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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, AT MASAKA
CRIMINAL SESSION CASE NO. 0051 OF 2003

UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTION

VERSUS

10 SSEKIMWANYI ROBERT :::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. JUSTICE V.F. MUSOKE-KIBUUKA

15 **PROCEEDINGS:**

Accused in Court

Ms Okalany – for State

20 Mr. Karugunda – for accused on State Brief

Mr. Ssali – court Clerk

Court:

Indictment is read in English and interpreted into luganda by Mr. Ssali.

25

Accused:

I have understood the charge. I do not know the offence read out by court.

Court:

Preci entered.

30

Ms Okalany:

We propose 14th April.

Mr. Kamugunda:

35 No problem with that date.

Court:

Trial date fixed for 14th April 05.

5 **Assessors:**

Mr. Muwulya

Mr. Wasswa D.

Accused;

10 No objection

Court:

Adjourned accordingly.

15

V.F. Musoke-Kibuuka

Judge

18.03.05

20 **14.04.05**

Accused in court

Ms Okalany – for state

Mr. Kamugunda – for accused

Both Assessors – present

25 Mr. Ssali – Court Clerk

Court:

Accused confirms that he still stands by his plea entered on 18.3.05

30 **V.F. Musoke-Kibuuka**

Judge

Court:

Memorandum of

AGREED FACTS

5 **PW1: Dr. Ssekitoleko**

Examined the body of Peregia Nakalanda on 14th October 2002. The body was identified to him by Kalanda Edward.

10 The body was of a female of 12 years – well nourished. The body had minor bruises on the neck. Internally the body had a fracture at the base of the scar. The cause of death was – head injuries causing bleeding from the ear, nose and throat.

The report was prepared on 14th October 02. We have agreed to tender it in evidence.

15 **V.F. Musoke Kibuuka**

Judge

Mr. Kamugunda: Agreed.

20

V.F. Musoke-Kibuuka

Judge

14.04.05

25 **PW2: Dr. Lukwago**

He examined Ssekimwany Robert on 16/10/02. He found him to be 16 years old. He found no wounds on his body. He was normal mentally. We have agreed to tender the report in evidence.

V.F. Musoke-Kibuuka

30 **Judge**

14.04.05

PW3: No 29839 DC Osinde Bernard:

He was 33 years old and attached to Kinoni Police Post in Masaka. In October 2002 he was attached to Masaka Police Station.

5 On 16th October 2002, at 3.30p.m. He was directed by ASP Nsubuga to take a suspect when he later knew as Ssekimwanyi Robert for medical examination to Masaka hospital. He complied and presented him before Dr. Lukwago for examination. He later was handled the suspect with Police Form 24. He brought both ASP Nsubuga for further management.

10 **V.F. Musoke-Kibuuka**

Judge

Mr. Kamugunda: Agreed.

15 **Court:** The Memorandum of Agreed facts is signed below:

- Counsel for State
- Counsel for accused

- 20 - Accused
- Court

V.F. Musoke-Kibuuka

Judge

25 **14.04.05**

Court: Assessors are sworn

- Wasswa Dominic (Sworn)
- Muwulya (affirmed)

30

PW4: IDA NAKIBUUKA (Moslem Affirmed)

I am 25 years old. I reside at Kijajjasi village, Makonda, Ndagwe Masaka. I cultivate.

I know Nakalanda Peregia. She was my sister. She is dead. She died on 13th October 02. I know the accused. He is Ssekimwany Robert. He is a village mate.

5 My sister was living with me. I sent her to the well at 3.30p.m. She was attending Kijajjasi Primary School in P.5. My husband is Abdu Ssebbale. She had been to school on that day. When I sent her for water she had just come from school.

I saw the accused follow the deceased. He passed by my home. From my home to the well is about one mile. I saw the accused come back after about 7 minutes. He was carrying a 10 litre
10 jelly-can of water. The accused had followed my sister while holding that same jelly-can. The accused was walking in a shrift manner. He stopped looked at me and then hurried away. Two minutes afterwards I went looking for my sister. I thought she had overstayed at the well.

I went up to the well. My sister had gone with a 10 litre Jellycan to fetch water. When going to
15 the well I did not meet anyone along the way. I did not find my sister at the well or along the way. I did not see her 10 litre Jellycan either.

