THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA CIRCUIT
HOLDEN AT MUBENDE

HC. CR. SC. NO 513/09

UGANDA……PROSECUTOR

VS

MUWONGE GEORGE……ACCUSED

BEFORE HON. LADY JUSTICE FAITH MWONDHA

JUDGMENT

The accused person was indicted on a charge of murder C/S 188 and 189 of the Penal Code Act. It was alleged by the prosecution that on the 16th/03/06 at Mutuka village in Mubende District, the accused Muwonge George murdered one Namirimo Gladys.

As usual like in all criminal cases the burden lies on the prosecution to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home. The burden of proof is always on the prosecution and it does not shift, See *Woolmigton v. DPP [1935] AC 462*. The accused has no obligation to prove his innocence.

In a murder charge there are four ingredients to be proved to that standard;

1. that the deceased is actually dead
2. that the cause of death was unlawful
3. that the unlawful act/omission was accompanied by malice aforethought or intention to kill
4. that the deceased participated in the unlawful act/omicron

As far as the first ingredient is concerned all prosecution witnesses including the defence testified to the effect that Namirimo was actually dead. So that ingredient was proved.

As for the second ingredient of the cause of death being unlawful act/omission, the law was well settled in the case of *Gusambizi s/o Wesonga v. Uganda [1951] 15 EACA.* It was stated among others that every homicide is presumed to be unlawfully caused unless if its justified, excusable or accidental. The medical evidence revealed that the deceased was hit on the head and the skull was damaged which caused brain shock because of the bleeding and that resulted /or caused death. I was satisfied that the cause of death was as a result of unlawful act/omission. So this ingredient was proved also.

On the third ingredient of the existence of malice aforethought S.191 of the Penal Code Cap 120 is very clear. It provides that malice aforethought shall be deemed to be established by evidence providing either of the following circumstances;

a. an intention to cause the death of any person whether such a person is the person actually killed or not or
b. knowledge that the act or omicron causing death will probably cause death of some person whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not by a wish that it may not be caused.

And in the case of *Uganda v. Kato and three others[1976] HCB 204*, Hon Ag Justice Sekandi as he then was held among others that, "it's the duty of the court as far as possible to examine all the surrounding circumstances of the case including the actions of the accused, the conduct which precedes and very often the conduct which follows the killing in particular the way the killing was carried out, the nature, the number of quality of injuries, the nature and the kind of weapons that was used and then ask itself whether it is satisfied that at that time of the killing there must have been an intention to kill. If the court is satisfied that the intention exists then the accused must be convicted of murder."

The prosecution case depended entirely on circumstantial evidence as there was no eye witness to the murder. Circumstantial evidence is evidence of surrounding circumstances which when considered together leads to only one irresistible inference and that of the guilt of the accused person.

In the case of *Simon Musoke v. R [1958] EA 715* then Taylor on evidence (11th Edition) at page 74 it was held that in a case wholly or largely depends on circumstantial evidence court must before deciding on a conviction find 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. While Taylor on evidence as quoted above states that, "the circumstances must be such as to produce moral certainty to the exclusion on every reasonable doubt." Also in *Teper v. R [1952] AC 489* it was held that before drawing the inference of the accused guilt from the circumstances of evidence court must be sure that there is no other co-existing circumstances which would weaken or destroy the inference.

The prosecution brought evidence of PW1 that on the day she could not remember in March of the year she did not remember she looked for her sister (deceased) who was married to the accused. That she found her sister dead buried in her (deceased) garden on an anthill. That before discovering her she went together with the LCI chairman after she had reported to him about the disappearance of her sister. That before she went to LCI she first went and asked the accused where her sister was and the accused told her that the deceased had gone to visit her other children. That the witness found when the accused had taken poison. That she went to Kiganda where the accused had told her that that's where her sister (deceased) went where her other children were. That she reported to chairperson LCI and they went to police who gave them a letter to go and search for the body. That together with other village mates searched for the body and found it buried on an anthill. That the police at Kasanda told them that the accused had told them where he had hidden the body and that is where the village mate including the witness found it. The body was found before the police officers from kasanda told them. That one Micheal Bukenya the brother to the accused told her that the accused had poisoned himself because the deceased had gone to see her children she had with a different man. That this is what made her go to their home (accused and deceased). That their home was only 30 meters away. That the accused was taken to Kasanda where he was treated after he had taken poison. That she did not see him take poison but his brother is the one who told her that the accused had taken poison.

