

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CASE NO: HCT-00-CR-SC-0122 OF 2005**

**UGANDA :: PROSECUTOR**

**VERSUS**

**BIZIMANA JEAN PAUL :: ACCUSED**

**BEFORE: HON. MR. JUSTICE J.B. KATUTSI**

**JUDGMENT:-**

The accused at the bar BIZIMANA JEAN PAUL alias XAVIER, VAN NYAME is indicted for murder on 9 counts as follows:-

**Count 1:-**

Murder Contrary to Section 188 and 189 of the Penal Code Act.

It is alleged that he and others still at large on the 1<sup>st</sup> day of March, 1999 at Bwindi-Buhoma in Kanungu District ROBERT HAUBNER.

On count 2 it is alleged that he and others still at large on the same date, time and place murdered SUSAN MILLER.

On count 3 it is alleged that he and others still at large on the same date, time and place murdered SUSAN MILLER.

On count 4 it is alleged that he and others still at large on the same day, time and place murdered MARK LINDERGREN.

On count 5 it is alleged that he and others still at large on the same date, time and place murdered MICHELLE STRATHER.

On count 6 it is alleged that he and others still at large on the same date, time and place murdered RHODA AVIS.

On count 7 it is alleged that he and others still at large on the same date, time and place murdered STEPHEN ROBERT.

On count 8 it is alleged that on the same date, time and place murdered JOANNE COTTON and on count 9 it is alleged that on the same date, time and place murdered PAUL ROSS WAGABA.

The first eight alleged victims of murdered were White tourists of American, British and New Zealand Nationalities while the last was a Uganda National.

The facts of this case are simple and concise. On the 1<sup>st</sup> day of March 1999 at about 6.45a.m. a large group of armed men suspected to have been INTERAHAMWE (members of Former Rwanda Army of the Late President HABYARIMANA) attacked Tourist Camps at Bwindi Buhoma in the Impenetrable Forest National Park, firing guns and destroying a lot of property. They set a blaze a number of structure and vehicles. They were also armed with machetes and axe. At the Camp a Park Warder known as PAUL WAGABA was burnt to death. A number of tourists were in the Camp at the time. A Ugandan was ordered to lead these tourists and their captors to the Congo Border. He appeared as PW2. In his testimony he said that on 1<sup>st</sup> March 1999 at about 6.30am. he was at his house resting when he heard the sound of a whistle followed by gunshots. He got out of his house and once out saw a crowd of people armed with weapons. Some members of the crowd were firing their guns. He had a gun, which he too fired. This appears to have attracted the crowd, which surrounded and disarmed him. He was led to a road nearby where he found White people whom he believed to be tourists and ordered to lead the group to A & K Camp. A & K they were lined up and asked to name their nationalities. The captors were speaking Kiswahili and Kinyarwanda. Americans were put on one side with the British nationals. Other nationals were also grouped on one side while he being the only Ugandan was grouped alone. At 9.00a.m. he was called out and asked to lead the group out of the A & K Camp. The White people were left at A & K Camp. He was ordered to lead the armed group towards the Democratic Republic of Congo. He led the group up to Luzabegyero. They reached the Uganda Congo Border

and there they were ordered to sit down.

At about 1.00p.m. a group they had left behind joined them at the Border. But the tourists they had left behind with this group were not with the group. He was ordered to move some 50 metres away and there he found some of the tourists that they had left behind. This time there were only six of them, and were surrounded by armed men. They had been ordered to sit down. Some of these White people did not have their shoes on. He was told that those Whites who were there are those who had managed to walk, that those who had failed had been left behind. One of the captors wrote a letter which he handed to one of the White people telling him to hand the letter to Museveni who in turn was to send it to Clinton. When it approached 7.00p.m. the leader of the group told his group to leave and only leave four armed men behind. Later the four armed men that had been left behind also left the place. He stood up and seeing no armed men around told the Whites to get up and leave the place. He led the Whites back to the Camp. On the back they met members of Uganda Peoples Defence Force who rescued them. On the way to the Camp he saw dead bodies of White people. He did not recognize any of the attackers.