I went back and informed my brother in law called Ssemambo and his wife and Sulaina Nankindu (deceased). We went back to the well. Ssemambo used a piece of wood and stirred
20 the waters in the well. The body of my sister was in the well. She was dead. I ran back home in great fear.

The well was an open one. It was about 3 square metres, people who fetched water would step in the shallow part of the well.

25

The body was brought home at about 7.00p.m by my brother in law called Abdu Kayabula. Ssemambo had by that time gone to report to police at Ndeeba. I informed Ssemambo that I had seen the deceased being followed by the accused.

30 I informed Ssemambo that I had seen the accused follow the deceased to the well before we went back to the well subsequent to which the body was found.

I saw Abdu Kayabula lead the accused past my home to the well. It was on the same day.

5 The police came the following day. The body was examined on 14th October 2002. It was buried on the same day. She was buried at Kakoni, Rakai.

V. F. Musoke-Kibuuka

Judge

14.04.05

10

Ms. Kamugunda: No questions in cross examination.

V.F. Musoke-Kibuuka

Judge

15 **14.04.05**

PW4: Examined by an assessors:

Abdu Kayabula was an LDU.

20 **V.F. Musoke Kibuuka**

Judge

14.04.05

PW5: A girl of about 9 years

Court: Voire Dire:

25 I am 14 years old. I am Nabutono Alaisa. I reside at Kiguluka, Ndagwe, Masaka. I do not go to school. I was at Kijajjasi Primary School. I stopped in P2.

I am a Moslem. I go to the mosque on Fridays. I go for prayers. I pray to Allah. Allah is a good person. He loves young people like me. If a girl tells a lot of lies Allah will not love her. It is
30 not good to tell lies.

I have heard about an oath. I have seen people take the oath. The oath binds the person tell the truths.

V.F. Musoke-Kibuuka

5 **Judge**

Court: Findings:

The witness appears to be possessed with sufficient intelligence to justify the receipt of her testimony by a court of law. She appears to understand the duty of telling the truth. She also
10 appears to understand the nature of the witness's oath. Her evidence shall be recorded upon oath.

V.F. Musoke-Kibuuka

Judge

15 **PW5: Nabutono Alaisa** (Moslem Affirmed)

I am 14 years old. I do not know when I was born. I reside at Kiguluka. It is neighbouring Kijajjasi. It is in Makondo Parish, Ndagwe in Masaka District.

I know the accused. He is Ssekimwanyi Robert. He is my brother. He is older than me.
20 Between us there are Saidat and Nanteza. We have just converted to Islam. The accused is still Christian.

I used to know Nakalanda. She used to reside in our village. She is now dead. On the day Nakalanda died some people came home and arrested Ssekimwanyi. One of those was Abdu
25 Mayabula. It was at about 7.00 p.m. Mayabula said that the accused had killed Nakalanda. When they arrested him, the accused was cutting firewood. The accused upon arrest he denied that he had killed the deceased. The accused came from the well at about 4.00p.m. He went and came back after sometime. He came back with water. He brought water with him. It was a yellow jelycan. When he came from the well Ssekimwanyi told me that he had shown someone
30 a touch "Nkalaze touch". He then ate food.

Ssekimwanyi stopped in P2.

V.F. Musoke-Kibuuka

Judge

5 **14.04.05**

Mr. Kamugunda: No cross examination.

10

V.F. Musoke Kibuuka

Judge

14.04.05

15 **Assessors:** No question.

V.F. Musoke Kibuuka

Judge

14.04.05

20

PW6: No21493 PC Naudo J. (Xtian Sworn)

I am 40 years old. In 2002 I was attached to Ndagwe Police Post. I can now at Masaka Police Station.

25 On 13th October 2002 at 7.30p.m, I was at the post one LDU Ssemambo M. came and reported that one Ssekimwanyi Robert had murdered one Nakalanda after which he threw the body into water.

I went with LDUs Kabiito and Kisinja to the scene of crime. We were led by Ssemambo to the
30 scene. The scene was at Kijajjasi village. I found a dead body of a girl. It was already drawn from the water. It was lying at the side of the well. The well was about 2 metres wide and about

3 metres long. It was surrounded by a swamp (short grass). I observed a cut on the head and some scratch marks in the neck. The body was bleeding from the nose and mouth.

