

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO

CRIMINAL SESSION CASE NO. HC-03-CR-SC-76 OF 2004

UGANDAPROSECUTION

Versus

ONGWEYO MATHIASACCUSED

BEFORE: HON. JUSTICE V. A. R. RWAMISAZI-KAGABA

JUDGMENT

The accused, Ongweyo Matias, was charged with murder contrary to sections 188 and 189 of the Penal Code Act. It was stated that in the indictment that Ongweyo Matias, on or about the 12th day of October 2001 at Nakabale village, in Kayunga District murdered Semulimi Arajab.

The accused denied the charge and was represented at his trial by Sserwanga while the prosecution was conducted by David Ndamurani. The prosecution called eight witnesses to prove its case. At the close of the prosecution case, the Court upheld the defence submission of no case to answer, acquitted and discharged the accused under sections 73(1) and 82(6) of the T.I.A. I now give my reasons for the order of acquittal.

In order to succeed in this case the prosecution must prove, beyond reasonable doubt, the following ingredients:

- (a) That Semulimi Arajab is dead
- (b) That he was killed by unlawful act or omission.
- (c) The person or persons who inflicted the injuries causing his death, acted with malice aforethought,
- (d) That it was the accused who caused Arajab Semulimi's death.

See: Uganda vs. Harry Musumba (1992) IKLR 83.

Uganda vs. Kassim Obura & another (1981) HCB 9

It was common ground by the prosecution and defence that the prosecution had proved the first three ingredients constituting the offence of murder. But the defence submitted that the prosecution had failed to prove the participation of the accused in the murder of Arajab.

The prosecution relied on circumstantial evidence to prove the participation of the accused. It is established law that before inferring the guilt of an accused from circumstantial evidence, it is necessary to be sure that there are no other co-existing circumstances which would weaken or destroy that inference. For a conviction to be based on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon other reasonable hypothesis than that of guilt:

See: (1) Kipkering Arap Koske (1949) 16 EACA 135.

(2) Waibi vs. Uganda (1978) HCB 218 (C.A) - Uganda

(3) Musoke vs. (1958) EA.

(4) Tumuheirwe vs. Uganda (1967) EA 328.

The only evidence that implicates the accused in the death of Arajab is that he was seen coming from the direction where the deceased was found murdered with wet clothes.

This evidence is insufficient to sustain a conviction against the accused. Consequently, I found the prosecution had not proved the fourth ingredient of the participation of the accused. Applying the principles pronounced in such cases as *Bhat vs. R. 1957 EA 332 and Oketcho Richard vs. Uganda, Criminal Appeal 26/1995 (S.C.)*, I found the prosecution had not made out a prima facie case against the accused. I acquitted and discharged him under sections 73(1) and 82 (6) of the Trial on Indictments Act.

V. A. R. Rwamisazi-Kagaba

Judge

23/2/2005