

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
HCT-00-CR-SC-0426-2010

UGANDA.....PROSECUTOR

VERSUS

- 1. NKULUNGIRA THOMAS ALIAS TOM }
2. SSEMPIJJA FRED }ACCUSED**

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The two accused persons in this case, Nkulungira Thomas alias Tom A1, and Ssempijja Fred A2, were indicted for murder c/s 188 and 189 of the Penal Code Act. It was alleged in the indictment that the two accused and others still at large between 21st of January 2010 and 30th January 2010 at Kijjwa Zone, Bukasa, Makindye Division, in Kampala District, murdered Karamuzi Brenda. Each of them denied the offence.

The brief facts of the case according to the prosecution are thus. Karamuzi Brenda the deceased herein (I will hereinafter refer to her as Brenda or the deceased) went to stay with A1 on 18th January 2010. (In this judgment, references to dates and days of the month, unless stated otherwise are references to the month of January 2010.) On 20th night she went and stayed with her mother Joy Karamuzi in Ndejje Namasuba. She left early morning of 21st to go and prepare for a job interview, and spent the day with her friend Carol Nibarungi at the latter's office at Workers House.

The two friends parted company at 5.00pm, when Brenda informed her friend that she was going to spend the night at the home of A1, for the reasons that he would drop her at the place of interview early enough, and in any case, he was the one who sourced the place for her.

That was the last time Carol Nibarungi saw Brenda alive. On 25th it was noticed that Brenda was missing, and Carol Nibarungi and Amellia Amanda Karamuzi, Brenda's sister, rang A1 to inquire where she was, and he told them both that he did not see her on 21st and 22nd. They had arranged to meet at Kabalagala on Saturday 23rd in the evening, but that when he rang her two numbers that evening, they were off. He advised the two to look for Brenda in hospitals or the morgue.

The body of Brenda Karamuzi was discovered in septic tank at the home of A1 on 30th January 2010. A1 was charged with the murder of Brenda Karamuzi. His shamba boy A2 was also charged with the offence, and both denied the charges as indicated earlier.

The prosecution adduced the evidence of 17 witnesses in the attempt to prove the indictment.

PW1 Joy Karamuzi was the mother of the deceased. She saw Brenda alive on 20th Wednesday January 2010, when Brenda went to her shop in Kampala, and they went together home at Ndejje, Namasuba where she spent the night.

The following morning on 21st Thursday, she left Brenda at home. Brenda had told her she would go back to her place of residence to pick up clothes in preparation for an interview in a telecom company called I-Telecom. Brenda who was 27years old at the time of her death was unemployed. She was looking for a job. She was renting a house in Najjera with a friend called Mercy Mutonyi. The witness waited for Brenda on 21st and 22nd but she did not appear. She kept ringing her phone and it was off. She then rang Brenda's father and brother and told them Brenda's phone was off and they advised that it might be a network problem. She and other family members called Brenda's friends but the witness never heard from her daughter again.

On 30th January 2010, she got a call from the police telling her that they had found Brenda's body in the septic tank at the house of Tonku (meaning A1), and her handbags

in the ceiling of A1's house. She went to Mulago city mortuary and identified the body as that of her daughter Brenda Karamuzi.

The body had injuries on the head and neck and there were cuts on the nose area. After the post mortem examination by the doctors, the body was handed over to her for burial which took place in early February 2010.

She told court that after one month the police called her to identify a phone which she confirmed belonged to the deceased Brenda Karamuzi. The numbers were 07003169309 and 0776169309. She said Brenda had two phones, one was a Sony Erickson and the other was Nokia. She identified the Sony Erickson at police, and also in court, exhibit P-ID1.

In cross examination she said she last saw Brenda alive in the morning of 21st Thursday, and that Brenda never told her she was staying with A1.

PW2 Caroline Nibarungi was a friend of Brenda Karamuzi. She also knew A1 whom she used to call Thomas. They met in 2004 through a friend called Apollo Tumwine. Later A1 became Brenda's friend. Brenda was a friend since their school days 2001.

She said she last saw Brenda on 21st Thursday, when Brenda went to her office at Workers House at about 11:30a.m and wanted to use the internet. Brenda was then looking for a job and wanted to update her C.V in preparation for an interview the next day on 22nd Friday with a telecom company. The two friends remained together up to 5.30pm left office together up to the ground floor of Workers House. The witness was going for a wedding meeting at Centenary Park and she asked her friend to go with her, but Brenda declined. Brenda told her friend that she was going to Muyenga at the home of A1.

The reason was because her sister Amelia was not home and her mother usually left home late. So A1 would drop her off to her interview early enough the following day, and that

in any event A1 was the one who connected her to the lady who was going to interview her.

The witness told court that she tried calling Brenda on 25th Monday, to invite her for a Kasiki but her phone was off. She did not hear from her again. She again tried calling her on 27th Wednesday for a workshop in Entebbe but her phone was off.

Later that night, Brenda's sister Amelia (PW3) called her asking if she knew the whereabouts of Brenda, as her phones were off. The witness advised Amelia to call A1, this being the place Brenda told her she was going on Friday 21st. As she did not have A1's number, she asked Amelia to send her A1'S number which was done. A1's number was 0752690115.

Early in the morning on 28th Thursday, she rang A1 but he did not pick. She sent a message telling him that she wanted to find out what was happening to her friend Brenda. A1 called her back and told her that he did not know where Brenda was. He told her that they were supposed to meet on Saturday 23rd but that he had lost a friend and had to go for the vigil first. That Brenda would wait for him and they would meet at Kabalagala, but when he rang Brenda, both her lines were was off and that he got worried. He did not meet Brenda on 21st Thursday at all.

The next day on 29th the witness Carol Nibarungi again called A1 to ask if he had any news about Brenda. He told her that he did not, and he advised Carol Nibarungi to check for her friend in hospitals and the morgue.

In cross examination the witness told court that by January 2010 Brenda was not dating anyone so far as she was aware. She said that the Brenda told her that the relationship with A1 was plutonic. She said that Brenda arrived at her office at about 11.30 am; they had lunch and were together up to 5.30p.m. She said Brenda was wearing a black dress with a bit of grey. She was due for an interview the following day. So far as she could recall, this was the first time Brenda told her she was going to spend a night at A1's place. Brenda had come from her mum's place in Ndejje Namasuba.

The witness said she called Brenda on 25th four days later. She did not call her on Sunday because she had no credit so she tried on Monday. She said when she called A1 on 29th he advised that she checks in the morgue as Brenda could have been knocked by a boda boda as she often used a boda boda. She told court that Brenda never disclosed to her that she spent a night at Tom's place prior to this. She was aware that Brenda used to drink, but had never seen her drunk.

The witness told court in further cross examination that A1 denied seeing Brenda on 21st and 22nd, and that he was to meet her on Saturday 23rd, at Kabalagala, but that when he rang her phones, both numbers were off. He was the one who suggested on 29th that she should search for her friend Brenda in hospitals and the morgue. These were the only places he suggested.

PW3 Amelia Amanda Karamuzi was the elder sister to the deceased. She knew A1 as a friend of the deceased. She said she had known him for about five years and knew their relationship as plutonic. She last saw Brenda on 17th January 2010, when Brenda went home in Ndejje and spent the night. The witness said she was staying at home with her parents at the time while Brenda was living in Kisaasi with her friend Mercy.

On 23rd her mother called her while she was in Nairobi and told her she had failed to get to Brenda as her two phones were off. The witness also tried and Brenda's phones were off. She called Brenda's friends and they told her that they had not heard from her. Only Carol said she had seen her, as she left for A1's place on Thursday evening of 21st. She called Tom (A1) on his mobile phone number 0752690115.

A1 told her he went for a vigil at the home of a deceased friend that Thursday night, and that he was to meet Brenda on Saturday but he did not meet her. She said she had got A1's telephone number from Brenda. A1 gave her other numbers of Brenda's friend to call including that of Apollo Kasami. They promised to update each other. She called Apollo and later called A1 who advised her to check in hospitals. She was shocked by

that advice and asked why the hospitals. A1 simply said they should check there anyway. Later Brenda was discovered dead on 30th January 2010 in the septic tank at the home of A1.

