the circumstantial evidence relied on by the trial Judge was capable of being explained away as to destroy the inference of guilt on the part of the appellant.

25     Lastly, counsel reiterated that the alibi raised by the appellant was plausible and erroneously rejected by the trial court which failed in its duty to evaluate both versions judiciously.

### **Resolution of the appeal**

30     As a first appellate court, rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions, S.I No. 13-10, requires the court to reappraise the evidence adduced at the trial court and to draw its own inferences and conclusions of fact and law. In exercising this duty, the court must be conscious that it did not have the opportunity to observe the demeanour of

5 the accused and to that extent, the court must be guided by the observations made by the trial court. (**Dinkerrai Ramkrishan Pandya v R [1957] 1 EA 336, Henry Kifamunte v Uganda, Supreme Court Criminal Appeal No. 10 of 1997.**)

The decision of the High Court from which the appeal arises is as follows:  
On the ingredient of whether there was death of a human being, the learned  
10 trial Judge found that prosecution had proved beyond reasonable doubt that Musasizi Asiimwe Hannington died on 28<sup>th</sup> August, 2016 and based this on the testimony of PW5 that Musasizi Asiimwe Hannington died on 28<sup>th</sup> August, 2016 at about 10:00 am and his body was taken to Cell 8 Ntungamo District for burial. The post mortem report of cause of death was admitted  
15 as Exhibit P. EX. 20.

On the second ingredient of murder, the learned trial Judge found that Musasizi Asiimwe Hannington's death was caused by an unlawful act based on the testimony of PW1 that the deceased was stabbed with a knife, which evidence was corroborated by the post- mortem report, PEX. 20 which  
20 showed that the deceased died as a result of trauma inflicted by a sharp edged object.

Further, the learned trial Judge found that the unlawful act leading to Musasizi Asiimwe Hannington's death was actuated by malice aforethought as defined by section 191 of the Penal Code Act because a sharp object was  
25 used to stab the deceased in the chest, a delicate and vulnerable part of the body. The learned trial Judge further considered the ferocity with which the knife was used because it occasioned injuries/wounds on the left breast, in the armpit, on the lung, in the muscles and on the sack covering the heart of the deceased (see **R v Tubere s/o Ochen (1945) 12 EACA 63** for the  
30 proposition that intention to cause death may be inferred from the manner and degree of the assault).

On participation, the learned trial Judge found that the Appellant caused the unlawful death of Musasizi Asiimwe Hannington and rejected the Appellant's alibi that she was at her place of work at PPDA, UDCL towers  
35 where she worked as a procurement manager until 7:00pm on the day of

5 the incident. She found that the Appellant was placed at the scene of crime  
as an active participant in causing the death of the deceased and rejected  
the evidence of a CCTV video footage in support of the Appellant's alibi  
adduced in evidence by DW4 on grounds that it failed the test of authenticity,  
reliability and proportionality as requisites for admission of electronic  
10 evidence.

The learned trial Judge held that it was a case that rested purely on  
circumstantial evidence because there was no eye witness account of the  
murder (See **Musoke vs. R (1958) E.A 715**). The circumstantial evidence was  
that in the testimony of PW1 that she left the Appellant and the deceased  
15 alone in the house for about 30 minutes and on her return, the Appellant  
hurriedly locked the gate and left with the keys. She found that the Appellant  
lied that PW1 had run mad and yet medical evidence proved that PW1 was of  
sound mind, and further that the Appellant lied that the deceased was not  
at home and yet he was inside injured. Further, the learned trial Judge  
20 considered the conduct of the Appellant in the morning after the day of the  
incident of running to hide in a nearby house and slapping the Chairman of  
the Local Council of the area, coupled with her indifference in reporting the  
matter to the police and asking that the blood in the house be cleaned before  
the police could come to the scene all pointed to the guilt of the Appellant.  
25 The trial Judge further pointed out that the Appellant kept PW1 to herself,  
and told the prosecution witnesses that PW1, her maid, had run mad and  
stabbed her husband, hit her and her daughter injuring both of them, and  
yet a few minutes later, she sat together with the same maid, PW1, and even  
made her to carry the same child that she claimed PW1 had injured. The  
30 Appellant coached PW1 leading to PW1 recording 3 varying statements about  
the circumstances that led to the death of the deceased. She refused to sign  
for the body of her late husband at the mortuary and she did not accompany  
the body for burial, nor did she send the children to bury their father in  
Ntungamo District. She found the conduct of the Appellant inconsistent with  
35 her innocence.



5 The trial Judge further relied on the deceased's dying declaration made to  
PW5, the deceased's sister, that it was the Appellant who stabbed him. The  
learned trial judge relied on Section 30 of the Evidence Act and **Uganda vs.**  
**Tomasi Omukono and others [1977] HCB 61** for the position that a dying  
10 declaration is admissible but must be received with caution because the  
test of cross examination may be wanting and particulars of violence may  
have occurred in circumstances of confusion and surprise, thereby  
requiring corroboration of a dying declaration as a matter of practice. The  
trial Judge found that in the circumstances of this case, there was  
15 overwhelming evidence that the incident took place in day light, in the home  
of the deceased, and the Appellant and the deceased were known to each  
other as husband and wife and therefore, the deceased could not have been  
mistaken in identifying the Appellant.

We have carefully considered the grounds of appeal and note that grounds  
1, 2 and 3 of the appeal all deal with the question of whether the appellant  
20 participated in the murder of the deceased. This is based on 3 grounds  
namely; the contention that the appellant never actively participated in the  
commission of the offence. Secondly, that the learned trial judge erred in  
law and fact to convict the appellant on the basis of weak and unsatisfactory  
circumstantial evidence. Thirdly, the learned trial judge erred to reject the  
25 possible defence of alibi raised by the appellant. To resolve the above  
grounds, we have subjected the evidence adduced at the trial to fresh  
scrutiny.