PW2 the chairperson of LCI said that he knew the accused person as he was staying on the neigbouring village. That on the 19/03/06 he saw PW1 come with her son and other people. That they gave him a letter from Nakatete police post. That the letter was requesting him to assist PW1 and her relatives to look for the deceased who was their relative who was being believed to have been murdered. That the accused and the deceased used to cultivate in his area of jurisdiction. That they went in the morning on the 20/03/06 for the search and both LC's were involved. That as they carried out the search, they reached a place in the garden of the accused and the deceased. That at a place where the anthill had been dug, the soil there was very soft as the village mates stepped on it. That they got a hoe and dug a little bit and they saw clothes which PW1 identified as clothes belonging to her sister the deceased. That he ordered them to stop there so that they go to report to police. That he wrote a letter to police and called the owner of the Kibanja who had given them (deceased and the accused) permission to cultivate his land. He was called one Muwebya Genatio. That they went to police at Nakate which had written a letter requesting him to help the residents carry out a search. That when they gave the report and went back to the scene he met one Kiirya a police officer from Kasanda. That Kiirya told him that the accused had directed him where the body was where he put the deceased after murdering her. That the accused had directed them where he had hidden the hoes he used. That there was a hoe which had hair on it. That later the police came with a doctor and residents were directed to exhume the body. The sister (PW1) of the deceased recognised and identified the body. The body was examined and the relatives were allowed to burry on 20/03/09.

In cross examination the witness stated that they (LCI and others) went to police Nakatete after they had discovered the body. That when he came back to the scene he found when Kasanda police had arrived. PW3 was D/IP Kiirya who was at the time of the commission of the offence OC CID Kasanda. He knew the accused person who was a suspected for having murdered his wife and when he asked him about it he denied. He was therefore detained. The witness stated that he was organising to go to court, then the accused called him and told him that he murdered his wife and hidden/buried her in an anthill. That when he was going to the scene of the crime, he did not go with him for fear of mob justice. That he proceeded to the scene with his detectives. That before they arrived they were with residents who had discovered the

body who told them that the body had been discovered. The body had been discovered in the deceased and accused garden. That he saw the body of a woman decomposing. That he went and asked Dr Wagamba who came and carried out a post-mortem. The body was recovered from the anthill and examined. He said that the accused had told him that he had used a hoe and one had a broken handle. That the hoe was rusty. That he had directed him where the hoes had been hidden. He had covered it with the grass he had cut. He told court that he did not come with the accused to the scene because the accused had told him that the residents were suspecting that he could have killed his wife, since he had told them that his wife had gone to Kiganda to cultivate food for the other children but she was not there. That he made a sketch map/plan of the scene on the 20/03/06. The same was well marked showing the features which existed at the scene of the crime photographs of the deceased (dead body) were taken. The sketch plan was tendered as exhibit and marked EXP 1 and EXP 2. The accused had grown onions on the anthill where he buried his wife and they had germinated. The hoe with a broken handle was tendered or shown to court for identification purposes. In cross examination the witnesses reaffirmed that it is not him who instructed for the search and he was not aware of those instructions since the case originated from Naketete police post. That he went to the relatives of the deceased who told him that the body had been discovered from where it was hidden. He also reaffirmed that the hoe with a broken handle was found. And they were three hoes. PW4 the doctor who carried out the post-mortem examination on the request of D/AIP Kiirya. The body was of an African female which was identified to him by PW1 one Nanyombi Harriet (PW1) of kiganda as that of one Namirim Gladys. She identified the bisuti as one which belonged to the deceased. It was in a decomposing state and was in a garden. That had been wrapped in a lesu. There were no weapons nearby. There was a fracture on the frontal bone and the right eye had been damaged. The cause of death was a head injury most likely caused by a hard object like a hoe leading to brain damage and shock. It was a body of a young adult female in her reproductive period. The report was tendered and marked EXP3.

PW5 was a police officer at Kasanda police post. He said that he knew the accused Muwonge George who was brought from Nakatete police post on the 19/03/06. That he asked him if he murdered his wife but just denied. That later they proceeded to

