

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CR-SC-106-2008

UGANDA.....PROSECUTOR

VERSUS

NAMATAKA MARY.....ACCUSED

BEFORE: THE HON. MR. JUSTICE E.K. MUHANGUZI

RULING

The accused, **Namataka Mary**, was indicted for murder contrary to sections 188 and 189 of the Penal Code Act, Cap.120. It was alleged that she, on 30.8.2007 at Bumwambu village in Kapchorwa district murdered **Grispus Muniala**.

On 27.01.2009 when the accused was arraigned on the indictment she pleaded not guilty. In order to prove the case against her the prosecution adduced the evidence of three witnesses but after two fruitless adjournments the prosecution failed to secure the attendance of its crucial witnesses and on 24.3.2009 the prosecution offered no further evidence, which marked the closure of the prosecution case. **Mr. Magirigi**, learned counsel for the accused, left court to make the necessary ruling as to whether the prosecution had made a *prima facie* case against the accused to warrant putting the accused on her defence.

Under section 73 of the TIA, Cap. 23, the Court has a duty to consider the evidence on record so far and determine whether there is sufficient evidence that the accused committed the offence in order to put the accused on his/her defence or to acquit him/her in case court finds that the prosecution has not established a prima-facie case against the accused.

In this country every accused is presumed to be innocent until he/she is proved or he/she pleads guilty. See Article 28 (3) (a) of the Constitution. Since in the instant case the accused pleaded not guilty, it follows that he has to be proved guilty in order to rebut the presumption of innocence in her favour. The duty to prove an accused guilty lies upon the prosecution who must prove the case, at this stage of the trial, to the standard of a *prima facie* case. That is the standard at which a reasonable tribunal, properly directing its mind on the law and evidence, will convict if the accused offers no explanation or defence. See:- **Rananlal T. Bhatt v. R, [1957] EA 332**, in which the Eastern Africa Court of Appeal stated that a *prima facie* case cannot be established by a mere scintilla of evidence or by any amount of worthless discredited prosecution evidence.

The offence of murder which is the subject of this case consists of four essential ingredients each of which the prosecution must prove in order to prove the offence. Failure to prove any of these essential ingredients amounts to failure to prove the offence. See: - **Woolmington v. D.P.P. [1935] A.C. 462**.

The four essential ingredients are, namely:-

1. Death of the person named in the indictment;
2. unlawful cause of death;
3. malice aforethought on part of the killer;
4. Accused being the cause of death.

See:- *Uganda v. Kassim Obura*, [1981] HCB 9.

Court has carefully considered the evidence of the three prosecution witnesses. PW.1, **Jennifer Nadunga** and PW.2, **Gomei Boniface** testified that they knew the accused very well. That they knew her to have had a child but on seeing her without a child they together with one **Madaya Caliste** arrested her and interrogated her until she led them to a pit latrine at **Budali**'s home where a body of dead child was retrieved. PW.3, **Kisiro Francis**, the chairman of Bumwambu village testified that he witnessed the retrieval of the dead body of a child from the home of **Budali** on 30.8.2007 after the accused had led people there.

Court has noted that much as the accused led the witnesses and other people to the pit latrine where a dead body of a child was retrieved, not a single prosecution witness identified the body as that of the person named in the indictment i.e. **Crispus Muniala**. In the circumstances the first essential ingredient, namely:- death of the person named in the indictment has, in court's view, not been proved and court so finds.

Regarding the second essential ingredient, namely:- unlawful cause of death, court is mindful of the legal presumption that all homicides, unless accidental or authorized, are unlawful. See:- *Gusambizi S/o Wesonga v. R (1948) 15 EACA 65*. The fact that in the case before court now the witnesses (PW.1 and PW.2) saw the accused with the child and after a short time saw the accused without that child and after interrogation the accused led the witnesses to the pit latrine where the dead body of a child was retrieved all strengthen the presumption of unlawful cause of death. However, since court found earlier that there was no evidence showing that the dead body was that of the person named in the indictment court finds that the unlawful cause was proved in respect of that unidentified body but not in respect of the person named in the

indictment. Consequently court finds that prosecution also failed to prove the second essential ingredient of the offence.

Regarding the third essential ingredient of the offence, court finds the circumstances surrounding the death pointing to malice aforethought in terms of section 191 of the Penal Code Act, Cap.120. However, since the dead body that was retrieved from the pit latrine was not proved to be that of **Crispus Muniala** (the person named in the indictment) the malice aforethought which was proved was not in respect of the victim in the case before court now. In the premises prosecution also failed to prove the third essential ingredient of the offence.

Regarding the fourth and last essential ingredient of the offence, namely:- the accused being the person who caused the death, court finds no evidence of cause of death by anybody at all let alone by the accused. As stated above earlier court also finds no evidence that the dead body retrieved from the latrine was that of the person named in the indictment. In the premises court finds that prosecution has also not proved the fourth and last essential ingredient of the offence.

Consequently, court finds that the prosecution has failed to establish a *prima facie* case against the accused to warrant putting the accused on her defence. Accordingly, court finds the accused not guilty, acquits her and sets her free forthwith unless she is held on other charges.

E.K. Muhanguzi
JUDGE
25.3.2009

25.3.2009

Accused present.

Mr. Magirigi for accused.

Ms. Ogwang State Attorney for State.

Wanale Court Clerk.

Ms Ogwang: Case is for ruling and we are ready to receive it.

Court: Ruling delivered, signed and dated.

E.K. Muhanguzi
JUDGE
25.3.2009