The primary evidence relied on by the trial court is that of the PW1, that of  
PW5 of a dying declaration and lastly the conduct of the appellant which  
30 was found to be inconsistent with her innocence.

PW1 Tukashaba Annet testified on the 2<sup>nd</sup> of May 2019 while the offence  
occurred on 24<sup>th</sup> August 2016. Her testimony shows that she was not there  
but had gone to the supermarket with the two children of the appellant when  
the suspected offence occurred.

5 The testimony of PW1 is that she worked for the appellant as a house maid. On 24<sup>th</sup> August 2016 she woke up as usual and the deceased dropped one child to school and the appellant to work respectively as was the usual case. The deceased came back home at 8:30 AM as usual and he was alone. She testified that the previous day the appellant told her that she would  
10 come home for lunch. The appellant came at midday with Shalom (the child who has been taken to school). It was the birthday of Shalom. The all had lunch together and the appellant gave her Uganda shillings 15,000/= to go and buy a birthday cake. It took 30 minutes because she had to cross the road and she went with the children to the supermarket. When she came  
15 back, the appellant was waiting for her at the gate. The appellant opened the gate and locked it. She further testified that there are three entries to the house. These 3 entries are the garage, another through the kitchen and the last one through the main door. She found when the main door was open. She also found that there were 3 drops of blood from the kitchen to  
20 her bedroom. There were drops of blood on her mattress. She explained that there were 2 mattresses in her bedroom. One was for Shalom and another was hers. When she peeped into the kitchen, she saw that the deceased was sitting down on the floor with his hands behind him. She also saw a knife and a cup less than a metre from the deceased. The time was  
25 the between 3 PM and 4 PM in the afternoon.

PW1 further testified that she called for help but no one came. The gate was locked because the appellant had gone with the keys. She waited for the appellant to come back and the appellant came back at 8:30 PM in the evening. The appellant locked the gate and PW1 gave her the keys. She got  
30 the appellant's laptop and onions. When she entered the house, the appellant had entered the house and had switched off the lights whereupon the appellant started torturing her. She went and locked herself in the bathroom. The appellant told her to say that the deceased had tried to rape her whereupon 2 men came and stabbed him. After some time, she saw a  
35 vehicle and a driver and also saw them support the deceased to the vehicle. She heard the appellant say that the maid had gone crazy and had hidden herself into the bathroom. She further saw that they were taking the

5     deceased while supporting him to the vehicle. She heard the appellants say  
that the maid had gone crazy and had hidden herself in the bathroom. 2 men  
came and tried to open the bathroom and she refused to open whereupon  
they forced the bathroom door open. She was made to go with the appellant  
and the deceased to the hospital. They went to Mulago hospital. On the way,  
10     the appellant called one Mama Didi and together they went to the hospital.  
Thereafter, the appellant told her to go back with the children and she went  
back home with the children. The appellant told Mama Didi to mop the floor.  
It was the witness who took a bucket of water which was used to mop the  
floor and she went and poured the water which traces of blood into the  
15     compound. The next day as they were going out of the gate, they were  
arrested. She told the police what the appellant had told her to say and this  
is recorded in her first statement. Thereafter she was transferred to  
Kawempe police station. She was persuaded to change her story and tell  
the truth whereupon they recorded another statement from her. Thereafter,  
20     she was transferred to Kanyanya police station.

In her cross examination testimony, PW1 testified that she worked for the  
appellant between February 2016 and August 2016. During the day, the  
deceased would stay with her and Trump (the younger child). The appellant  
would come home between 5 and 6 PM every day. She further accepted that  
25     there was a lady who was chased out of the house but she did not see her  
face or recognise her on the date of the incident.

PW2 Mr. Moses Kizito testified that he was a special hire taxi driver. On 24<sup>th</sup>  
August 2016, he saw the appellant across the road on the side of their  
workstation. The appellant used to have a Muslim taxi driver who usually  
30     transported her but he was not around that time. The appellant was going  
to Kazo and the time was 8 PM. The appellant had a polythene bag and  
handbag. She knocked at the gate and they opened for her. He noticed 2  
men on the veranda. The 2 men told him not to turn around because he  
would fall into a ditch. He gave the appellant his telephone number and she  
35     called him soon after he had left. When he arrived the appellant told him  
that the house maid had run mad. She also requested to help her.

5 Whereupon he asked why she did not ask her husband The appellant informed him that her husband was seated inside in his own blood. He went and helped her to support the deceased to the vehicle. Other people had gathered in the compound. When the deceased was asked as to what had happened to him, he told them to ask the maid about what had happened. 2  
10 men went and broke into the bathroom and found that the maid had no blouse on.

In cross examination, PW2 stated that the appellant was very pregnant (because her stomach was very big). Further, he testified that the deceased stated that whoever wanted to find out what had happened should ask the  
15 maid. The appellant stated that the maid had beaten her and a child. There was a trace of blood on the forehead of the child.

PW3 Kalule Simon was the Defence Secretary LC1 Lugoba Village and testified that on 24<sup>th</sup> of August 2016, he was approached at around 11 PM about an incident in the home of the deceased. The story was that the house  
20 maid had stabbed the deceased who was trying to rape her. The deceased had been taken to Mulago hospital. The next day, he called the chairman of the local Council 1 village and they stopped the appellant who was in a car moving out of the gate on suspicion that she was escaping. The appellant ran out of the car and into a neighbor's house. He thought that the appellant  
25 was moving away. After she was persuaded to come out of the house, they asked a child of about 6 and 7 years what had happened and she said that mummy said that they should say that the sister stabbed the deceased. They proceeded to open the master bedroom and it had blood on the carpet. They went also into the bathroom of the master bedroom and found that blood  
30 had been poured in the bathtub. The appellant was arrested. In cross examination, testified that also made a statement to police on 25 August 2016 and this was admitted in evidence as exhibit D3.