I did not notice any struggle marks at the scene. I do not recall the part of the head with the cut.

5 I drew a plan.

It was already night. I advised the relatives to carry the body home pending post mortem the following day. On 14th October, I took the body to Masaka where Dr. Ssekitoleko examined it.

10 On 13th October 02 as we were leaving the scene of crime, I saw the accused being escorted by one LDU Kayabula Abdu. I re-arrested him. I took him and to police at Ndagwe to assist the police inquiries.

I can recognize the sketch plan. It is in my handwriting. I signed it.

15

Court: PW6 is shown a sketch plan.

PW6: This is the sketch plan I drew. The scene was along Kiwangala Ndagwe Road. The distance from the main road to the claim was about 100 metres. It is marked as the place where I
20 found the deceased lying after being drawn from the water. I also observed that whatever happened at the well would be seen by anyone along the main road.

Ms Okalany: I apply to tender the report.

25 **Mr. Kamugunda:** No objection.

Court: Exhibit P.3

30 **V.F. Musoke-Kibuuka**
Judge

PW6: The home of the victim was about one mile from the well. The home of the accused was about 200 metres from that of the deceased.

5 I was the investigating officer in this case. On 15th October 02, I escorted the accused from Ndagwe to Masaka. I took the accused to ASP Nsubupa at Masaka. He was the OC/Station. I took the accused to ASP Nsubuga's office. Nsubuga was alone in his office. I requested that a charge and caution statement be recorded from the accused. I left the accused in the office of ASP Nsubuga. The ASP called me back to pick the accused after completing the recording. I
10 took the accused to the cells.

The accused I took to Nsubuga is the one standing in the dock now.

15 **V.F. Musoke-Kibuuka**
Judge

Mr. Kamugunda: No Cross Examination.

20 **V.F. Musoke Kibuuka**
Judge

Assessors: No questions.

25 **V.F. Musoke Kibuuka**
Judge
14.04.05

PW7: Muhabuba Ssemambo (Moslem Affirmed)

30 I am 42 years old. I reside at Mubende. In 2002 I was residing at Kijajjasi, Ndagwe, Masaka. I was an LDU attached to Ndagwe Police Post.

I know Nakalanda, the deceased, she was sister to my sister in law. My sister in law was wife to my brother Abdu Ssebbale. She is the one with a head curf (identified in Court) I know the accused. Nakalanda is dead. I was working in my kibanja. I heard my sister in law saying that
5 Nakalanda had gone to the well but she had not returned. It was during the month of October 2002. I went with my sister in law and a few other people.

Among those was Kadija, Abdu Kayabala, Sarifa Nalwanga and others.

At the well, I stepped in the shallow part of the water. I went checking with boy my legs and
10 hands. I also had a piece of wood of about 8 feet somewhere half way the length of the well. I felt the body of the girl which I extracted from the well and I went to report to Ndagwe Police.

My sister in law told me that Ssekimwnyi was the suspect. She told me that she had seen Ssekimwanyi follow the deceased to the well. The deepest part of the well was 7 feet. The well
15 was about 3 metres wide and 3 metres in length. It was dug as a well not a dam. I came back from Ndagwe with the OC/Police, with SPC Kabiito Badru and others. They came with me to the well where the dead body was. The accused was first arrested by secretary for defence of the village called Abdu Kayahula.

20 **V.F. Musoke Kibuuka**

Judge

Mr. Kamugunda: No Cross Examination

25 **Assessors:** No questions.

V.F. Musoke Kibuuka

Judge

14.04.05

30

Ms Okalany: Those are the only witnesses I had today. I seek adjournment to re-summon ASP Nsubuga, and Abdu Kayabula.

5 **V.F. Musoke Kibuuka**

Judge

14.04.05

Mr. Kamugunda: No objection

10

Court: Adjourned to 22nd April 05 at 9.00a.m.

V.F. Musoke Kibuuka

Judge

15 **14.04.05**

21.04.05

Accused in court

20 Ms Okalany for State

Mr. Ryazi – holding brief for Mr. Kamugunda.

Ms Okalany: I pray case be given another date for calling the remaining 2 witnesses. I pray for 9th May 05.

25

Court: Adjourned to 9th May 2005 at 9.00a.m.