PW3 Emmanuel Twagira was at the material time the District Internal Security Officer in-charge of Rugungiri District. He had under him a man called Gadi Buturo. Around the month of November 1999 he received information of about three people who wanted to surrender with their weapons. On 13/12/1999 Buturo took to him a man called Jean Paul Bizimana now the accused, Buturo introduced the accused as a man who had surrendered with his gun from the Park. The accused told her that he was tired of living in the bush and that he knew those who had carried out the attack at Bwindi. Accused gave him the name of Ntabwoba and others. He stayed with him and used to go with him to the border to see whether they could track down those he had mentioned. All in all he stayed with him in Rukungiri for six months. After six months with him he handed him over to Uganda Peoples Defence Force at Mbarara. PW6 Gadi Buturo testified that he was an Internal Security Officer based at Kihikihi. He came to know the accused in 1999 through his contacts. On 12/12/1999 accused surrendered to him with his gun.

Accused introduced himself as Corporal Jean Paul Bizimana. After accused had given him his background he took him to Rukungiri together with his gun and handed him to the District Internal Security Officer.

PW4 D/ASP Ndungutse testified that he was assigned duties involving to the attack on Bwindi. He accompanied Mr Aisu to Mulago Hospital City Mortuary to assist in the post mortem examination. In all there were eight slain tourists and one Park Warder who had been killed at Bwindi National Park. Four of the bodies were females, and four males. These had been hacked to death. All the white victims had their heads broken. In 2000 he was assigned duties again involving the attack on Bwindi National Park Camp. He was detailed by SAKIRA an Assistant Commissioner of Police to record statements of people who claimed to have witnessed the attack at Bwindi. Among those was Bizimana Jean Paul now the accused. Bizimana was taken to him at the CID Headquarters in Kampala. He recorded his police statement there.

During the course of investigation he liaised with other investigation agencies like FBI and Scotland Yard through Interpol. In 2004 he received information concerning Bizimana now the accused. He looked for Bizimana and eventually found him at Nakivale Refugee Camp in June 2004. he took accused to Kampala and waited for other investigators to arrive in the country. When he was finally interviewed accused appeared to be giving a confession. He therefore decided to take him for an extra judicial statement. Accused was taken to Buganda Road Court Chief Magistrate where he recorded an extra judicial statement.

In an unsworn statement accused stated that he was formerly a member of Rwanda Armed Forces. He denied any knowledge about the charged adding that if he knew anything he would not have come to Uganda. He came to Uganda as an asylum seeker he said. He was interrogated and then set free in 2000. He went to a Refugee Camp where he stayed for four years before he was arrested. He was arrested in 2004 and taken to Kampala where he was taken to Central Police Station where he spent a long

time. He was then removed from Central Police Station and taken to an unknown place which was being guarded by army men. There he was tortured and made to make a statement which he had already been told to make by police. He was later taken before a Magistrate but at that time he did not know he was before a Magistrate. He repeated the statement he had been told not to change after which he was returned to police.

During the hearing the accused said he had made a statement after being tortured. Because of that claim I conducted a trial within trial to determine whether the extra judicial statement that was allegedly made by him was a result of voluntary and free will made without duress or expectation of favours. The Chief Magistrate who had recorded it and who speaks the language of the accused is one of the finest Magistrates we have in this country. He testified in the steps he made before recording the statement. The only thing that can be followed in the procedure is that he took the accused in the court hall for fear of being attacked by the accused whom he had learnt was an ex-combatant. This fear sprang from experience that had been gained out the same place the Buganda Road Court where a would be volunteer into making an extra judicial statement had attempted to strangle a Magistrate who was recording his statement. However the Learned Chief Magistrate swore that this court hall was on the first floor of the building empty at the time and without anybody peeping in. That only himself and the accused were the only occupants of the court hall at the time. He swore that he introduced himself to the accused as a Magistrate and that the accused appeared relaxed and at ease. I had no slightest reason to doubt what the Chief Magistrate gave in his evidence. After all he had nothing to gain by telling lies. There was then the evidence of the doctor who physically examined the accused. He swore he did not detect any sign of injury fresh. It became crystal clear to me that the claim of torture was an afterthought designed to derail the course of justice. Strictly speaking the extra judicial statement in question did not amount to a confession for the accused was exculpating himself from liability in the murder of the tourists. In it he was only admitting being a member of the gang that attacked Bwindi-Buhoma Park. The relevant part of that extra judicial statement goes as hereunder.