PW4 Mr. Wanyama D, a neighbour of the appellant testified that on 24th August at 8:30 PM, he was seated on the veranda with his friend Mr. Ivan.  
35 The appellant returned home to her house around 8:30 PM in a special hire taxi. The appellant knocked the gate about 3 times and the maid came and

5 opened the gate. The maid picked some items from the appellant and they went into the house. He directed the driver of the special hire taxi to manoeuvre out of the gate. After the special hire taxi driver had left, the appellant came out of her residence and requested them to rescue her from her maid. They responded to her and said that her husband should assist  
10 but she said that her husband was not at home. They refused to help her and she called the special hire taxi driver who came. The special hire taxi driver went into the house whereupon they called 6 women from the neighbourhood and people came into the compound. The people found that the special hire taxi driver and the appellant had carried the deceased into  
15 the vehicle. When the deceased was asked as to what had happened, he said that they should leave him alone to go and get treatment. The appellant then directed them where the "Mad girl" was. They found the maid had locked herself in the bathroom. They managed to open the door and asked PW1 about what had happened, and she said that he tried to rape her and  
20 she stabbed him.

When the maid PW1 was still explaining, the appellant asked her to hurry and dress up. The appellant refused to take the deceased alone and decided to go with the maid.

25 In his cross examination testimony, PW4 testified that he heard the sound of a fight in the house and was able to see stones and sticks that were thrown when they entered the gate. He made a statement of what he had seen and heard that day at the police and is in evidence as exhibit D4. This statement shows that the witness heard a serious fight going on inside the house but could not see what was going on. After a while, the appellant  
30 came out and asked them to go and help her as the maid was running mad. The appellant said that the maid was stoning her. They looked for the maid and found her hiding in the bathroom. The maid informed them that the man had found her in the kitchen and had tried to rape her. In herself defence, she stabbed him on the chest with a knife. There was a pool of blood in the  
35 kitchen. Thereafter the man was taken to hospital.

5 PW5 Karungi Annet 45 years and a resident of LC1 Nyakatete, Kyabale subcounty Ntungamo District is a sister of the deceased and did not witness anything. She testified that by the time the deceased died, the appellant was pregnant. On 26th of August 2016 her mother called her and informed her that her brother had been stabbed with a knife. They travelled the whole  
10 night with one Kembabzi Judith and arrived in Kampala in the morning hours. When they reached Mulago hospital, they found the deceased on oxygen and could not recognise any person. They were directed there by the appellant. She testified that the patient recovered slowly and by 4 PM he begun to talk. He recognised them and informed them that he had a  
15 secret that he wanted to tell his mother. But she told him that she represented his mother who was not around. He then requested everyone to leave the room and informed her that it was Diana (the appellant) who had stabbed him. He said his vehicle was at the police and that he did not want his wife to pick it. He also said: "my God will fight for me". Since he  
20 was weak, they never discussed at length. The following morning at 10 AM the patient died. Thereafter the appellant started crying. The appellant among other things refused to sign for the body of the deceased from the mortuary. She never went for burial and did not take her children for burial. In cross examination, she testified that they buried the on the day the  
25 appellant was arrested.

PW6 Mr. Oligo Michael. A medical clinical officer testified that he examined PW1 Annet Kamushaba on 1<sup>st</sup> September 2016. She was aged 14 years and was in good mental state and her hymen was intact. There was no sign of penetration and no body injuries. He also examined the appellant who was  
30 about 32 years old and eight months pregnant. He found her to be of sound mind. He carried out the examinations on the suspects on 1 September 2016 and the reports were admitted in evidence.

PW7 Namatovu Christine of Meera Katoke, Kawempe is a sister-in-law of the appellant and on 24th of August 2016 at around 9:30 PM, the appellant  
35 called her and told her that she had gotten a problem. They met on the way and she entered the car where they carried the deceased to Mulago

5 hospital. When she opened the back door, she realised that there was a man  
lying in the back of the car. There were many people at the emergency ward  
and it took a long time before the patient was examined. Her husband also  
came after she told him that the appellant had a problem. Thereafter she  
went back home with her husband, the maid and two children. They arrived  
10 at about 10:30 PM. The left the patient at a local hospital with no one caring  
for him at the time. When they reached the home of the appellant, they  
noticed that there was a lot of blood in the kitchen with a knife a cup and a  
"lesu" (a piece of cloth usually tied around the waist by a woman). The  
appellant went to the rooms to pick things to take to the hospital and  
15 requested her to stay with the children and to help clean the blood. She  
tried to clean up by removing the lesu, the cup which she threw in the  
dustbin. She cleaned the blood and the first blood stained water in the  
bucket was poured in the toilet. The second bucket was emptied by the main  
at her request. Then she started preparing something for the children to eat  
20 because they were crying and were very hungry. The maid was carrying a  
baby called Triumph who was about one year and Shalom was three years  
old. When she asked (whatever happened, the appellant said that she had  
been invaded by men who had stabbed her husband.

In cross examination, she was presented with her statement recorded by  
25 the police on 1<sup>st</sup> September 2016 in which she stated that it was the maid  
who removed the cup, knife and lesu and threw them in the dustbin  
(trashcan). It was also not in her statement that the appellant informed her  
that she had been attacked by some men.

PW8 Kinobere Hellen a resident of Kawempe testified that she runs a  
30 supermarket and she recalled that Kamushaba Annet (PW1) came on 24<sup>th</sup> of  
August 2016 at around 4 PM and bought a cake for Uganda shillings 7000/=.  
She came in which two baby girls.