V.F. Musoke Kibuuka

Judge

30 **22.04.05**

9.05.05

Accused in Court

Ms Okalany – for state

Mr. Kamugunda – for accused – not in court

5

Court: Owing to fact that the case is part-heard and counsel for accused is not in Masaka, not the case is adjourned to tomorrow at 9.00 a.m. to be file called.

V.F. Musoke Kibuuka

10 **Judge**

9.05.05

10.05.05

Accused in Court

15 Court as before

PW8: Simeo Nsubuga (xtian sworn)

I am a police officer attached to Uganda Police headquartes Katwe. I am ASP, I am 38 years old.

20 In 2002 I was at Masaka Police Station. On 15th October 2002, a police constable called Nandu marched the suspect called Ssekimwanyi to me to record a charge and caution statement. I was in my office. I gave the suspect a chair. The suspect told me he spoke luganda. I introduced myself to him and informed him the offence against him. The offence was murder C/S 184 and 185 of the Penal Code Act.

25 I then I cautioned him that it was his liberty to say something or to keep quiet but that whatever he said I would record and it would be used against him in a court of law. The accused told me he had understood the caution. He told me he wished to say something. I recorded what he told in luganda. I read out the text to him. I asked him whether he had made a mistake he said he had not. He signed the statement I also did.

30

We were only two in the office. Nandu delivered the accused he left. I called him to collect him after recording the statement.

Court: PW8 is show a statement. It has my handwriting. I signed it here. Ssekimwanyi's
5 signature is also here. It is dated 15/10/02.

Ms Okalany: I apply to tender this charge and caution statement recorded by this witness.

Mr. Kamugunda: I have no objection.

10

Court: Have read through it carefully?

Mr. Kamugunda: Yes my lord.

15 **Court:** Marked Exhibit P.4.

PW8: The charge and caution statement was recorded by me at 10.30a.m at Masaka. The suspect was a muganda called Ssekimwanyi Robert of Kisaasi village, Ndagwe, Masaka District – (charge read) (caution also read).

20

*“On 13th October 2002 at around 1600 hrs, I went to the well to fetch some water, Nakalanda Pelegia (the victim) came following me to the well with a Jelycan. When we reached the well, she started abusing me because I had told her to enter the well and collect the water for me. Instead of doing this, she started abusing me because I had told her to enter the well and
25 collect the water for me. Instead of doing this, she started abusing me. For me what I did was to push her into the well. She drowned there. My intention was to kill her because she had abused me. For me I collected water in my Jelycan and went home.*

*At 7.00 p.m. people came to my home in large numbers intending to kill me. Lucky enough
30 police came in time, they fired some bullets in the air in order to rescue me from the mob.*

Police arrested me and took me to Ndagwe Police Post. That is where I slept in the cells until this morning when I make this statement”

When the accused appeared before me he was physically in good health. He had no injuries that
5 I saw.

Ms. Okalany: That is all.

V.F. Musoke Kibuuka

10 **Judge**

10.05.05

PW8: On Cross Examination

I did not receive any complaint from the accused that he had been assaulted by Nandu or
15 anybody.

V.F. Musoke Kibuuka

Judge

20 **Assessors:** No questions.

V.F. Musoke Kibuuka

Judge

10.05.05

25

Ms. Okalany: I now close the Prosecution’s case.

30 **Mr. Kamugunda:** I leave it to Court to decide whether the accused has a case to answer.

V.F. Musoke Kibuuka

Judge

Court: Finding Under S.73(1) of Trial on Indictment Act

5

The prosecution has led evidence in this case from 8 Prosecution's witnesses. I have had the opportunity of perusing the file this morning before the 8th and last witness testified today. I find that the evidence on record makes out a prima facie case against the accused person in this case. He is accordingly called upon to conduct his defence.

10

V.F. Musoke Kibuuka

Judge

Court: Accused is informed of his rights under S.73 (2) of Trial on Indictment Act.

15

Accused: I will give an unsworn statement. I have no witnesses.

Mr. Kamugunda: I pray for an adjournment to enable me discuss the defence with the accused. I suggest Thursday 12th May 2005.

20 **Ms Okalany:** No objection.

Court: Adjourned to Thursday 12th May at 9.00 a.m.