In cross examination she said Brenda was a strong willed person, with a mind of her own, selfless, cheerful, loving and that she trusted people very much. She had many friends including male friends, and as far as she was aware, Brenda had a plutonic relationship with such of her male friends like Charles Ayume and also A1.

PW4 Nakirya Joan (hereinafter referred to as Joan) told court that she knew the two accused persons, and that A2 is Ssempijja Fred was her boyfriend. A1 was Tom, Ssempijja's boss. She was staying with Ssempijja at Muyenga prior to his arrest and they were not staying in the main house. Ssempijja used to wash A1's car, clean his house and wash his clothes.

Ssempijja had another boss called Aziz. Joan told court that these were two semi detached houses, that of A1 and that of Aziz. They both shared the same fence and compound.

Joan told court that she knew Brenda and that she saw her only once on a Thursday but cannot recall the month and the year. She was seated outside the fence in Muyenga when Brenda arrived on a boda boda. Brenda entered the gate which was partially open and went into the house of Tom. She initially thought Brenda was going to Aziz's place as she dressed well.

Brenda was brown, small rather medium, tall but not too tall, and she arrived at about 6 pm. Joan told court that Brenda entered A1's house and that A1 was inside. A2 her boyfriend was in the compound. She did not see A1 and Brenda outside the house they remained inside.

At about 8 pm, A1 called A2 and sent him for food. A2 went for the same with a polythene bag (kavera) which had a container. Joan told court that this was not the usual

practice and that in other cases A1 would send A2 while it was still early. A2 brought the food but Joan did not know to whom he gave it. Joan further testified that both A1 and Aziz had cars and A2 used to open the gate for both of them.

On Friday morning the next day, at about 8.a.m while Joan was inside their boys quarters room, Brenda who was wrapped in a towel called A2 and sent him for food. Fred brought the food and Joan never saw Brenda again.

Joan stated that she saw A1 that day (Friday 22nd) at around 4.pm. He drove out and she was the one who opened the gate for him. A2 had gone to Katongole's to buy food for them i.e. himself and Joan. A2 returned at about 7.00pm.

A1 also returned very late that night but she could not recall the time as she was inside sleeping. She heard her boyfriend A2 getting up to open the gate for him, and it was raining. A while later A1 woke up A2 to go and buy for him cigarettes. She went with him as it was very late. They bought the cigarettes as shops were still open and came back. A2 took the cigarettes to A1 using the back entrance.

Joan told court that A1 was inside the house and his car was outside. There was light in front of his house and that the car doors were all open which struck her as odd, as it had never happened before. The car doors were all open even as they went to buy cigarettes. Even the house doors were open.

Joan testified that later A2 returned after a long time with A1, but he never told her what he or they were doing all time at this time of the night.

On Saturday morning (23rd) A1 stayed at home sleeping but Joan never saw Brenda at all. A2 was in the house at 10 am taking tea when she woke up, and oddly, he never carried out his chores as usual. That day Saturday A1 left the house very late in the evening on foot. The car was inside the fence. A1 returned the next day on Sunday (24th) very early in the morning. Joan told court that it was not unusual for A1 to sleep out.

She told court that that day Saturday 23rd, Chris a frequent visitor and friend of A1 came to visit at about 4 or 5 pm. He arrived after Tom had left. He asked for the house keys from A2 and entered A1's house. He started smoking and drew the curtains of the house. She could see him from their house, the boy's quarters which was about 12 metres from A1's house.

Joan told court that Chris left at about 9 pm. She however never saw the lady come out of the house. A2 never went to clean the house. A1 never received any other visitors apart from Chris that day. She said that whenever visitors came, they would be with A1, and would not therefore need to get keys from A2.

Joan did not see A1 on Monday leaving the house. The car remained parked in the compound. She saw A1 come back Sunday morning on foot.

Tuesday 26th Joan was not at home as she had a misunderstanding with her boyfriend, A2 and she left and went to her sister's place at Wandegeya. A2 did not want her to visit her sister. She returned on Friday 29th when A2 called her back. She came back at around 1.p.m.

Joan told court that upon her return, A2 did not reveal anything to her. But the landlord had locked up A1's house, and A1 had left. That day A1 and Chris came at about 4.p.m in a Benz and they asked for the key and A2 gave it to them, they used the behind entrance.

A1 called A2 and handed to him a plastic basket where they kept dirty clothes. She saw A2 picking out the clothes as he put them into the basin. They had blood on the. They included a vest, a t-shirt and male pants. Joan was at this time standing in the compound where A2 was washing the clothes from.

At that time A1 was inside the house with Chris. Joan asked A2 how come he was washing clothes with blood on them and A2 said he had just been handed clothes to wash

by his boss, and that was all. After the clothes dried, A1 took them inside. He did not spend the night at home but she did not recall the time they left.

That on Saturday 30th at about 10.a.m, she was seated outside, when Aziz called A2 who was also outside the gate. A2 entered the gate and as she was seated out there she saw a police vehicle enter the gate. When she tried to enter the compound one man stopped her, and questioned her about Brenda. Earlier, Chris had come and was also around.

She had not known her name of the girl Brenda, but knew the person and she was told that there was girl in the septic tank, and they showed her. She saw it was Brenda in the septic tank. Once they realized she knew nothing about the issue they left her alone.

Joan told court that never used to communicate with A1 though she would open the gate for him and that he never talked to her. She said she did not witness the body being retrieved from the septic tank. She was too scared and went off to Mzee's place.

She returned at 6 pm, and Alex Ssali (PW10) a worker at a different site informed her that A2 and others had been arrested. Alex informed her that A2 agreed to sell him a phone at 45000/= plus another one in exchange. Alex already had the phone in his possession. Alex gave her the 'ka torch' phone in exchange plus the money shs 45,000/-. This was done because the deal had already been finalised between this Alex and A2. Alex wrote the agreement and they both signed and he remained with the agreement.

She said the phone which A2 sold to Alex was a black one, big with white marks. She first saw the phone with A2 when she returned on Friday 29th. It was not a new phone. She asked A2 about that phone and he told her that he sold his old one and added money to buy the bigger phone. This was the phone she found with Alex Ssali (PW10).

Joan said that she spent the night at Ssalongo's place in front of Nakayenga's place near Cornerstone church. She said that she went to the village in Masaka but the police

brought her back to Kampala. She led the police to Alex Ssali at Bukasa, and the police recovered that phone from him.

The police also recovered some things from their house like sim cards that were found in Jerry can. A2 was the one who led the police to their recovery. The police handed to her the other properties of A2.

In cross examination Joan said that A2's duties included cleaning inside A1's house daily. The keys would sometimes remain with him. She said that Brenda had arrived on 21st Thursday and that she saw Brenda on Friday morning. She insisted that Brenda was alive that Friday morning, and she saw her at 8:00 am that Friday. She also insisted that A2 was given clothes to wash that had blood but police never recorded it. She denied categorically that she and her boyfriend A2 killed Brenda and stole the phone which the police recovered.

She further stated that on Friday 22nd, A1 returned late at night about 3.00 am, and it was raining. That was when he sent A2 for cigarettes. She said she did not know the time when Brenda was killed.

She also said that at times A1 stayed at home. But from 21st to 30th A2 never went into the house of A1 to clean it as was the usual practice, and that in that whole period, he washed A1's clothes once.

In further cross examination, Joan told court that on 21st when Brenda came, she was dressed in a black blouse and had tied pencil braids-black. She insisted that on 22nd, there were two vehicles one for Aziz and another for A1. The vehicle of A1 was present on 23rd Saturday. She clarified that the visitor Chris came with Tom on Friday the following week, about 4pm, but that A1 never came back the following day Saturday, when the body was recovered.

Upon further cross examination, she said that A1 sent for cigarettes on Friday on 22nd when the girl came on 21st. She said that sometimes she used to help A2 wash the clothes of A1, but A1 would always give instructions to A2 to wash them.