PW9 Sserwadda Juma the LC1 Chairman Lugoba village testified that on  
24th of August 2016 at night he got a telephone call from the Defence  
35 Secretary Mr, Kalule about an incident in the appellant's house. The  
information he got was that the head of the homes had been found abusing

5 the house girl. In the process, chaos erupted and the head of the house had sustained injuries. They handled the problem the next day at 7:30 AM the went to the residence. When they knocked the gate, the residents refused to open. Thereafter after some persuasion, the appellant opened the gate. She had already put the children in the car, the house girl. She ordered the  
10 car to drive off and the vehicle drove off by they caught her and she said that it was illegal to arrest her. He called the police and newspaper reporters. She ran to the home of the neighbour but they managed to get her out when the police came. Thereafter they entered the house and found that the big room was locked. He found blood in the rooms and clothes  
15 stained with blood. There were blood stains even in the bathtub. There were two mattresses on the floor where the maid sleeps and there was also a blood. There was also a small cake in the room. The maid reported that there were thieves who attacked and stabbed her uncle. She showed them a wall where the thieves passed. The wall was on the left side of their  
20 residence and there was a neighbour's house. They found a knife, and a cup near a trashcan. It was stained with blood. The police recovered the items and took them. The laptop was also taken.

In cross examination, he clarified that the first information he got was from the appellant that it was the housemaid who stabbed and then again the  
25 Housemaid said it was the thieves. He discovered later that it was the appellant was stabbed her husband. He also recorded a statement on 25th of August 2016 with the police.

PW10 No. 38287 D/CPL Asindwa Kasiano, a scenes of crime officer under the forensic services directorate. On 25th of August 2016 at around midday  
30 he reached the scene of crime at around 3:55 PM. There was no one at the house. They broke the doors and gained entry into the house. Proceeded to the kitchen which had been mopped but still had some stains of blood and the smell of blood. He did not get the weapon. He went to other bedrooms and recovered a white bedsheet stained with the blood from one of the  
35 bedrooms. In another room, he recovered a mattress covered or stained with blood in the opposite room. He moved out of the house and saw a jerry



5 can with the top cut off used as a rubbish can. He found a knife stained with blood in the rubbish bin. He also recovered a white tea cup stained with blood. He took the exhibits and they were admitted in evidence. This included pictures of the scene of crime. He took blood samples from the deceased and from the appellant for DNA analysis.

10 In cross examination, testified that he suspected that the stabbing took place in the kitchen. White bedsheets were recovered from the room opposite. That is the master bedroom. He never took any fingerprints. Blood samples were extracted by the police surgeon.

PW11 No. 33634 D/CPL Olari John Christopher investigated the matter. He  
15 took over investigations on 30th of August 2016. He collected some exhibits which had blood stains but failed to get the knife used in the house. They found a knife and a cup in a rubbish bin. The scenes of crime officer photographed all the items. They recovered a mattress cover with stains of blood in the first and a white bedsheet with blood stains in the bedroom on  
20 the left. He re-interviewed Katumushaba Annet who informed him that the first statement she had met was not correct.

He also investigated the appellant, went and recorded a statement from the owner of the supermarket, got call data from Airtel and CCTV camera footage from PPDA.

25 PW12 Dr. Kalungi Sam carried out a post-mortem on the deceased and found that there were two stab wounds on the left breast and armpit and bruise on the front of the chest. Two wounds in the muscles, then wound on sack covering the heart and also a wound on the lungs.

PW13 Natukwase Immaculate, a government analyst with the government  
30 analytical laboratory analysed samples submitted by the investigating officers to provide scientific evidence. The DNA analysis report was tendered in as Exhibit 21. The analysis shows that the genetic evidence was that the deceased is the donor of the DNA material recovered from the bloodstains on the exhibits namely a kitchen knife, with a light green handle,  
35 recovered from the crime scene, a white teacup recovered from the crime

5 scene, a multi-coloured royal form mattress cover recovered from the crime scene and white bedsheet recovered from the crime scene. On the other hand, the appellant was not the donor of the blood recovered from the samples. The housemaid was not the donor of the blood recovered from the samples.

10 PW14 Kabera Francis, the security manager for airtel produced called data for mobile phone number 0759574531 and also for 0753339908. This were exhibited as Exhibit 22 and Exhibit 23. Number 0753339908 had no outgoing calls between 24th and 25th of August 2016. Its last communication was made on 20th of August 2016 and the communications was directed to  
15 0700360445. The next communication was on 29 August 2016. Further number 0759574531 had no communication between 24 and 25th of August 2016. The last communication in coming before 24th of August 2016 was on 21st of August 2016.

PW15 Kedini Lydia the mother of PW1 Ms Katushaba Annet testified that on  
20 24<sup>th</sup> of August 2016 she received a call from Musasizi (the deceased) but it was a woman talking to her. She informed the lady who called that she did not have transport money. Whereupon, the lady said that she would send her transport money on the number she called on. The following day on 25<sup>th</sup> of August 2016 she called the number but no one picked it and no money  
25 was sent to her. Thereafter she was contacted by the police officer who told her that her daughter was in the cells after the wife killed the husband. Thereafter, she was taken to where her daughter was imprisoned. She was informed by her daughter that the appellant sent her and when she came back, she found the appellant at the gate and she ordered her inside that  
30 she wanted to lock the gate. Many people came and she ran and locked herself in the bathroom. That was the time she received a call from the number of Musasizi (the deceased). She had never seen the appellant. She had never talked to the appellant before and the only time she talked to her was when she received a call from the number of the deceased. She  
35 recorded 2 statements. She further confirmed that she was called on 24<sup>th</sup>

5 of August 2016 upon her cross examination. The phone call was between 9 AM and 5 PM.

PW16 D/AIP Wandera K. Desire investigated the crime. Among other things, she tried to obtain a CCTV footage from PPDA but was unable to retrieve it. She also investigated the dying declaration and tried to establish whether  
10 the phone call to the mother of the house maid was made by the housekeeper or by the appellant. In cross examination she testified that there was no CCTV footage in the supermarket.

We have further considered the testimony of the appellant who testified as DW1 after she was put on her defence, that of DW2 Kwesigabo Bridget and  
15 DW4 Ogwang Nixon.