*“I was born in 1974. My parents were Nkiramihigo Rudoviko and Mukabunangu Domine. I grew up in Lukondo in the District of Kigali. After leaving school I worked as a butcher at Gikondo. I joined the Army (EX-FAR) in 1992. I was posted to Byumba and later to Rehengiri.*

*In 1994 after the RPF had captured state power I fled to Zaire (DRC). In Zaire I stayed at a refuge Camp at Katali. As I was a soldier I fled with my gun. In Zaire I remained with my gun. I never handed it over to the authorities there.*

*In 1997, the RPF attacked our Camp and some of us fled to Masisi others to Kinshasha and some to Congo Brazaville. Our leader in the fallen army informed a group called ALIR which was based at Masisi and they ordered us to return to Rwanda by force of arms. We passed through Birunga (mountains) arrived in Ruhengiri and continued in the nearby communes. We found against RPA but we were defeated and we fled back to Zaire. In Zaire we camped at a place called Bwito. I was in a company called SOIRI which was headed by one Ntabwoba who was desputised by Sgt Nsengoyunva. Later we left Bwito and went to Bwishu where we stayed for sometime.*

*Our leaders started planning but we did not know what their plans were. On one evening the platoon commanders told us that no soldier was supposed to go away as we had some work to do. We did not know that work we were supposed to do. We knew that our work was to fight but we did not know where the battle was going to be. At night around 9.00p.m. we were ordered to move. We did not know where we were going. We only found ourselves inside forest we did not know. We were simply moving but the guides were Congolese. However one of our leaders Nsengoyunva knew the way as he had used the route when he used to smuggle coffee. As we were in the forest we came to a road. We walked for a short distance along the road. Later an order came from the front telling us to halt. We were then told to rest and wait*

*for a day break.*

*In the morning were briefed of our mission. We were told that there were tourists together with Uganda soldiers in the forest. Our mission was to attack the Uganda soldiers and loot guns from them. We were told that all of us were to engage in the battle except some few who would remain behind as a rear guard. In my platoon the leaders selected three people to man the rear guard and those chosen included myself, Ngungutse and Gakiga .... I had a gun of the type .... I remained behind with my colleagues. The others proceeded. Later I heard gunshots but could not see what was taking place. After about 30-35 minutes the gang returned. They were putting on nice clothes e.g. jackets normally put on by Whites, watches and some had cameras. They also came with white people who were walking barefooted. Another the White people there was one who was complaining about his eyes and he shouting that his eyeglasses had been removed from him and he could not see properly. That one was released. Some of the soldiers from the front were saying that there were some French nationals whom they had released.*

*Our leader then ordered us to retreat. At that time our leader called Ntabwoba gave an order to a section commanded by Captain Mandevu that any White man/woman who became tired should be take behind and killed without the notice of the other whites. Ntabwoba said "I am going to put up a notice to the effect that the USA is helping one ethnic group at the expense of mother" I was now in the platoon that was in front. In Captain Mandevu's section there were three soldiers by the names of Havugimana, Karube and Detire. I heard the three saying that they had killed some people. We went back to Zaire. We climbed a hill. As we were at the top of the hill I had our colleagues who were behind saying that all Whites should go back. We went back to Congo where we had earlier camped at Bwito. After a day we were told that Uganda Peoples Defence Force was after us. We left the place passed via Kinyandago. We crossed a forest at Rutshuru and went back to Bwito. After some days I was in*