25 **V.F. Musoke Kibuuka**

Judge

10.05.05

12.05.05

30 Accused in Court

Court as before

V.F. Musoke Kibuuka

Judge

5 **Defence Case:**

DW1: Ssekimwany Robert: (Not Sworn)

I am Ssekimwany. I am 16 years old. I was residing at Ndagwe Sub-county in Masaka.

I did not kill Peregia Nakalanda. I know Peregia Nakalanda. I went to the well. I went alone. I met nobody at the well. I did not meet anybody along the way. I fetched the water. I went back
10 home at about 8.00p.m, an LDU called Abdu Mayabuula came and arrested me. I did not know why he arrested me. He did not tell me why he was arresting me. Mayabuula and Akibalu beat me. I was taken to police at Ndeeba Ndagwe. I did not know how I reached police.

In the morning the police officers at Ndeeba police beat me and made me sign a statement. I was
15 brought to Masaka police station. I was made to sign a statement while I was being beaten. The police then brought me to court alleging that I killed Nakalanda Peragia. I did not commit that offence. I did not kill Nakalanda Peragia.

That is my statement.

20

V.F. Musoke Kibuuka

Judge

12.05.05

25 **Ms. Kamugunda:** that is the closure of the defence. We have no witnesses.

V.F. Musoke Kibuuka

Judge

30 **Court:** Adjourned to Tuesday 17th May 05 for final submissions at 9.00a.m.

V.F. Musoke Kibuuka

Judge

12.05.05

5 **17.05.05**

Accused in Court

Court as before

Court: Final Submissions:

10 **Ms. Okalany:**

The accused stands charged with murder C/S 188 and 189 of the Penal Code Act. It is the prosecution's case that on 13th October 2002 the accused murdered Nakalanda Peragia.

The burden of proof lies upon the prosecution Oketh Okale & Others Vs. R. (1963) EA 555.

15 **There are 4 essential ingredients:-**

- a) that death occurred
- b) death caused unlawfully
- c) malice aforethought
- d) that the accused caused death

20

On the element of death prosecution relies upon the evidence of PW4 Aida Nakibuuka who testified about the death of her sister who was well on that day.

PW5 also testified to same effect so did PW6 and PW7.

25 Dr. Ssekitoleko's evidence also supports the evidence that the deceased died. We submit that the deceased died.

On unlawfulness of the death, there is a presumption that all homicides are unlawfully caused unless authorized, R. Vs Gusembizi S/O Wesonge (1948) 12 EACA 65.

30 There is the circumstantial evidence of the witnesses and the confession statement of the accused. Dr. Ssekitoleko saw bruises on the neck of the deceased. There was a fracture at the

base of neck and there was bleeding from the nose and mouth. PW2, also testified to the same effect.

5 PW4 and PW5 testified that the body of the deceased was found in the well where she had gone to fetch water. The well was 7 ft at the deepest end and people who went to fetch water would enter the shallow end. This evidence shows that there was some force used against the deceased to the deep end. This is corroborated by the confession of the accused that he pushed her into the well.

10 Therefore the death of the deceased was not lawful or authorized.

Malice aforethought is defined by S.186 – as intention to cause death.

15 In **Kadiri Matovu Vs. Ug. CA . No.8/85** it was held that Malice aforethought is rarely established by direct evidence. In this case it can be inferred from the injuries sustained by the deceased. It can also be inferred from the well where the body was found in the deepest part of the well – giving the impression that she was pushed there. There is also the accused's own confession that he intended her to die. Lastly, the accused would have known that pushing her into the deepest area of the well would result into death.

20

On the participation of the accused prosecution relies upon circumstantial evidence PW4 saw the accused and deceased go to the well. PW5 Nabutono corroborates that evidence. The accused himself admits going to the well. Although he denies going with anyone else.

25 In his own confession the accused admits that he is the one who pushed the deceased into the well. We pray court to find that the statement amounts to a confession and is true and is corroborated by the circumstantial evidence of PW4 and PW5.

30 We pray court to find that the accused killed Nakilanda Peragia on 13/10/02 and convicts him accordingly. We so pray, my lord.

V.F. Musoke Kibuuka

Judge

17.05.05

5

Mr. Kamugunda:

I agree with my colleague that ingredients 1&2 have been proved by the prosecution beyond reasonable doubt. We contend, however, that the prosecution has failed to prove ingredient, 3 and 4.