The appellant gave her testimony not on oath. It is to the effect that on 24<sup>th</sup> August 2016 she took her child Shalom to school and left home at 7 AM. She reached the school at 7:30 AM and proceeded to PPDA which had 2 offices. The office is in UDCL Towers. On that day she received a call from her late  
20 husband but he did not say anything. He would always pick her at around 5 PM but she continued calling at 5:30 PM up to 6:30 PM and the phone was off. She was very pregnant. She got a motorcycle taxi and went to BWAISE where she did some shopping. Thereafter, she got a special hire taxi driver who took her home at around 8 PM. When she went home there were 2  
25 gentlemen seated opposite. She knocked for a long time and then the maid opened. When she inquired about her husband, the maid told her that her husband was not there. She walked with her and the children and the maid hit her on the head and also hit her daughter. She made an alarm and the neighbours did not come to help and the maid ran and hid herself in the  
30 bathroom. She saw her husband with a lot of blood. She called her brother and he was very far. Thereafter she called the taxi man. Her brother sent his wife to help her. Her husband was completely naked and he only had a "lesu" wrapped around him. She dressed him alone and the special hire taxi man helped her to carry him to the car. The husband could not talk and there  
35 was a lot of blood flowing. All he could say was that she should take him to the hospital. After they reached Jordan clinic, they were told that his

5 condition was worsening and was referred to the big hospital. They went to Mulago and on the way asked the maid what had happened. (Part of the record is missing).

Further DW2 Kwezigabo Bridget worked with PPDA investigations based in Mbale regional offices and was a resident in Mbale. She testified that she  
10 knows the appellant used to work with them. The appellant was the procurement manager. She was shown a video footage and was told to identify herself which she did. She was walking in the footage. They used to have at the PPDA an office called the PPDA home. She was coming from lunch from the PPDA home and the footage showed the time to be 14:53.  
15 She was walking with a colleague called Richard Kalule. The appellant was working in front of them with one Ronald Tumuheirwe. They were moving in the same direction. She testified that it was the appellant who brought the footage to him and he does not recall the date and the year. She could not confirm the date on the video footage.

20 Further DW4 ASP Ogwang Nixon testified that he was attached to the ICT directory department of the CCTV multimedia unit and was the acting senior superintendent of police CCTV production, analysis and production. He makes reports on the basis of CCTV footages received from any particular system for purposes of making a lab analysis and reporting his findings. He  
25 remembered handling an assignment from PPDA. That was last year in February 2019. He received a phone call from one of the CID officers Mr Sembera Isaac who gave him a CCTV footage which needed to be analysed. He requested for him to write a letter to the director of the ICT requesting for it. A letter was written to the director and head of Department was told  
30 to handle. The head of Department gave the report to the witness to handle and for analysis. The head of Department is SP Senyondo Richard. He analysed the footage from morning to evening that is between 6 AM and 7 PM. It was on the basis of an allegation that one of the workers had murdered somebody. He wrote a report on 25 February 2019 and appended  
35 his signature to it. He established that the suspect did not go away from the workplace except at 1:42 PM when she was seen crossing over the

5 reception. The camera which was capturing her was at the reception. At 1:44 PM she was seen together with a man working towards another building. They were suspected to be going for lunch. At 20 4 PM the appellant and another man were seen walking back to the PPDA building. At 2:11 PM the appellant and a man were seen together at the reception. At 6:13 p.m. the  
10 appellant was seen again at the reception with her 2 bags possibly leaving for home. The letter is dated 19<sup>th</sup> of February 2019 together with the flash disk. The learned trial judge rejected the flash disk but admitted the report as defence Exhibit 11 made by Ogwang Nixon.

We have carefully analysed the above evidence. The primary question  
15 determined by the learned trial judge was whether the appellant participated. The evidence that was relied upon was circumstantial evidence.

#### Analysis of the evidence

The evidence presented begs the question of when the victim was stabbed  
20 and this question which was never satisfactorily established by the prosecution beyond reasonable doubt. It was the crux of the prosecution case to establish when the victim of the crime was stabbed. This crucial piece of evidence was missing except in the testimony of PW1 the house maid. The question to be established is whether the court should believe the  
25 testimony of PW1 in the circumstances. PW1 was the only other person at home. However, her testimony is that she found that the appellant had stabbed the deceased. Apart from this piece the court relied on circumstantial evidence to convict the appellant.

The learned trial judge agreed with the prosecution that it was a case  
30 resting purely on circumstantial evidence given the fact that there was no eyewitness to the murder. She also considered the fact that the appellant stated that she was at her workplace all day. She further relied on the dying declaration of the deceased which he made to his sister and stated that this type of the evidence must be received with caution and stated that:

5 Therefore, although corroboration of such evidence is not necessary as a matter of law, it is a prerequisite as a matter of practice... In this case, there is overwhelming evidence that the incident took place in daylight, in the home of the deceased. It is also not in contention that the accused and the deceased were known to each other as husband and wife.

10 There is also evident that the accused person kept PW1 to herself, as the prosecution witnesses she had told them the maid had run mad stabbed her husband, hit her and her daughter injuring both of them, but then again a few minutes later she is seated together with the same maid and she was even made to carry the same child she said the maid had injured! She even coached her  
15 leading to PW1 recording 3 varying statements about the circumstances that led to the death of the deceased. PW1 one was nonetheless straightforward and consistent in her testimony that the accused person returned home for lunch on the day of the incident and later sent her to buy cake and upon her return, she found the deceased injured. I find that the accused had all this planned out, it is  
20 the reason she called PW1's mother to pick her but instead got easier plan of sending her to a supermarket accompanied by both children. This was all to give her time to execute her mission of taking away the deceased's life.

The learned trial judge also considered the conduct after the incident of the appellant and concluded that it was conduct inconsistent with her  
25 innocence. She rejected the alibi of the appellant on the ground that the evidence of the video in the CCTV footage did not meet the requirements of the law of authentication.