Kitadooba and they arrived when the residents had discovered the body from where the accused had directed the D/AIP. That they looked for the hoes which he had covered with the grass he had cut and they recovered them too. One hoe had a broken handle and they were three hoes. They brought the hoe with a broken handle as an exhibit. That it was exhibited by the exhibit officer. The witness identified it to court since he is the one who recovered it. He also identified the exhibit sheet which was written by one Nabwire and he said that he knew the handwriting. This was merely identified since it had not been signed but he said it was written in his presence. He handed it over to SPC Kabogoza who was an exhibit store keeper. These exhibits were not tendered as exhibits but court took judicial notice of them since they were identified by an officer who recovered them. There was a prima facie case established by the prosecution to require him to give his defence. In his defence he gave an unsworn statement. He stated that on the 16/03/06 he woke with the deceased (his wife) to go and plant beans. That the garden was one and a half miles away. That he got ready with the bicycle so that they could go. But when he asked his wife (deceased) about the beans she said they were not enough. That he went to buy more beans in a market and he left the deceased going to the garden on foot. That when he came back he found when the locks of his door were broken. That when he got in the home to see if anything had been stolen he found that there was nothing. That he looked where she normally put food for him as he was hungry and he ate. That he suspected that she had gone to her sisters place. That she went to his sister in law to find out if she was there because he felt that maybe she had lost the keys. That before she reached her sister in law place he felt weak and dizzy and went at the neighbour of the sister in laws home. That he collapsed. That he gained conscious when he was in hospital on the 17/03/06.

That when he was at home PW1 came and asked her where her sister was and that he told her that he left her going to plant beans and that he did not know where she was. That PW1 said that the matter had to be reported to police. That she said that all of them go back and when they reached police PW1 and other people told police to detain the accused and PW1 and the others went to search. That PW1 and the other people she was with left without a letter. He denied having told anyone that he murdered his wife.

After careful consideration of the evidence as given by the prosecution, I found that the accused was merely telling lies and those lies just went to strengthen the prosecution case which was already strong. He was fabricating evidence like he said that they were going to plant beans and they were ready to go because he had already organised the bicycle. I found it difficult to believe that it was at this time that it came to his knowledge that the beans were not ready and had to leave his wife to go on foot for a distance of one and a half miles. I also find it strange and difficult to believe that he could come back and found his wife he had left going to plant beans in the garden not at home and instead of going to the garden, he sits, looks for food and eats. I find it unbelievable that he even attempted to go to PW1's home and yet when PW1 testified her testimony about the whereabouts of the deceased was not shaken. There was no cross examination. The evidence of PW3 D/IP Kiirya was so plain and simple, he told court that the accused himself told him that he had murdered his wife with a hoe and buried her in an anthill. That he used a hoe whose handle got broken. He even directed them where the body was. This evidence was so cogent. It was not shaken at all by cross examination and the only inference is that its true.

PW2's evidence about recovering/ finding the dead body buried in that particular spot was so clear and this was by PW3 when he met them and narrated what the accused had told him, in fact for PW2 and the residents had not discovered the hoes and yet evidence is that they turned the grass but did not see anything. The hoes were found when PW3 came and they looked where the accused had told him that he put the hoes. Indeed they were three hoes and the accused told them that he used the hoe which had a broken handle. This evidence was so irresistible that the facts surrounding could not point to something else but the guilt of the accused.

The medical evidence PW4 in the post-mortem report revealed that the body was decomposing when it was examined on 20/03/06 and this was the day he examined it. The accused last saw the deceased on 16/03/06 and where he sought she had gone she was not there, so the only person who had to know was the accused person. There is evidence that the accused told his brother that his wife went to see the other children, when did he know that that's where she went and yet he left her going to plant beans? (the fact that he even attempted to take his own life points to his guilt cause he did it most likely after he had killed his wife). Though it not in evidence it could be that

after killing and burying his wife he went to buy poison in the market. His conduct explains it when he allegedly came back from the market (per-biennium).

The accused was just feeding court on a pack of lies which could not shake the prosecution case. I was satisfied that the third ingredient had been proved also. There was irresistible circumstantial evidence which only pointed to the accused's guilt.

The assessors in their opinion which was jointly given advised me to convict the accused on the ground that the prosecution had proved its case beyond reasonable doubt.

I agreed with them entirely for the reasons already given in the judgment. The prosecution had proved its case beyond reasonable doubt. I therefore find the accused guilty of the offence of murder his wife, I therefore convict him accordingly as charged.

Judge

29/09/09

Judgment delivered
Accused present
Amina for State
Gumisiriza for defence

Previous record

Nil. He is considered as a first offender but the offence the convict is convicted of is serious and carried a maximum sentence of death. I pray that a deterrent sentence be given.

Allocutus

The convict is a first offender. He has been on remand for close to four years. He even wanted to punish himself by wanting to commit suicide. He has children who have lost their mother, we pray that a lenient sentence can be given so that he can go and look after his children.

Court

The convict is a first offender who has been on remand for close to four years. The maximum sentence of this offence is death. I shall take the period he has been on remand in account and he is sentenced to life imprisonment.

Judge

29/09/09

RA explained

Judge

29/09/09