She was not aware that on Saturday Phyllis slept in the visitor's room. She never saw her yet she was at home on Sunday 24th. She did not even know this Phyllis Katana. She last saw A1 on Friday the day before the body was recovered, but never saw him on Saturday. She last saw Brenda on Friday 22nd. She did not know about that other girl Phyllis Katana. She told court that she did not know if A1 had a spare key, but that it was quite likely because at times he would arrive and get inside the house even when the key was with A2 and in the absence of A2.

PW5 Wamono Samuel was the LCI Chairperson of Kijjwa Zone, Bukasa Makindye Division. On 28th January 2010 Juma Hamid (PW6) the landlord of A1 and Aziz brought a complaint of non payment of rent by A1 for 6 months. That when he welded a lock on his house, A1 broke it, yet he still had not paid the rent.

The Chairperson rang A1 who promised to pay on Saturday at 11.am.

On that promised day, 30th Saturday at around 10 am, the same landlord (PW6) reported the discovery of a body in the septic tank in the premises. PW5 arrived at the scene and found that two people who came to fumigate the house of Aziz upon looking into the septic tank, they discovered the body of a human being. The witness also saw the body and police were called in.

A2 identified the body as that of the girlfriend of A1. The witness rang A1 and asked him about rent appointment, but actually they wanted him to explain about the body found in the septic tank. He said he was on his way coming but he never came. The witness left at 5.00 pm and the body was still at the scene. He called A1 and told him to meet his landlord at Muyenga International Hotel and he said he was going to come, but he never came. The next time he rang A1, he told them that he was at Kabalagala police and they found him under arrest.

PW6 Abdul Hamid Juma the landlord said he knew the accused persons and that A1 was his tenant and A2 was a shamba boy employed in the premises by A1 and another tenant Aziz Kakooza. A1 had been his tenant for about 4 years. He said there are two houses one occupied by Tom A1, and the other occupied by Kakooza. He said the two share the same compound and the premises are fenced off and each has their own facilities like water, electricity, however the two houses are attached together. He said up to the time of testifying, A1 had not paid him rent and his property was still in the house so he was still his tenant.

He said that he locked the door of A1's house on 28th January 2010 because A1 had not paid rent for 6 months. In the 1st week of December 2009 A1 offered him a cheque post-dated to 15th January 2010 and promised that he would pay the money before the maturity date, but he reneged on his promise.

On the 15th January he called A1 about the rent money and A1 asked for 4 days grace. The landlord gave A1 up to 28th January and when no money was forthcoming, he decided to lock up his house. He nonetheless called A1 who still promised to pay up.

On 29th he went to the house at about 3 p.m and found A2 who told him that the previous day A1 came and broke the metal he welded on the back door and entered the house, as he wanted the remote of his car urgently.

The witness checked and confirmed that indeed the lock was broken. He reported to the police who advised him to go through LC's. He reported to the LC I Chairperson (PW5), and they all i.e. the Chairperson, A1 and the landlord agreed to meet the following day, Saturday at the premises of A1 at 11.a.m. Meanwhile he added super glue to ensure that the house remained locked up.

The next day Aziz Kakooza the other tenant called him and told him that fumigators at the house had discovered a body a body in the septic tank. The Chairperson and police were called, and the body of a female was retrieved from the septic tank.

A friend of A1 arrived soon after in a Mercedes Benz, and he said he did not know the deceased. He also recorded a statement. The body was taken to the police.

The landlord tried to call A1 since they had an appointment anyway and A1 told him he was coming but he was still far. He never came. That was when The OC CID ordered him to unlock the house so they would make a search. He opened the back door. The key to the front door was with A1 according to the shamba boy A2. Police collected some items which they recorded on a piece of paper and he was told to sign as he verified each item and from that day he locked the house and gave the keys to the police as they said they were from then on in charge of the house.

In cross examination he said that the police recovered items from the main house - A1's house but some time later, police called him and some other items were recovered from the boy's quarters.

PW7 No. 24673 D/W/Sgt. Auma Grace Silver on 30th January 2010 received a report made the recovery of a body in a septic tank t Kijjwa Zone, Bukasa. Together with OC CID, and DPC Alita, DC Robert Ecote SOCO they moved to the scene.

That the premises were fenced with a perimeter wall and a main gate with a small guard house, there were two apartments under one roof and a septic tank on the left hand side. It had four slabs of which two in the middle were open. In the front of the apartment were two vehicles, a land rover frelander green in colour and a land cruiser scrap. There was an outer bathroom and toilet on the left hand side serving the Shamba boy. The landlord was Abdu Juma Hamid (PW6) and the two tenants were; on one side Thomas Nkulungira (A1) and the other side Aziz Kakooza. Aziz was married and lived with his family.

Thomas Nkulungira (A1) was living alone. The two tenants employed a shamba boy called Sempijja Fred (A2) for cleaning and opening the gate.

That in the septic tanks was a body of a woman floating inside. It was dressed in a black blouse and the lower part was naked. The body had braids. Police fire brigade arrived and retrieved the body. She observed that the braid she had seen earlier while in the septic tank had now fallen off, and the body was swollen. That she observed a depression on the right fore side of the head and that the body had decomposed as skin was peeling off.

Nobody at the scene identified the body. The suspect was Thomas Nkulungira and he was not around and his house was locked with padlocks. With the help of the landlord they accessed A1's house from the back entrance. Those who entered were the landlord, the LC1 chairman and the police team. She took charge of the recovered exhibits. These included three bags which were recovered from the ceiling of A1's. From the bags were among other items, a money purse containing ATM card and NSSF card in the names of Brenda Karamuzi.

The recovered items were all exhibited and the exhibit slip was tendered as an exhibit. These included suspected brain tissue and blood swabs taken from the house of A1, a hoe recovered from the corner of the outside toilet, cushion cover recovered from the sitting room, a floor carpet, among others. The clothes which were in the three bags were identified by PW1 as belonging to Brenda Karamuzi.

In cross examination, she told court that A1 was not around when the search in his house was conducted. The Officer also told court that other items were recovered from the quarters of A2. These included two sim cards which were hidden in an empty jerry can. She identified NSSF card No.8402600401482 with names of Brenda Karamuzi and her photograph and the visa electronic card for Barclays bank No.4117060053059032 in the names of Brenda Karamuzi which were exhibited as PE3 and PE4 respectively.

PW8 No.31734 D/Sgt Icoot Robert was the scenes of crime officer (SOCO). He visited the scene and took photos of the body both while in the septic tank, and after it was retrieved there from. He invited his senior colleague D/ASP Calingom Pius (PW11) who joined him as they carried out their forensic investigations. They accessed the house after the landlord broke open the padlocks he had put on. The forensic team took swabs of dried blood and suspected brain matter from the walls of A1's house. These were from the kitchen, the sitting room and the corridor. There were no suspected blood stains in the master bedroom.

He recovered three ladies bags from the ceiling. There were suspected blood stains in the compound from the kitchen door up to and including at the septic tank. He stated in cross examination that he did not dust the exhibits which were recovered for finger prints.

PW9 Dr. Kalungi Sam is a pathologist from Mulago hospital. He carried out the post mortem examination on the body of Brenda Karamuzi on 31st January 2010. The body was identified by Joy Karamuzi PW1 as that of her daughter Brenda Karamuzi. The body was of a female adult. It was decomposing with little hair on the head. It was dressed in a black blouse.

There were 6 stab wounds on the right side of the neck. There was laceration on the right side of the face. It was over the cheek bone. There was a fracture of the right cheek bone. There was a laceration of the right nostril. There was a laceration on the forehead. There was a laceration above the right eye. There was an open fracture of the skull in front leaving a defect 6x3cm. There was a bruise on the right side of the head and back of the head. There was open skull fracture (part of the skull bone was missing) on the right side as well as the top of the skull extending to the base of the skull-where there were multiple bone fragments. There was no brain tissue within the skull because of the injury; the person had lost all the brain tissue. The lacerations were caused by a blunt object. The cut wounds were caused by sharp edged object.