We have critically examined the evidence in light of the legal doctrine on reliance of circumstantial evidence to convict. In **Simoni Musoke v R [1958]**  
30 **1 EA 715**, the East African Court of Appeal held that:

... in a case depending exclusively upon circumstantial evidence, he must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. As it is put in Taylor on Evidence (11th  
35 Edn.), p. 74–

"The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt."

5           There is also the further principle... stated in the judgment of the Privy Council in *Teper v. R.* (2), [1952] A.C. 480 at p. 489 as follows:

          "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."

10   The question is whether there were some other coexisting factors, which would weaken or destroy the inference of the guilt of the appellant? We have subjected the evidence to critical analysis. We note that PW1 went out after lunch with the 2 children of the appellant leaving the deceased and the appellant in the house according to her testimony. She took about 30  
15   minutes going to the supermarket and back. In a police statement she explained the delay as owing to the fact that the children were walking slowly. The time was between 3:57 PM in the afternoon. She found the appellant going back and the appellant left with the keys to the gate. She also found blood between the kitchen and her bedroom. There was blood on  
20   her mattress. Thereafter she states that the appellant came back at 8:30 PM and she opened for her. In other words, the gate was locked up all this time. There were 2 men who went and asked her to open the bathroom and she refused to open. Lastly, she went to Mulago hospital and another lady called Mama Didi joined her on the way. She came back with this lady and  
25   the lady mopped the floor where there was blood. She poured part of the bloodstained water into the compound. The next day she was arrested with the appellant as they were leaving the compound in the morning hours.

          PW1 agreed that blood was mopped from the floor. She brought the bucket of water and poured it in the compound. PW7 Christine Namatovu went with  
30   the appellant to the hospital. She came back from Mulago hospital with her husband, the maid, the appellant and 2 children to the residence of the appellant. She testified that the kitchen had a lot of blood, she found a knife, a cup and a "lesu". She threw these things into the dustbin. She mopped and poured water initially in the toilet and later on she gave it to the maid who  
35   poured the second bucket of water in the compound. In her police statement she stated that it was the maid who removed the cup, knife and "lesu" and

5      threw the items into the dustbin. The maid had informed her that they had been attacked by some men.

10      This testimony can be compared to the testimony of PW2 Mr. Kizito Moses, the taxi driver who brought the appellant at around 8:30 PM and that of Wanyama D, a neighbour who was able to partly see and hear what was happening. PW2 testified that the appellant knocked the gate and it was opened for her. The begging question was who had the keys to the gate? Was it the appellant who had the keys or the maid? PW2 also noticed 2 men at the Veranda. He had given the appellant his number and she called him soon after he had left and gone to the stage where he operates from. The appellant called him and he went back. The appellant called him about 3 times in the course of after he had dropped her initially and when he reached, the appellant said that the house maid had run mad and she requested for help. He was also informed that the husband of the appellant was injured and seated in his own blood. He helped to carry the deceased to the car and other people had gathered around. The deceased told them to ask the maid what had happened. Two men went and broke into the room and found that the maid had no blouse on. They reached Mulago hospital around 10 PM. PW2 also testified that the appellant was very pregnant. The forensic evidence by the medical personnel PW6 is that the appellant was 25      8 months pregnant. The testimony is further important in that PW2 stated that the maid had beaten the appellant and a child. He saw a trace of blood on the forehead of the child.

30      PW4 Mr. Wanyama the neighbour who was watching and could hear some activity in the residence of the appellant stated that he saw stones and sticks flying around that is after 8:30 PM after the appellant had come back. We note that in the blood on the maid's mattress cannot be explained from the testimony of the witnesses. There was injury on the appellant which appears in the medical examination that shows that she had scratches on her face. The scratches on the face of the appellant can be considered to be 35      consistent with the testimony of PW4 about hearing a fight at 8:30 PM and sticks flying and the appellant telling PW2 that the maid hit her and a child.



5 PW2 saw bloodstains on the forehead of a child. According to PW1 the victim was stabbed between 3 – 4 PM in the afternoon when the appellant was home. No other person saw this. PW4 Mr. Wanyama saw the appellant returning at 8:30 PM that evening and heard the fight in the evening. The inference that can be made, if the testimony of PW1 is to be believed, is that  
10 the fight could have been between the appellant and the maid. In other words, the victim was not the one causing the commotion at 8:30 PM in the evening of 24<sup>th</sup> August 2016. The fight heard by PW4 had nothing to do with the injury on the deceased. PW1 testified that when the appellant came back, she started fighting her and asking what she had done to her husband (in  
15 her additional police statement) and in her testimony in court she stated that the appellant started torturing her. In the police statement she stated that the appellant pushed her down and started boxing her then she ran and hid in the bathroom.

PW6, the medical clinical officer adduced exhibit P3 which shows scratches  
20 on the face of the appellant but no recent injury. The examination was carried out on 1<sup>st</sup> September 2016 about 5 days after the incident. According to PW4 it was the appellant who run out for help but they refused to help her and wanted to know from her why her husband was not there to help. PW4 was with a friend called Ivan.

25 We have further considered the fact that PW1 (the Maid Kamushaba Annet) made 3 police statements. In the 1<sup>st</sup> statement made around 25<sup>th</sup> or 26<sup>th</sup> August (the date on the court record is not clear), she states that the deceased started admiring her and would sometimes kiss though she did not want it and would refuse. He further used to molest her by removing his  
30 penis and putting it on her buttocks. One time she woke up when he was in her bed and it was Shalom who told her that daddy her urinated in her bed. As to the facts of the assault she states that on 24<sup>th</sup> August 2016, she went to her bedroom to collect a mattress for Shalom. The deceased came and removed his penis and put it on her buttocks as usual. Then she saw 2 men  
35 come and they concealed their face with a cloths mask and stabbed him. They told her not to tell anybody or the would kill her. They were looking for

5 something inside and disorganised place. She had never seen the men before. As they were going out, she threw stones at them. One stone hit Shalom on the head. We note that the fact that a stone hit the young girl is consistent with the testimony of PW2 that he saw blood on the forehead of the girl. The appellant then came and demanded to know who stabbed her  
10 husband and she ran and hid in the bathroom.