*another company called “Hekaru” which was commanded by Captain Sankara. I was in KLAP platoon. I then started wondering as to what I was up to. I saw that I was leading no where. I told my close friends that this war was not going to take us anywhere. My friends agreed with me and we started planning of how to escape so that we could settle where we could neither still or kill. The problem was where to pass. Later our commander told us to go on a mission to steal drugs from Bwisha. I knew that place and I told my friends that we should escape during that operation. At Bwisha we duly carried out the mission and we stole the drugs. The section commander, Sgt Saleman ordered us to invade homes and we loot food and drinks which we did. I told my friends that we shall escape at the time for rest.*

*When we were resting I was ordered to write down the names of soldiers as the followed each other in line. After the rest of our colleagues had taken asleep, I, Imanazibayo and Sandaka escaped. We passed through a forest. During our trek we fell sick. I told my friends that we should report ourselves to the Uganda authorities. My friends said “no if we go they will kill us” There was a local man called Saidi Ntampaka who was burning charcoal in that forest. I befriended him and asked him whether he knew any high-ranking Ugandan soldier whom he would inform that there was some one in forest who wanted to report himself. He told me that he would get one. I told my colleagues about it but they were not interested. I decided to go alone. Saidi came and told me to go and find him in his garden on a Thursday night. At around 2.00a.m. I got my gun to and went to look for Saidi. I arrived at Saidi’s before day break. We went to Saidi’s home and waited for day light. In the morning Saidi rode a bicycle and went to the market. It was a Friday. He came back with another person. The problem now was where to put my gun. They brought a box and I put my gun inside. Saidi carried me on his bicycle and went to Ishasha at the border. The other fellow took my gun to his home. I was shown where to rest and eat. That day the Government Internal Security Officer’s home on foot from where we went to the sub-county Headquarters. At the sub-county*



*headquarters the Government Internal Security Officer got a motorcycle and he took me to the District Internal Security Officer at Rukungiri. I fell sick and was taken to a Doctor where I was treated and later transferred to Mbarara – Makenke Barracks. From Mbarara I was brought to Kampala where I stayed for some time. A White man came and photographed me together with some Congolese who had also been brought. We were staying in Namirembe Guest House from where we were taken to Calendar Guest House where I was interrogated by some Whites. From Kampala I was taken to a Uganda Peoples Defence Force Barracks at Kihotoye Congo. When Uganda Peoples Defence Force left Congo I went with them. I stayed with one Sgt. Natukunda Edward. Later I was handed over to Captain Lumumba. >From there I was taken to the office of UNHCR where I was registered. I was given two documents and told to take one of them to the Red Cross Officers at Mbarara. At around 4.00p.m. I was taken to a refugee camp where I was handed over to the commandant who also sent me to the refugee reception centre. I settled in the refugee camp. I married a woman and we got children. On 17/6/2004 I was called and introduced to a police officer whom I later came to know as Ndungutse. I was handcuffed and taken to Mbarara Central Police Station where I spent a night in the cell. The following day I was brought to Kampala Central Police Station where I spent three weeks. Yesterday they took me to talk to some Whites. I did not kill any White person nor did I see any dead body of the same”*

I have reproduced the entire statement above, to show that:-

- a) It is very detailed and so detailed as to leave no doubt on any ones mind that the maker knew what he was talking about.
- b) It is based on personal knowledge of the maker giving a brief history of his birth growth to the time of his arrest which tends to show that it cannot have been the work of a third party and removing the claim by the accused person that he was given what to say and ordered not to alter what he had been told.

I did warn the assessors just as I am warning myself now that although there is no rule of law which requires corroboration of a retracted statement, it is a salutary rule of practice to seek corroboration of a retracted statement. I warned the assessors just as I am warning myself again now that great caution should be exercised before relying on corroborated retracted evidence.

Are there some corroborative evidence in this case. I think with respect that the evidence on record is replete with such evidence of which the following is but examples.

In his evidence Masinde Geoffrey who was at the scene at the time of the attack stated the attack took place at about 6.30a.m. in the retracted statement it is stated.