The cause of death was brain injury following blunt force trauma. Some specimens like liver, kidney and stomach were sent to the lab for toxicological analysis that is to look for any poison. He also took off part of the skin, hair, part of the breast bone and a swab from the vagina for DNA analysis.

He said the body was in a decomposing state and in his opinion death had occurred more than 72 hours before the post mortem examination was done because of the state of decomposition. The skin peeling off and discoloration meant that was more than 72 hours since death. The post mortem examination report was tendered in evidence as an exhibit and was marked as PE13.

He told court that a bruise causes bleeding below the skin but skin is not torn and a laceration causes a tear of the skin. It maybe caused by a blunt object. In this case brain tissue had been lost. It was not there due to the skull injury.

He considered a sexual encounter and took a swab from the vagina. He however did not determine that there was a sexual encounter. He could not be any more definitive about the exact time of death than his opinion that death occurred more than 72 hours before the post mortem examination.

PW10 Ssali Alex told court that A2 sold to him a phone Sony Erickson black in colour. He identified it as the exhibit P ID1. He paid shs 45,-000/- plus a small phone commonly known as 'ka torch'. He gave the money and the 'ka torch' to Joan PW4, the wife of A2 on Saturday the day the body of the girl was discovered in the home where A2 used to work. The transaction took place when the police and fire brigade arrived. This was around midday. Joan's friend wrote the sale agreement and all signed including two boys who were around. He handed over the money and phone to Joan because A2 had been arrested just before the deal could be concluded. Later police led by Joan came and took away the phone Sony Erickson plus the sale agreement.

PW11 ASP Calingom Pius was the senior SOCO at the scene. He worked with PW8 D/Sgt. Icoot Robert. The two carried out forensic investigation at the scene. They emptied

the septic tank and recovered clothes. They took photographs and recovered swabs of human fluids and blood and brain matter from inside the house of A1. These were all handed over to PW7 D/W/Sgt. Auma Grace. They noticed foot smudges around the entrance into the ceiling, and PW8 Icoot Robert climbed into the ceiling from where he recovered three ladies bags.

In cross examination he told court that nothing of evidential value was recovered from the master bedroom. The blood trail was from the kitchen up to the outside toilet and up to the septic tank. Inside the house the pattern of blood was a splatter on the wall. A metallic object as well as a hoe were also recovered. These had blood stains. The exhibits were sent to the Government Analytical laboratory for analysis.

PW12 Maureen Asiimwe is the Security Officer at MTN Uganda. Her duties include issuing print out of phone numbers when requested by security agencies for purposes of investigations upon a court order. The court order is handed over to the Security Manager who receives the same and when done, she makes the print out and give it to the Security Officer who signs it.

She followed the same procedure in this case and issued the printout exhibit P 18. She explained that she issued this printout and it was for phone calls and short messages (sms) sent and received by telephone No.0776169309 for the period 1st to 30th January 2010.

The first page has the date of the calls were made, the time, the number calling, the number receiving, the duration of the call, the site location of the number in question and the serial number of the sim card.

The witness explained that the site location is the cell or in common parlance a mast which picks up or activates the making or receiving of the call. A phone will use the nearest and strongest cell when a cal is made or received, and this is the same for the short messages (SMS). She told court that the police took her and their technical people

to A1's place and using their machines were able to detect which cells or site locations serve that place.

The information was generated by the machine and it showed that the cells or base stations as they are called which serve this area are: Kirombe, Luzira, Muyenga Bukasa, Gaba Seminary, Portbell, Namilyango, Kirombe Biina, Bunga hill, Biraro estate Kitintale and Seeta cells. This document which is system generated was tendered in evidence and marked as exhibit PE19.

The printout exhibit P18 showed that on Friday 18th Jan 2010, Brenda received 11 calls. For the first five calls of that day the site location was Najera meaning that she was using the cell of was and in the proximate area Najera. The 8th call and 9th calls were from the Kirombe cell, while the 7th call was from the Muyenga-Bukasa cell. The 10th call was from the Namilyango cell. The time was between 8.18 pm and 11.47 pm. That meant that Brenda could have been in one place which is served by the above base stations.

On 19th Brenda received 3 calls received. The 1st call was at 12.12pm, and used the Muyenga-Bukasa cell, the 2nd call at 8.38 pm used the Bunga Hill cell while the 3rd call at 9.37 pm used the Biraro Estate Kitintale cell . On this day, she could also have been at the same place which was served by the above base stations.

The witness told court that in the morning of 23rd Saturday, the sim card reading was different. It was 358659010665340. This was a different serial number from the rest. That meant that the last call on this phone with this simcard was using a different phone. This was not Brenda's phone. The simcard had been removed from Brenda's phone and put in a different phone that morning.

PW13 Geoffrey Onen was the Principal Government Analyst at the Directorate of Analytical Laboratories and Head of the DNA laboratories. On 1st February 2010, and on various days later, he received specimens from the police for DNA analysis. The request

was to ascertain whether the specimens were connected with the deceased Brenda, and any of the suspects, A1, A2 and Christopher Bagaruka.

He was not able to recover any DNA from the deceased Brenda Karamuzi because the body had lain in what was described as a wet microbial environment for a long time and as a result the DNA had degenerated.

For that reason he took the DNA of PW1 Joy Karamuzi and used that as the control for his analysis. His findings were contained in a report which was tendered in evidence and marked exhibit PE 20.

His analysis showed that the blood swab and fluid swabs from the inner kitchen door, from the cushion cover and from the southern corridor and eastern wall of the house as well as the carpet and hoe with a wooden handle were from the same female person. From that analysis, he found that that female person was most likely the biological daughter of Joy Karamuzi with the probability of paternity at 99.978%.

From his further analysis, he concluded that, the hoe with a wooden handle exhibit PE22 which was recovered from the outside toilet, a cushion cover orange in colour recovered from the sitting room, exhibit PE21 and a floor carpet also recovered from the sitting room had blood stains of Brenda Karamuzi. He also found that the pink nylon pair of knickers recovered from the wardrobe drawer in the visitor's room and a whitish pair of knickers recovered from one of the three bags from the ceiling both belonged to Brenda Karamuzi. The extent or degree of proof was 99.9%, or extremely likely, which when put in numerical terms meant more than one million chances more likely.

He also found that the swabs taken from the inner side of the kitchen door, from the compound near the septic tank towards the kitchen, from the compound between the septic tank and the outside toilet, from the southern corridor wall next to the visitors toilet inside the house and from the eastern wall in the sitting room all tested positive as being blood from Brenda Karamuzi.

He told court that he was not able to make any DNA findings from the 17 pairs of shoes of A1. He did not make any match between any of the suspects with any of the specimens. There was no match between the hoe where there was suspected blood stain with any of the suspects. Finally he told court that his findings showed that Brenda was in the house of A1.

PW14: D/AIP Chimaria Enock is attached to Rapid Response Unit of the police at Kireka. In May 2010, he was instructed by D/ASP Aisu of CID headquarters to find the call data and other related information two lines one of MTN and another of Zain now airtel and to cross check with their respective networks. These were 0776169309 and 0752690115. He got court orders in that respect and got the printouts from the respective network authorities. The printout from Zain was tendered in evidence as exhibit PE 26. The printout from MTN was exhibited as PE 18.

He testified that on 23rd at 8.50 am deceased's line 0776169309 was used to ring 0773723881 using Muyenga Bukasa site location. It was picked by the recipient. Brenda's line was inserted in another head set serial no.358659010665345 which belonged to A2.

PW15:Ochwo Patrick was the network Engineer with Airtel Networks. His work was to optimize networking quality and planning for the networks.

At the request of the police, using his 'tems' gadget, he determined that the cells serving A1's place are: Buziga I, Biina II, Luzira, portbell, Konge, Gaba, Muyenga, Bukasa and Gaba. The report which he made was exhibited as PE27.