In the 2<sup>nd</sup> statement recorded at the police on 30<sup>th</sup> of August 2016, the statement is entitled as an additional statement. In that statement she retracts the previous statement she had made and stated that what she had said in it was not true. The appellant had threatened to kill her if she told  
15 the truth. She stated that the deceased took the child and the appellant as usual in the morning and came back. It should be noted that it was the appellant who used to make provision for everything as the deceased was not working. It was the appellant who used to pay the maid and provide for everything in the home. The victim stayed at home. On the fateful day, after  
20 he came back from dropping his wife and the child, he entered his bedroom and stayed there. In the afternoon, he did not go to pick his child because the appellant said that he should not. She further recalled that the appellant had told her the previous night that she would come back for lunch. The appellant came back and had lunch and thereafter send her to buy cake  
25 because it was the birthday of Shalom. It took about 30 minutes for her to go to the supermarket and back and she explained that the children were walking slowly. She had gone with the children. When they reached the gate, they found the appellant going back and she locked the gate and told her to go and celebrate with Shalom by cutting the cake. When she reached the  
30 house, she found that the door to the kitchen was locked but she was able to peep inside and saw the victim lying in a pool of blood. She was drawn to investigate that because she saw bloodstains from her room to the kitchen. We further note that there is no clear explanation as to why there should be any bloodstains in her room. She found some bloodstains on the  
35 mattress. It is when she peeped into the kitchen and saw the deceased lying down in a lot of blood that she ran to the gate but the gate was locked. She made an alarm but nobody came. It was around 21 hours (this is around 9

5 PM as recorded by the person who wrote the statement). The time seems to have been inserted afterwards. The appellant came and knocked the gate and passed a key to her for her to open the gate which she did. She went and picked items from the vehicle outside the gate which had brought the appellant. The appellant went and switched off the security right. The  
10 appellant then grabbed her by the hand and asked her what she had done to her husband. The appellant pushed her down and started boxing her. She then ran away leaving her blouse and hid in the bathroom. While she was in the bathroom, the appellant threatened her and couched her on what to say otherwise she would be killed.

15 Lastly on 3<sup>rd</sup> June 2017 about 10 months after the incident, PW1 made an additional statement about whether she had a phone. She stated in the statement that initially she had been given a phone then the appellant removed it after some time. Possibly that was the phone that her mother called her on, on the date of the incident. By that time, she was already back  
20 in school in senior 1.

We note that PW 9 Serwadda Juma LC1 chairperson of the village testified among other things that there were 2 mattresses in one of the rooms on the floor where the maid sleeps and there was also blood and a small cake in the room. Initially the information he got from the appellant was that it  
25 was the house Maid who had stabbed the deceased. The house maid told him that it was thieves who had stabbed. He discovered later that it was the appellant who stabbed her husband. The statement was recorded on 25<sup>th</sup> of August 2016. The house maid had showed him a wall where the thieves broke through, attacked and stabbed the victim.

30 The learned trial judge found the testimony of PW1 to be consistent and truthful. On the issue of the dying declaration, the learned trial judge found that the deceased could not have been mistaken about the identity of the appellant because they were husband and wife. She relied on this evidence. She further considered the conduct of the appellant after the death of the  
35 victim in that she refused to sign for the body of her late husband and did not accompany the body for burial nor did she send her children to bury

5 their father. She was arrested on 30 August 2016 in Kampala on the date of  
the burial. She did not find sufficient authentication of the video footage as  
to support the alibi that the appellant was in the PPDA offices the whole  
day. The video footage considered was that at 1.44 PM the accused went for  
lunch, then at 2.04 PM she came back for lunch and at 6.13 PM she left the  
10 building with 2 bags for home. This was based on the testimony of the  
investigating officer of the PPDA who was able to access this footage. The  
learned trial judge was not satisfied because she found that the evidence  
did not cover vital points as to who recorded the video, the files, the location,  
where it was recorded, when it was recorded, the purpose of the recording  
15 and any other individuals depicted in the video except one person.  
Moreover, the witness admitted that he had edited the video because it was  
too long and he created a folder to make the story flow.

We note that the video recording was supposed to cover a period of about  
12 hours.

20 The evidence of PW1 and particularly the 2<sup>nd</sup> statement she made to the  
police was made after persuasion. It was made several days after the  
incident. On the other hand, the statement, not on oath, of the appellant is  
consistent with the facts which show that she reached home at 8:30 PM and  
there were 2 gentlemen she asked to help her with the maid and these two  
25 gentlemen (one of whom is PW4 Mr. Wanyama) refused to help her.  
Thereafter she called the taxi operator to come and help her. PW2 indeed  
came and helped her to pick her husband and take him to the car. She called  
the relatives of her husband and informed them about the situation. PW4  
heard a commotion in the house, after the appellant came back and  
30 moreover he saw stones flying. The evidence is consistent with the fact that  
a child had been hit on the head as confirmed by PW2. PW1 confirmed that  
the victim did not go that day to pick the appellant and his child. Did the  
appellant come home that day? There are very many unexplained questions  
which we have raised above that do not lead to moral certainty for the  
35 inference that it is the appellant who participated in the stabbing the  
deceased. There is a further mysterious lady who ran out of the house.

5 The learned tried judge rejected the video footage of PPDA offices showing who came in and out on that day. She however admitted in evidence the report of DW4 Mr. Ogwang Nickson. This was admitted as exhibit D11. Exhibit D11 is dated 25<sup>th</sup> February 2019 and addressed to the Director, Criminal Investigations Directorate by the witness. It is the digital forensics analysis  
10 report on alibi raised by the accused (Najuma Joan alias Luutu Diana) on allegation that she murdered Hannington Musaasizi on 24 August 2016.