***“Later an order came from the front telling to halt. We were then told to rest and wait for the day break. In the morning we were briefed of our mission. We were told that there were tourists together with the Ugandan soldier in the forest our mission was to attack the Ugandan soldiers and loot guns from them.”***

In his evidence PW3 Emmanuel Twagira testified that

***“Around the month of November 1999 I received information of three people who wanted to surrender to us with their weapons.”***

In the statement the maker states:

***“I, Imanazibayo, and Sandaka escaped ..... I told my friends that we should report ourselves to the Ugandan authorities...”***

These were three people. In his evidence Twagira continues to say:

***“Buturo brought to me a man called Jean Paul Bizimana. He brought him on a***

*motorcycle....”*

In the statement the maker states:

***“At the sub-county headquarters the GISO got a motorcycle and took me to DISO in Rukungiri.”***

In his evidence Twagira the District Internal Security Officer at Rukungiri goes on to say:

***“After 6 months I handed Bizimana to Uganda Peoples Defence force in Mbarara for further management.”***

In the retracted statement to maker states:

***“At Rukungiri I fell sick and I was taken to a Doctor where I was treated and later transferred to Mbarara-Makenke Barracks.”***

In his evidence PW4 Ndungutse stated:

*“..... on 2004 I received information concerning Bizima. After receiving this information I started tracking Bizimana. This time he was a suspect. I arrested Bizimana from Nakivale Refugee Ca,p ..... I brought him up to Kampala after spending a night tat Nakivale and Mbarara.”*

In the retracted statement the maker states:

***“on 17/6/2004 I was called and introduced to a Police Officer whom I later came to know as Ndungutse. I was handcuffed and taken to Mbarara Central Police Station where I spent a night in cells.”***

In his evidence Gadi Buturo PW6 states:

***I used my informers to lure the Interahamwe to me. I promised to guarantee their security. Out of the three only the accused came to me. .... I hired a vehicle to take us to Kihihi.” That day the Government Internal Security Officer of Kihihi brought a vehicle and I was brought to Uganda. At Kihihi we went to the Government Internal Security Officer’s home on foot.”***

It is an irrefragable fact that Gad Buturo was the Government Internal Security Officer talked about here. I would go on and on to cite examples of corroborative evidence on record. Suffice it to say that I leave no doubt in my mind that the retracted statement is copiously corroborated. I leave no doubt in my mind that the maker of the retracted statement is none other than the accused at the bar. The evidence on record leaves no doubt even in doubting Thomases that all the deceased named in the indictment were killed by members of the gang that attacked Bwindi-Buhoma on that fateful morning of 1<sup>st</sup> March 1999.

It is trite to say that if a statement out of court amounts to admissions, great weight is attached to them on the assumption that what people say adverse to their case is probably true. In this case circumstantial evidence points irresistibly to the accused having been a member of the gang aforementioned. It is an irrefragable fact that he surrendered to the Ugandan authorities at Kihihi. I accept the evidence of Twagira who at the time was the Internal Security Officer at Rukungiri that for sometime after surrender accused used to go with this officer at the border areas with the Congo Democratic Republic where efforts were being made to track those he had named as having been the leaders of the gang above mentioned. It was when all efforts to trace any of these had failed that accused was handed over to Uganda Peoples Defence Force at Mbarara. This circumstantial evidence is sufficient to corroborate what is stated in the retracted statement. Accepting as I do that the accused the bar was a member of the gang about described, what is his position in law? I think the answer is to be found in section 20 of the Penal Code Act. That section runs as here under following :-

***“When one or more persons from a common intention to prosecution an unlawful purpose in conjunction with one another, and in prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purposes each of them is deemed to have committed the offence.”***

Does this section sufficiently cover the accused at the bar? With respect I think it does. In case of EZERA KYABANA MAIZI AND OTHERS Vs R [1962] EA 309 (CA) the court while considering section 23 of the Penal Code Act (TANGANYIKA) which is very similar to our section 20 of the Penal Code Act above cited, observed that, in a charge of this nature the essential issues which had to be determined were:-