PW16 DW/AIP Nakku Joy Mary recorded the statement of Segujja Fred A2 under charge and caution. The statement was admitted in evidence with no objection from

Counsel Nakakande for the Accused A2, or from Counsel for the accused A1. It was marked exhibit PE 28A and 28B for the Luganda and English versions respectively.

PW17 D/ASP Namukasa Prossy was the Investigating Officer in this case.

She arrested the two accused persons on 30/1/2010 as suspects in a murder case of Brenda Karamuzi. She led the team of police investigators to the scene. Evidence was recovered thereat and exhibited. The SOCO's, PW8 and PW11 took charge at the scene under her general superintendence.

That was the prosecution case. The accused Nkulungira Thomas A1 gave evidence on oath. He called 5 witnesses who testified on his behalf. Sempijja Fred A2 gave evidence not on oath. He did not call any witnesses.

Nkulungira Thomas A1 told court that Brenda was his girlfriend. The sexual encounters would take place at his house. The last such sexual encounter took place one month before her death.

On 18th January 2010 Brenda went to his residence to stay there for a week as she sorted out her financial problems. She arrived at about 11.am by bodaboda. She had a handbag and another which A2 assisted her to carry inside. A1's friend Peter Kasedde DW4 was around.

A1 told court that Brenda had in the past spent time in his house, and would sometimes stay on the couch in the sitting room, other times in his bedroom and at other times in the visitor's room.

A1 narrated in great details his movements from this point up to the time when Brenda's body was discovered in the septic tank at his house.

That day 18th, he left the house at about 5pm with Peter Kasedde DW4. Brenda remained alone at home. A2 was in the compound. A1 told court that he returned on that 18th day at

about 10pm. and found Brenda seated in the sitting room watching a movie. He did not join her for the movie, but only greeted her, had a glass of water and went to sleep in his room.

On the 19th he woke up at 8 am. Brenda was in the visitors bedroom sleeping. He greeted her and proceeded to town for his business. He did not speak to her again till that evening. As was his usual practice, he went to the gym at 5pm. He got back home at about 10pm and Brenda was at home watching a movie. He said hello and asked about her. She told him that she was still sorting herself out.

On the 20th, he left for work at 8.am but did not speak to Brenda as she was still sleeping. Brenda called and informed him that she was going to see a friend in Kansanga. From work A1 went to the health club, at Bambo fitness centre in Muyenga as usual. That evening he went to the club, then to Kansanga for 1 hour before going home.

That evening of the 20th, he got home at about 11pm and Brenda was not home. A2 told him as soon as he arrived that she was at Sebo Green with friends. This is about 100 metres from his house. He had been to Sebo Green several times. It is a recreation centre-with facilities like lodging and eating. After that information, he went to bed and slept. Brenda returned to his house but he did not know the time. He saw her in the morning of 21st.

A1 told court that on 21st, he got up at 8.00 am, and watched news. Brenda also woke up and asked for a lift to town. A1 had an urgent meeting with one Amos at Muyenga, but he would pick her after the meeting and they proceed to town, which he did.

At her request, he dropped Brenda at the junction of Entebbe Road and Nakasero market which was near her mother's shop at about 10.30 am, as she had matters to discuss with her mother. She had earlier called and that her mother was in Busia. Brenda also wanted to visit the saloon.

That day A1 spoke to Brenda at about 7.00 pm when she called and asked whether he was already at home. He was still in town. He went to a vigil in Kansanga. On 15/1/2010 he had lost a friend to kidney failure in America, one Elias Kagimu Kalungi. The vigil was in Kansanga at deceased's parents home. There were a series of meetings there in which he was deeply involved. That day he was at the vigil with Jonathan Bakwega, Aggrey Kagonyera, Peter Kaggwa, David Kigozi, Dennis Kiggundu. He remained at the vigil up to 11.00pm and thereafter he went to a nearby bar with his friends in a group. He went back home that day past midnight and did not see Brenda. He did not ask where she was but went to bed immediately.

A1 told court that on 22nd Friday he got up about 9.am. Brenda was in the sitting room drinking, a small quarter waragi. He commended her braided hairstyle. He left Brenda at home and went to town. On the way he had a problem with the car and proceeded to his garage on 6th street Industrial Area called Auto Mend Engineering.

He called Rita Musoke to give him a lift. She dropped him at Social Security House at Peter Kasedde's office. He was with peter Kasedde for an hour, and he thereafter proceeded to Parliament Avenue to meet Jesse Lule his friend. He was with Jesse Lule till 1.00 O'clock.

He proceeded to Dewinton road at the pub for lunch Ben Bitature, Denis Kiggundu, Olivia, Rita Musoke, Jerry Majimbi and later Peter Kasedde.

They left the pub about 7 - 8pm in Peter Kasedde's car with Denis Kiggundu as he had no car. The rest had their vehicles and all went to Kansanga at the vigil. At the vigil, they were with David Kigozi, Peter Kaggwa, Suubi Kiwanuka and John Oteba among others.

A1 said he was at the vigil up to 11pm. From there he proceeded to a nearby pub Divas. They were moving as a group of 8; David Kigozi, Denis Kiggundu, Peter Kasedde, Rita Musoke, Suubi Kiwanuka. Later Uthman Mayanja joined them at about midnight. He left

Divas at about 1.30a.m, and went to a bar across the road. He could not recall its name. He was with Andrew Bugembe, Uthman Mayanja, David Kigozi and Denis Kiggundu.

During the course of the day at 2.pm Brenda had called asking for his plans for the day. He told her that he would be at the vigil in Kansanga. A 1 told court that Brenda promised to find him in Kansanga as she would be in nearby Kabalagala.

He never talked to her again. He called her MTN and Warid numbers and both were off, and this was after midnight. He was trying to find out if she was still coming to Kansanga as she had earlier promised and to tell her that he was now moving away. He did not want her to get lost. A1 and his friends remained in that bar for 30minutes drinking.

At about 2.00 am, they went to Club Silk—royale section in Uthman Mayanja's car. Uthman Mayanja dropped him home after 5.00am. They met several people at Club Silk, including Peter Kasedde, David Kigozi, Ben Bitature. All the time while at Club Silk Uthman Mayanja was seated next to him. He could not recall the exact time when he got home. It was the morning of 23rd and it was light. Uthman Mayanja dropped him home. When he got home A2 opened the house, and he went straight to his bedroom and slept, as I was very tired. He asked A2 if Brenda was around and he was told that she was not around.

A1 told court that he woke up on 23rd at about 11.am. At that time Chris Bagaruka came in, and A1 asked him for a lift to 6th street Industrial Area so he would pick up his car before the garage closed.

While Chris Bagaruka waited for him, A1 went for a shower in the visitor's room because of the convenience of the shower as opposed to a bath tub in the master bedroom. While taking a quick shower, he noticed two pairs of underwear. As there was no other lady in the house save for Brenda, he assumed they belonged to her. He went to the visitor's room to look around to see any other things which belonged to Brenda. He was surprised there was no bag or shoes of Brenda.

A1 told court that he spent that 23rd of January drinking and by 2.00 am he was at Club Rouge and after several drinks, he was joined by a friend Phyllis Katana.

A1 was tipsy and he called his driver Derrick who drove him and Phyllis Katana to Punchline bar in Kabalagala and several drinks later, he proceeded home at about 4.30 am with Derrick and Phyllis Katana.

A2 opened the front door to the house. A2 always kept the keys of the house. Derrick went back by boda boda while Phyllis Katana took to the visitor's room. A1 proceeded to his room and slept. He got up on Sunday 24th Jan about 10.am and called Chris Bagaruka.

This was the day for picking the body of Elias Kagimu from the airport. He did this with friends and they got to Kansanga about 10:30pm at Haji Kagimu's residence the home of the deceased's parents. He went home at about 1.30am. Brenda was not at home. He went straight to bed that night.