The report shows that it was requested for by the police and particularly it was to analyse video files provided by the CID headquarters through the investigating officer of the case and determine whether the raw video  
15 content of the files had been edited or otherwise altered. He was supposed compared the raw video to certain files submitted earlier by the police professional standards unit ("full footage" videos and a "supplemental" video") for the purposes of the determining inconsistencies between the files. The scope of the analysis did not include validation of the individuals  
20 depicted in the video except one person who recorded the video files, the locations where they were recorded, when they were recorded on the purpose of the recordings. The video recordings were in a flash drive received on 20 February 2019. The appellant gives some technical information and shows that the video was for the year 2016 and the month  
25 of August of the 24<sup>th</sup> day of that month. He reviewed the supplemental full footage video against the raw video and determined the supplemental video matches, the timeframe, timecards and events depicted in the raw video file. There were only 6 files out of 521 that captured the movement of the accused person and he gave the technical names of the files. Particularly  
30 what is of interest is as follows:

1. At 07:58:5 hours, the footage showed that a woman who is perceived as being pregnant arrived at the reception.
2. At 07:58:59 hours, as shown in image 2, the woman was seen booking in the book at the reception and she was being monitored by camera  
35 03.

- 5 3. At 07:59:10 hours, the woman was seen advancing towards the office and she had 2 bags with her (image 3).
4. At 13:42:41 hours as shown in the image 4, she (the pregnant woman) was seen crossing over the reception.
- 10 5. At 13:42:44 hours, as shown in the image 5, she was seen moving past the reception shortly after she was seen outside the building.
6. At 13:44:20 hours, the woman was seen together with a man walking towards another building possibly for lunch and this was captured by camera 01.
- 15 7. At 14:04:53 hours as shown in image 7, the woman and another man was seen walking back to the office (PPDA building). Captured by camera 01.
8. At 14:11:18 hours, the woman and the man were still seen together at the reception as they cross over to the office side (image 8).
- 20 9. At 18:13:32 hours, she was seen again at the reception with her 2 bags probably living office for her home (image 9).
10. At 18:13:34 hours, as shown in the image 11, the woman was seen putting her finger on the access control (image 10).
11. At 18:13:37 hours, the woman was seen passing through the door to an unknown destination (image 11).
- 25 12. The images in the appendix were cut from all the videos files that had the movement and activities carried out by the accused person. Those files that did not capture the movement of the accused were not considered during the image cutting.

DW4 went on to conclude in the report as follows:

#### 30 1.6 CONCLUSION

- 35 1. With regard to the "Full Footage" I reviewed any and all inconsistencies in timecode apparent in the videos for comparison to the raw video footage corresponding to those videos. Notes were made upon review of the raw video content which described the events that took place during the missing footage that was not taken count of in the 1<sup>st</sup> video submitted earlier by the PSU.

5                   2. Based on this evidence, I therefore conclude that the video files located on the flash drive are accurate representations of the raw unedited footage captured by the original video camera with reliable and consistent timecodes.

10                   3. The fact that there was only one access door to and from the office where the woman (the accused) was working, then the footage analysed here in does not implicate this woman for having moved far away from PPDA Tower on the fateful day since the video was consistently showing her movement in and out of her office.

15                   The analysis in the report of ASP Ogwang Nickson clearly compensated for the lack of authentication of the edited flash disk video footage which was meant to only capture the movement of the appellant in and out of her office so as to shorten the video playtime. The evidence clearly shows that the appellant on the 24<sup>th</sup> of August 2016 arrived at the PPDA offices at 07:58:51 hours, left the office briefly for lunch between 13.42.44 hours and when she  
20                   came back at 14:04:53 hours which is a period of about 22 minutes when she presumably went out for lunch. It was not possible for the appellant to do the things that PW1 stated that she could have done at the time of between 3.00 p.m. to 4.00 p.m. on 24<sup>th</sup> of August 2016. By this time the appellant was in her office at PPDA Towers (UDEL building). The report was  
25                   made to the CID and by the Police and also admitted in evidence. This evidence was available to the prosecution and it rhymes with the evidence of PW2 and PW4 and other witnesses of the prosecution about the time the appellant went home on 24<sup>th</sup> of August 2016. On the other hand, the evidence of PW1 was unreliable given the multiple alterations it went through after  
30                   discussions with police or other people.


                    As far as the Evidence of PW5 is concerned, the alleged dying declaration of the deceased is a questionable statement. It is mixed up with a statement that the deceased allegedly said that his wife (the appellant) should not take his car which was at the police. It is possible to infer that the witness  
35                   wanted to state that the appellant who was then a widow should have no access to the deceased's vehicle.

5 On the other hand, when the victim was injured, he told sympathisers who had gathered to ask PW1 about the incident because she knew. We note that when the appellant came home, she called for help and tried to have her husband rushed to hospital.

10 In the circumstances, it was erroneous for the learned trial judge not to consider the evidence in exhibit D11 as well as the testimony of DW4 against the inconsistencies in the evidence of the prosecution in circumstances where nobody ever saw the appellant commit the offence. In the premises, the circumstantial evidence and the evidence of an alleged dying declaration were erroneously relied upon to convict the appellant.

15 We find that the offence of murder was not proved to the required standard against the appellant. We hereby quash the conviction of the appellant and set aside the sentence. The appellant is hereby acquitted and shall forthwith be set free unless held on any other lawful ground.

20 Dated at Kampala the 2<sup>nd</sup> day of Nov 2021

  
Fredrick Egonda - Ntende

Justice of Appeal



25 Catherine Bamugemereire

Justice of Appeal

  
Christopher Madrama

Justice of Appeal