- 1) Whether the murder of the deceased was committed in the prosecution of a unlawful purpose of the gang and was a probable consequence of the prosecution of that purpose and;
- 2) Whether the individual (appellants) have been shown to have been members of that gang sharing the common purpose. In this case there can be no doubt that the members of the gang shared common purpose to attack Uganda soldiers in the forest and to loot was arms as stated in the extra judicial statement made by the accused at the bar. There can be no doubt further that this purpose was to be achieved by subduing and overcoming with violence any resistance by the Ugandan soldiers in order to effect the purpose. There can be no doubt that murder was a probable consequence of the prosecution of that common purpose. In view of the nature and circumstances of the planned attack, the inference is irresistible that all the deceased persons were murdered in the prosecution of the planned purpose: any other hypothesis can, I think, be safely excluded. In those circumstances each member of the gang was guilty of murder. Accused cannot be heard to say that he was at the rear guard.

The accused at the bar did not advance the plea of compulsion under section 14 of the Penal Code Act. That section runs as follows:-

***“A person is not criminally responsible for an offence if it is committed by two or more offenders and if the act is done or omitted only because during the whole of the time in which it is done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offenders or offenders instantly to kill him or her or to do him or her grievous bodily harm if he or she refuses; but threats of future injury do not exercise any offence.”***

There is no evidence on record to show that the accused at the bar was not at any moment during the attack on Bwindi-Buhoma and during the retreat therefrom under instant threat or grievous bodily harm. But even if such threat existed there is ample evidence that there were plenty of avenues of escape if any member of the gang so desired.

For the reasons I have endeavoured to give herein above I am not inclined to the opinion given by both assessors that prosecution failed to prove a case against the accused. I find the accused at the bar guilty as indicted on each of the 9 counts and convict him accordingly.

**J.B.A. KATUTSI**

**JUDGE**

**9/01/2006.**

Mr Byabakama for state.

Bigano interpreter.

Judgment read and signed.

**J.B.A. KATUTSI**

**JUDGE**

**9/01/2006.**

**16/1/2006:-**

Mr Byabakama Mugenyi for state.

Counsel for accused absent.

**Court:-**

Let accused say something in mitigation.

**Accused:-**

I pray for leniency. I did not kill any of the victims.

**J.B.A. KATUTSI**

**JUDGE**

**16/01/2006.**

**Mr Byabakama:-**

Accused is aged 32 years. He was arrested around 2004. has been on remand for 1 ½ years. Nine victims were murdered in this case. Eight of those were no Ugandans who had traveled from other countries as tourists in our country. While the accused his group killed, the victims were innocent. The victims were innocent defenceless people not armed. Yet they were killed in most horrific manner. The death shocked their families. This death damaged the image of this country. The accused had an opportunity to leave the gang. Given the circumstances the could should impose the maximum sentence under the law.

**SENTENCE:-**

In Constitutional Section No. 6 of 2003 the Constitutional Court ruled and declared that Section 189 of the Penal Code Act which prescribes a mandatory death sentence is inconsistent with Article 21, 22(1) 24, 28, 44 (a) and 44 (b) of the Constitution. The court ordered that in capital offence the trial court must, before sentencing the convict afford him/her a hearing on mitigation of sentence.

I have heard all that the convict in this case had to say on mitigation of sentence.

It is fair to observe that the convict left the forest of his fine will and surrendered himself to the Ugandan authorities. The act of surrendering to the authorities seeks volumes on his behalf.

It would be an evil for the country to which the convict surrendered this clearly demonstrating that he had renounced all and activities and was not transferred person to punish such demonstration with a sentence of death.

I not with appreciation that some of the victims were from countries where death penalty is regarded as harsh and inhuman. It would be a double tragedy if their spirits were to be disturbed by a sentence of death. The spirits of these victims need to be appeased by a sentence that the victims would have viewed as fair and civilized.

It should ever be none in mind that this man has in mind that this man has been found guilty because he was a member of the gang that killed the tourists. There is no evidence that he did by his own hand kill any of the victims. By his very act of surrendering to the authorities here demonstrated that he no longer wished to be a party to evil doing. All in all I deem a sentence of 15 (fifteen) years on each count to run concurrently to be on the side of justice. I could however urge the state to appeal against the sentence so that the law in subject is settled.

**J.B.A. KATUTSI**

**JUDGE**

**16/01/2006.**