Next day 25th Monday he got up and about 9.am and proceeded to Chris Bagaruka's home in Nsambya where they met before going for burial. On the way back from the burial, they had stopovers for drinks and A1 eventually got home about 1am. He said that he attempted to call Brenda, but his mind was pre-occupied with the death of Elias who was very close to him.

26th Jan-NRM day, at about 10 a.m. Chris Bagaruka and his wife came to A1's house to watch a movie as there was no power at their residence in Nsambya and he joined them in the movie. Later they all went to Bagaruka's residence for lunch and A1 remained there the whole day. He left after dinner about 10.pm. he got home before midnight. He said he tried several times to call Brenda but her phones were still off. When he got home he asked A2 if he had seen her and he said he did not.

On Wednesday Jan 27th A1 said he woke up at 8.am and went to town on business. That day Amelia Brenda's sister called him asking if he was with Brenda, and he denied and that he did not know her whereabouts. He told her Brenda had disappeared and that they were to meet on Friday 22nd and had not. He told her he had been trying to contact her also in vain. He advised Amelia to call her father or one of her friends.

On 28th Thursday heA1's car could not start and so he left it at home. He went to the office of Jesse till Jesse had to go off to pick his children. Carol Nibarungi called him trying to trace Brenda. He denied being with her and told her that Amelia had also called. He got home with Rita about 6.pm. earlier A2 had informed him on phone that the landlord had locked up the house. A1 took a mechanic but the remote for the car was inside the now locked house. He got A2 to bring two boys who broke the locks open and he accessed his car remote. He joined Apollo Tumwine at Fuego's cocktail and after a series of drink stopovers; they went home well after midnight and A1 spent the night at the home of Apollo Tumwine.

On Friday 29th January A1 got up at 10.am and watched TV till about midday when Apollo Tumwine his host woke up. A1 asked for a lift to his house place to freshen up. They drove to A1's place and later to Apollo's place of work at URA Nakawa. A1 went to Dewinton road where he met Peter Kasedde and they moved to Naguru at Kembabazi restaurant. They were joined by Jonathan Bakwega, Rita Musoke, some Engineer from UTC. At 5.00pm, A1 left in Rita's car and later went to club Rouge where he met Jesse Lule. He was there till midnight. At 2.00am, he went with Peter Kasedde and his wife home and spent the night at that place. He said he was trying to avoid the confrontation with his landlord, whom he promised to pay the next day.

On Saturday 30th Jan 2010, A1 got up at midday. Peter Kasedde had left for work earlier. On his warid line there were 12 missed calls. The celtel line kept ringing and it was the LC 1 CM Wamono Samuel calling. He said he was with the landlord and wanted to conclude the matter of unpaid rent. A1 assured them the money was ready and available and he would be with them in an hour.

A1 told court that soon after this, his phone again rang. This time it was Chris Bagaruka his friend who said he had an urgent problem and wanted help was at Kabalagala Police Station. When asked why he could not call his wife, he said he had been caught driving drunk so he did not want his wife to know. A1 told court that he immediately called Peter Kasedde and told him what had befallen their friend. A1 borrowed the car of Peter Kasedde rushed to Kabalagala Police Station, as he believed that would be an easier problem to solve than the rent payment matter with his landlord.

He was detained at Kabalagala Police Station, and he handed over all his belongings including his passport. He found A2 and Chris Bagaruka in the cells. Chris Bagaruka was in tears and devastated. A1 said that he apologized to Chris Bagaruka, and he only said sorry because Chris Bagaruka went to his house and found problems, and that was why he was in police custody.

A2 said he did not know what happened. He was angry at A1 because he was the one responsible for the house. At that time, A1 was not aware of the identity of the body which was found at his premises. He got to know on 31st Sunday while recording a statement with Police Officer Katongole that it was in respect of the death of Brenda Karamuzi. A1 later recorded a charge and caution statement before he was charged. Those statements were tendered in evidence were marked as defence exhibits DE3 for the plain statement and DE4 for the statement under charge and caution.

A1 told court that the landlord locked up the house because he gave him a cheque, as he owed him 4 months rent of 3 million. He had been a tenant since 2007.

A1 told court that he indeed told Carol Nibarungi that the search for Brenda should include the morgue. He did so because Brenda had disappeared for sometime. She used to drink alcohol. She was in the habit of riding on boda boda's. She sometimes moved in the night. For those reasons, he advised her to check at the police, the hospitals and morgue.

A1 clarified that he had a nasty experience when friend disappeared and later his body was found in the morgue.

A1 went through the calls he made and those he received on the 22nd, from the printouts. These showed that at 9.30 am, he made a call and the site location was Luzira, meaning he was possibly still at his home. The next call was at 11.32 am, and the site location was Sheraton, meaning he was at or near that place. The 3rd call was at 11.41 am, and the site location was Farmers House, meaning he was at or near the city centre. The 4th call was at 1.38 pm, and the site location was still Farmers House. The 5th call was at 4.02 pm, and the site location was Farmers House.

The incoming calls for A1 that day were thus. At 8.49 he received a call from Peter Kasedde and the site location placed him at or near Lizuira, meaning that he was possibly still at his home. 2nd call was at 9.46 am, and the site location was Bugolobi, putting A1 in the vicinity of that place. At 12.22 pm, he received a call, and the site location was Farmers House. The same site location was for the next two calls at 12.37 pm and 1.45 pm.

The next three calls he received placed him at or in the vicinity of Konge site location, at 8.17 pm, 8.50 pm, and 9.36 pm, meaning that he could have been at his home during this period. A1 however insisted that between 9 and 10 pm, that evening of 22nd Jan 2010, he was in Kansanga at a vigil. Konge is about 3-5km from Kabalagala.

A1 denied what was contained in the statement of A2 exhibit PE 28(a) and (b). A1 told court that in any event, A2 never showed police any of the blood stained clothes he allegedly washed. A1 said that the salary of A2 was shs 80,000/=. He used to pay 40,000 and Kakooza would pay the other 40,000/=. That salary was fully paid up. He told court that he used to earn approximately 15 million per month from his businesses.

DW2 Pope Ahimbisibwe is a practicing Attorney with Kateera and Kagumire Advocates. On 22nd he made a call to Brenda at about 7.00 pm and they discussed a business (land) deal.

DW3 Peter Kasedde was a close friend of A1. He was at A1's residence when Brenda arrived on 18th. On 22nd, at about 10 am A1 visited him in his office. The witness next saw A1 again that day at Dewinton road at the pub about 1.00 O'clock when they met for lunch. He again saw A1 at 6pm at the same lunch place and from there; they went to the vigil at Kansanga at Kagimu's residence where they had a meeting. He gave a lift to A1 and Dennis Kiggundu. The witness told court that the group left the vigil about 11 O'clock and they went to Divas restaurant and bar about 50 metres from the vigil's place. They all walked there. He remained at Divas for 30 minutes and went home.

He confirmed that A1 spent night of 29th at his residence. The following day, A1 called and told him that a friend Chris Bagaruka had been arrested for drink driving, and needed assistance. The witness told A1 to proceed using one of his cars to Kabablagala police station, where their friend was being held and commence the paper work, and he would come over with the money, as A1 told him he had no money. This was about 4.00pm.

The witness knew Brenda as a friend of A1, but he did not know whether she was his girlfriend. From 22nd to 29th A1 never told him or their other friends that Brenda was missing or absent from his home, till they found out when they were at the police station. It was absurd that the friends went to Club Silk on the night when we were having a vigil of a late friend.

DW4: Jonathan Bakwega is Finance and Administration Manager and a friend of A1. 22nd January 2010 was a Friday. At about 7 or 8pm he went for a vigil at Kansanga. He met, Peter Kasedde and his wife, David Kigozi, Dennis Kiggundu, Suubi Kiwanuka, Ben Bitature, A1, Aggrey Kagonyera. He was there for about 3 hours. While there he received a call from Uthman Mayanja who wanted to join them. He joined them at about midnight, and they stayed there for 2 ½ hours. A1 was with them. The witness left for home after 5 or 10 minutes when the group crossed to another bar. He next met A1 on Sunday 24th when they were going to Entebbe to collect the body of Elias Kagimu. He last saw A1 on Monday 25th at the burial.