10

There is no direct evidence linking the accused with the commission of the offence. It is also important to note that at the time of the commission of the accused was still a child. It is difficult to believe that he duly understood the caution before making the statement. The accused stated in his defence that the charge and caution statement was extracted from him after being tortured at the police post and at Masaka Police Station.

15

This is more evident because the accused never admitted to the people who arrested him. Why did he not confess to those people? In the alternative, according to the charge and caution statement, the deceased had refused to fetch water for the accused and that the deceased abused the accused which led the accused to throw the deceased into the well. I asked court to seriously consider whether this was an act really intended by the accused to kill the deceased. Does this behaviour amount to malice aforethought? I submit that the act by the accused did not intend to kill the deceased.

20

Another last ingredient, that it was the accused who caused death to the deceased. The confession is clear that it was the accused who did – but in his defence the accused denied it. I leave it to court to decide.

25

I pray that court rejects the charge and caution statement. But should court uphold it, I pray court finds that the act that caused the deceased was a rash act by a minor that led to the death of

30

the deceased – malice aforethought has not been proved. I pray court finds the accused not guilty of murder but the lesser cognate offence of manslaughter.

So I pray, my lord.

5

V.F. Musoke Kibuuka

Judge

Ms. Okalany: In reply being a minor does not dispense of criminal liability as stipulated by
10 S.88 of the Children’s Act. The law does not exempt minors from recording charge and caution statements.

The assertion that the accused was tortured before the charge and caution statement was recoded from him should not be accepted. PW1, Dr. Ssekitoleko who examined the accused found him
15 normal on the 14th October 02. The accused attempted to retract the confession during the defence. It was too late to do so. We reiterate the submission that court finds the accused guilty as charged and convicts him. So we pray.

V.F. Musoke Kibuuka

20 **Judge**

17.05.05

Court: Adjourned to tomorrow 9.00a.m, for summing up.

25 **V.F. Musoke Kibuuka**

Judge

17.05.05

18.05.05

30 Accused in Court

Court as before

Summing up notes read and explained

SUMMING UP NOTES:

01. Introduction:

5 Gentlemen assessors. You sat through the trial as the law requires you to do. You listened to all the evidence given by the witnesses on both side of the case. Your duty is to assess that evidence and advise the presiding judge whether the accused person should be acquitted, convicted as charged or convicted of same other cognate offence. The usual cognate offence of murder is Manslaughter C/S 187 and 190 of the Penal Code Act. Usually murder is
10 reduced to manslaughter when the essential ingredient of malice aforethought is not proved but all the other essential ingredients of murder have been proved.

02. Burden and Standard of proof

- burden always upon the prosecution and generally never shifts into the accused.
- 15 - Standard of proof is proof beyond reasonable doubt – all essential ingredients are to be proved beyond reasonable doubt.

03. Offence And It's Essential Ingredients:

- offence is murder C/S 187 and 189 of Penal Code Act.
- Four essential ingredients
- 20 - Death of deceased
- Death resulting from unlawful act
- Malice aforethought accompanying act causing death.
- Participation of accused

04. Evidence:

25 Death of deceased – Nakalanda Peragia

- Conceded by defence as proved beyond reasonable doubt
- However it is still your duty to assess the evidence and arrive at year own conclusion.
 - o evidence of PW4 Aisha Nakibuuka
 - 30 o evidence of PW5
 - o evidence of PW1, Ssekitoleko.

Unlawful Act Causing Death

- evidence of PW4, PW5
- evidence of PW7 Mukabula Ssemambo (who removed the body from the well)
- evidence of PW1, Dr. Ssekitoleko as to case of death, exh. P1, post mortem report giving
5 cause of death as “Head injury due to bleeding from Ear, Nose and Throat, minor bruises
in Neck”
- all homicides unlawful unless authorized or accidental.

Malice aforethought:

- 10 - no direct evidence as no eye witness.
 - Constructive malice (to be deduced from circumstance)
 - Evidence of PW4
 - Evidence of PW5
“nkalaze touch”
 - 15 - Evidence of PW8 ASP Simeo Nsubuga – charge and caution statement exh.P.4.
- Defence: * - Consider defence counsel’s submission that accused was a child when he made it.
- consider – defence of provocation – if charge and caution statement is true yanvuma nti
‘Kkomanyoko’
 - Rules governing application of provocation as defence reducing murder to manslaughter.
20
 - o death must have occurred in heat of passion with no time to cool
 - o provocation must have been caused by wrongful act with or insult
 - o provocation must be sudden
 - o the wrongful act must be of such nature as would deprive an ordinary person of
the class of accused of power of self control.