DW5: Uthman Mayanja is a Director and partner in Price Waterhouse Coppers. A1 has been his friend about 9 years since 2002. On 22nd, he dropped his family after a feast and headed to the vigil of Elias a deceased friend. He called Jonathan Bakwega about the vigil and was told that most people had left and that they were at Divas. He joined the other friends at Divas at about midnight and was there for about 2 hours. He then moved with A1 to Club Silk, where they remained till 5.00 am. He then drove A1 to his home in Bukasa, and he also went home. It was still dark when he dropped off A1 and he was using the car lights.

DW6 Phyllis Katana is a friend of A1. She has known him since 2006, and has on at least two previous occasions slept at his house. On 23rd she had an appointment with her boyfriend at Club Rouge and while there she met A1 at 1.00 am. The boyfriend was a no show, and she moved with A1 to Punchline bar at Kabalagala, and at 4.00 am, they went to A1's place, as her boyfriend had stood her up. She slept in the visitor's room and left the following morning of 24th with A1.

Sempijja Fred A2 gave an un sworn statement. He told court that he was a shamba boy for A1 and Aziz Kakooza. He denied killing Brenda. He told court that he found her already dead. He told court that on Thursday 21st Brenda came home at 6 pm. A1 and his friend were around. They remained at home and A1 for about 2 hours then A1 left. Later about 9.00 pm, Brenda also moved out and left a message for A1 that she was a place called Seebo Grill. A1 returned about 2 or 3 am and A2 gave him Brenda's message. He went to sleep. Brenda returned in white pick up at about 4 am, drunk. A2 informed her that A1 was inside the house. When she knocked both front and behind doors, A1 did not open. She sat in the veranda for about 10 minutes and A2 who always had the key to the behind door opened for her and she entered.

A2 told court that the next day 22nd at about 10.00 am, Brenda called him while was wrapped in a towel in A1's bedroom window, and sent him for chicken and chips. He brought the food and A1 was also around. She even gave him a tip of 2,200/- which was

the balance from the shs 11,000/- she gave him. A2 then went away leaving his girlfriend Joan PW4 around.

A2 returned at 6.00 pm, and A1 was away. A2 went to bed and about 2 or 3 am, A1 returned. A2 opened for him the house as A1 was drunk. A2 got keys from the car and A1 went inside. Some 15 minutes later A1 went to A2 and gave him shs 1,000/- to go and buy for him cigarettes. It was very late and raining, and so A2 woke up his girlfriend PW4 to escort him.

A2 came back and handed over the cigarettes to A1 who lit up as he sat in the kitchen. He told A2 to close up all windows as they were still open. As A2 went to do so, he noticed blood. In the sitting room, were beer bottles and glasses. The cushions were piled up in the long chair. A1 told him to remove those cushions, and that was when he saw the body of Brenda wrapped in a red sheet. There was dry blood, and A1 told him there was a problem which they had to solve. A1 asked him to help him lift the body of Brenda and take into the car.

A1's car was parked in the compound near the septic tank. A2 did as requested, and they lifted the body of Brenda moved through the kitchen, the compound and up to the car and placed it on the ground next to the car whose doors were wide open. A1 had switched off the security lights before the body was taken out of the house.

A1 asked A2 to go and get the back door keys and he brought them. A1 asked him if PW4 was still awake and A2 replied that she was still watching TV. By this time A1 had opened the septic tank and the two lifted the body and threw it into the septic tank. A1 then closed the septic tank. A2 told court that A1 promised him a lot, including payment of his 200,000/- salary which A1 had not paid for 5 months, plus the addition of shs 1 million, if he was to keep all this to himself. The money was to be paid on Sunday, but that Sunday A1 was not present. He was not to reveal these to anyone including his girlfriend Joan PW4. A2 was faithful to his master and did as instructed. A2 took the red bed sheet back into the house and placed among the other clothes for washing, as A1

closed the car doors. A1 carried beer bottles and a big bottle of soda from the car into the house which A2 put in the refrigerator and then he left.

A2 told court that when he went to sleep PW4 asked him what delayed him. He told her he had some cleaning up which he had to do first. The following morning of 23rd, A1 called A2 and instructed him to take out clothes and wash them from the outside bathroom. The clothes included a T- shirt, and a bed sheet. PW4 came to call him for tea and noticed the blood from the clothes he was washing. When she asked about it, A2 told her that he did not know. A1 just gave him the clothes to wash, but may be beer may have poured on them.

As he washed the clothes, A1 brought a cushion cover which was also blood stained and instructed A2 to wash it so it gets ready by evening and is put back on its cushion. Later A2 showed the police that cushion cover and they took it away. A1 also directed A2 to clean up the wall near the chairs where blood spilled and he did so.

When Chris Bagaruka A1's friend who was around that morning asked A1 where blood in the kitchen veranda came from, A1 told him it was from cuts sustained when they stepped on broken beer bottles. The two friends moved away about midday.

A1 returned alone and asked A2 to put the clothes which were on the hangers in the visitors room into the bags which were under the wardrobe. He did so, and was asked to bring a small table stool from A1's bedroom which he stood on and tried to open the ceiling door. A12 was too short for that and A1 did it himself. A2 handed him the three bags and A1 threw them into the ceiling. A1 then walked away leaving his car at home.

A1 never returned home that Saturday. The landlord came asking for A1 but A2 told him A1 had not been seen since Saturday. The next day the landlord came with the Chairman and they sealed off the house. That evening A1 came with a mechanic and as A1 wanted the remote of his car, he asked A2 to get help and A2 did so and they broke open the back door. A1 accessed his house and later left.

The landlord returned the next day and saw that his seal was broken. He sought to institute charges against A1, but the LC I Chairperson advised that they talk to A1 and they tried in vain.

When A1 came home A2 told him what transpired and A2 also demanded for his money, A1 became aggressive and ordered A2 to move away. A2 never saw A1 again till both were arrested and taken to the police. At the police station, A1 asked A2 what happened, but because Chris Bagaruka was also under arrest and present in the cell, A2 did not tell A1 what happened at home, but he knew well that A1 was well aware. A2 told court that A1 kept apologising to Chris Bagaruka for getting him into this mess.

That was the defence of A2.

The burden to prove a charge against an accused person lays on the prosecution. The Supreme Court held in *Ojapan Ignatius vs. Uganda* Cr. App. No. 25 of 1995 (unreported), that the onus was on the prosecution, as it is always on the prosecution in all criminal cases except a few statutory offences, to prove the guilt of the accused beyond any reasonable doubt. See also *Abdu Ngobi v. Uganda* Cr. App. No 10 of 1991, (SC), (unreported), and *Woolmington v. DPP* [1953] AC 462.

The accused person has no duty to prove his or her innocence. The burden of proof does not shift from the prosecution throughout the trial except in a few statutory offences of which murder is not one. The prosecution is bound to prove to the required standard each of the ingredients of the offence charged.

In a charge of murder, the prosecution must prove the following ingredients.

1. That there was death;
2. That the death was unlawful;
3. That the death was caused with malice aforethought; and
4. That the accused persons participated in or caused the said death.

There was no dispute whatever in respect of the first three ingredients of the offence. There was no dispute that Brenda Karamuzi is dead. There was the evidence of PW7 Sgt. Grace Auma who was at the scene and witnessed the body of Brenda as it was recovered from a septic tank. It was taken to City mortuary, where the mother Joy Karamuzi PW1 identified it and later took her daughter for burial. Evidence of corroboration thereof is from PW9 Dr. Kalungi the Pathologist who performed the post mortem examination. Both A1 and A2 admit that Brenda Karamuzi is dead. The prosecution proved that ingredient beyond reasonable doubt.

There was no dispute also that the death was unlawful. On the ingredient of the unlawful nature of the death, the law is that a homicide will be presumed to be unlawful unless excused. This position of the law was set out authoritatively by the East African Court of Appeal in the case of *Gusambizi Wesonga And Others v. R.* (1948) 15 EACA 63, where it was held that 'a homicide unless accidental, will always be unlawful except if it is committed in circumstances which make it excusable'.