25 Participation of accused:

- Evidence of PW4
- Evidence of PW5
- Evidence of PW8

30 **Defence:** See Provocation on P.54.

18.05.05

Accused in Court

Court as before

5 **Court:** summing up notes read and explained.

V.F. Musoke Kibuuka

Judge

10 **Mulongo Wasswa:** I will be ready in the morning.

Mr. Muwulya: tomorrow morning

Court: adjourned to tomorrow 9.00 a.m. for the opinion of the gentlemen assessors.

15

V.F. Musoke Kibuuka

Judge

18.05.05

20

19.05.05

Accused in Court

Mr. Kamugunda for accused

Mr. Ssali court clerk

25

Court: Opinions of gentlemen assessors are given as below:

Mr. Muwulya - reads his opinion placed on record.

30

Mr. Wasswa Dominic – reads his opinion which is placed on record.

V.F. Musoke Kibuuka

Judge

5 **Court:** Judgment reserved to be read on Tuesday 24th May 2005 at 9.00 a.m.

V.F. Musoke Kibuuka

Judge

19.05.05

10

24.05.05

Accused in Court

Court as before

15

Court: judgment read and signed.

V.F. Musoke Kibuuka

Judge

20 **24.05.05**

Ms Okalany: Ms Okalany I pray that the accused be remitted to the children's court for sentencing Under Section 100 (3) of the Children's Act Cap.59.

25 **Court:** Does that provision apply to the accused who has been found guilty of the offence today when he is above 18 years. Does the jurisdiction of the children's court apply to him now?

Ms. Okalany: There is a larcener in the law.

30 **Mr. Kamugunda:** I partly agree with my colleague. I believe the proposal of S.100(3) was to enable convicts benefit from that section for offences committed by them when they are still

children. However, as S.100(3) of the Children's Act stands, by the time of conviction, the accused is no longer a child. He does not qualify for the provisions of that section. He is no longer a child now.

5 However, if one looks at the intention of section 100(3) it appears to have been to protect children who commit offences when they are children. The accused was still a child when he committed this offence. Is this court going to sentence this accused because he has become of age, when he committed the offence when he was a child. I believe this court has inherent jurisdiction to decide what to do with him appropriately. It is my humble jurisdiction this court
10 should send him to the children's court for sentencing.

Court: But would the children's court have jurisdiction even to sentence a man who is above 18 years. Section 100(3) differs greatly from 105 of the Trial on Indictment Act which deals with offences committed while the offender is below 18 years.

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V.F. Musoke Kibuuka

Judge

Ms. Okalany:

20 The convict has been on remand since October 2002. we have no earlier conviction.

In determining the appropriate sentence, I ask court to consider the seriousness of the offence which attracts life sentence. A human life was lost at its very tender age at the hands of this convict who could not control his ego. We seek a sentence which would punish this accused and also satisfy the relatives of the deceased. So we pray.

25

V.F. Musoke Kibuuka

Judge

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Mr. Kamugunda:

It is true the accused has been on remand for almost 2½ years. He is still a young man who has just attained the age of 18.

5 I ask court to consider the circumstances in which the offence was committed. It is unfortunate that life was lost. It cannot be regained even if the convict is given life imprisonment. The convict is likely to reform. He is very remorseful. A long sentence may not assist him or society as a whole. We pray for a lenient sentence.

10 **V.F. Musoke Kibuuka**

Judge

24.05.05

Accused: first keeps quiet.

15

Court: Sentence and Reasons:

The accused was below 18 years when he committed the offence. I have considered sending him to Children's court for sentencing but I have found that section 100(3) of the Children's Act would not apply as the convict is already a grown up above 18 years. The law needs reviewing
20 in this particular respect. There is a lacuna which needs to be addressed by the legislature.

I have considered the convicts being a first offender, having spent about 2 and half years on remand and his age of just above 18 years as mitigating factors on his part. I sentence him to imprisonment for 7 years.

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V.F. Musoke Kibuuka

Judge

24.05.05

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