The evidence on record was that the body of Brenda was recovered from a septic tank. PW8, PW11, PW5, PW6 and A2 were all present when the body was retrieved there from. Ordinarily a body of a deceased person will not be dumped in a septic tank.

PW1 and PW7 observed wounds on the body. PW9 Dr. Kalungi Sam the Pathologist observed what he described as multiple injuries on the head, the skull was crushed and all brain matter splattered out. There were 6 deep cut wounds on the head, neck and face. The cause of death was brain trauma from blunt instrument. His opinion was that those external injuries were sufficient to cause death, meaning that death occurred before the body was dumped into the septic tank.

That without doubt could not be said to have been lawful or excusable death. The defence did not contest that ingredient. I found that the prosecution proved that ingredient beyond reasonable doubt.

The prosecution also had to prove that the death was caused with malice aforethought. This is provided for in S. 191 of the Penal Code Act. It is deemed to have been established by evidence of either the intention to cause death or knowledge that the act or omission causing death will probably cause death of some person.

Malice aforethought is therefore a state of mind, which is hardly ever proved by direct evidence. The courts have set down the circumstances, which ought to be considered before making the inference whether malice aforethought was made out from the evidence. *Tubere v. R.* (1945) 12 EACA 63. The court must consider the type of weapon used, the nature of the injuries inflicted, the part of the body affected; whether vulnerable or not, and the conduct of the accused before, during, and after the attack. *Uganda v. Turwomwe* (1978) HCB 182.

There was the evidence of Dr. Kalungi Sam was that the body of Brenda had 6 stab wounds on the right side of the neck and cheek bone on the face. There were lacerations on right side of the face, on the nasal bridge, on the right nostril, on the forehead and above the right eye. There was open skull fracture with multiple skull and bone fragments; there was a bruise on the right side of the head and back. There was no brain tissue within the skull due to the injury.

The Pathologist observed that there were no 'defence' injuries on the body, meaning that the deceased never put up any resistance. The injuries described by the Pathologist were on the head, neck and face. All these are vulnerable parts of the body. The extent of the injuries as described by the Pathologist were, deep cut wounds, lacerations, open skull fracture. These were extensive injuries.

The evidence on record was that there was a hoe recovered from the scene exhibit PE22, which had the blood stains of the deceased Brenda.

Her head was battered to such an extent that the skull was not only fractured, but all brain matter splattered out leaving fragments of bones. That was exceedingly brutal force which was used to inflict the injuries.

That evidence left no doubt whatever that the person who inflicted these injuries intended that death does occur. That is the only inference which can be deduced from the nature and extent of the injuries inflicted on the deceased.

The defence did not contest that ingredient. I found that the prosecution proved beyond reasonable doubt that the death of Brenda Karamuzi was caused with malice aforethought.

The last ingredient in the charge of murder which the prosecution must prove beyond reasonable doubt is the participation of the accused in the death. This was the only ingredient which was contested, and vigorously so by the defence.

The prosecution case in this regard was based mainly on circumstantial evidence. During the summing up to the Assessors, I warned them to consider circumstantial evidence with a lot of caution. The reason for the caution is because circumstantial evidence is evidence which is capable of being manipulated so that the truth is obscured resulting in errors which cause injustice.

The principles of law regarding circumstantial evidence were laid out in the case of *Simon Musoke v. R* [1958] EA 775 where the East African Court of Appeal stated:

‘In a case depending exclusively on circumstantial evidence, the judge must find, before deciding upon a conviction, 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’

According to the case of *Teper v. R* 2 [1952] A C 480 at page 489 which was cited with approval in *Simon Musoke v. R* (Supra), it held that;

"It is also necessary, before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."

See also *Twinimugisha Alex Alias Twine & Others v. Uganda* SC. C.A. No. 35 of 2002. There must be an irresistible inference of guilt from the surrounding circumstances before a conviction may be entered in a case where the prosecution relies wholly or almost exclusively on circumstantial evidence.

The circumstantial evidence which the prosecution sought to rely on was from a number of facts and situations. I will deal with each aspect and also the defence evidence thereof one by one.

The death and recovery of the body of Brenda Karamuzi.

The starting point was the evidence of the recovery of the body of Brenda. The evidence of PW5 and PW6, the area LCI Chairperson and landlord of A1 respectively was that the co tenant of A1 Aziz Kakooza brought fumigators who while trying to fumigate the septic tank discovered the body of Brenda.

A1 was the co tenant and the one unmarried, and the one who was wont to bring in women at his residence. The body was identified as that of Brenda Karamuzi by her mother PW1. A2 while at first feigning ignorance also identified it as that of Brenda, whom he obviously knew very well.

The body was naked save for a black blouse. It had braided hair. The evidence of A1 was that Brenda went to the saloon on 21st Thursday. In the morning of 22nd Friday, he commended her braided hair style. This was the same person with the same hair style who was recovered from his septic tank 8 days later.

The evidence of A1 was that Brenda came to stay with him on 18th January 2010. That was a Monday. DW3 testified to the same fact. She came with bags 2 bags plus her

handbag and these were deposited in the visitor's room of A1's house. Police forensic evidence from PW7 W/D/Sgt. Auma Grace, PW8 D/Sgt Icoot Robert and the Investigating Officer in this case D/W/ASP Namukasa Prossy was that they recovered three ladies bags from the ceiling of A1's house the day the body of Brenda was discovered in the septic tank of A1's house. The three bags were exhibited as PE23, PE24, and PE25. PW5 the LC I Chairperson of the area and PW6 A1's landlord witnessed the recovery of these bags. A2 was also present when the bags were recovered.

These bags were after analysis found to contain clothes of Brenda, according to the evidence of the PW13 Geoffrey Onen the Principal Government Analyst at the Directorate of Analytical Laboratories and Head of the DNA laboratories. His report was tendered in evidence as exhibit PE 20. Also in those bags were the NSSF card of Brenda exhibit PE3 as well as her ATM Barclays Bank card exhibit PE4.

Those bags were not dumped into the ceiling by Brenda. The evidence from A1, A2 and DW2 was that she put them in the visitor's room. Only A1 and A2 had access to the house and therefore the visitor's room according to the evidence of A1. The only possible explanation therefore was that either A1 or A2 dumped or rather hid Brenda's bags in the ceiling of A1's house.

The evidence of the police investigation team led by PW17 D/W/ASP Namukasa Prossy was that the blood of Brenda was found splattered on the corridor wall leading from the visitors room, on the eastern wall of the sitting room, and on the kitchen door. The brain matter of Brenda was found splattered similarly. The police forensic team took swabs from these places. The swabs were tested and conclusively determined by PW13 Geoffrey Onen the DNA expert to be the blood and brain matter of Brenda Karamuzi.

The Pathologist PW9 Dr. Kalungi Sam told court Brenda sustained very severe injuries and her brain matter splattered out of her skull. The skull was empty of brain matter by the time he carried out his examination. There only bone fragments of the fractured skull.

This was the brain matter which was found in the house of A1 on 30th January when her body was recovered.

From the above, it was clear that Brenda met her death in the house of A1. A1 denied any knowledge of the death of Brenda in his house. A2 on the other hand in his unsworn testimony told court that he found Brenda dead in the sitting room of his masters house in the early hours of 23rd January when A1 called him in to help lift her body to the car, though they ended up throwing the body into the septic tank instead.

The day and date of death of Brenda Karamuzi

The other aspect of circumstantial evidence which the prosecution sought to rely on to prove the participation of the accused in the death of Brenda was on the day and date when she presumably died. It was conceded by both the prosecution and the defence that it may never quite come out exactly when Brenda met her death.

The only definitive fact in that regard was the inconclusive statement by PE9 the Pathologist that Brenda must have died at least 72 hours before he carried out his examination. His examination was on 31st Sunday meaning the earliest he could place her death was 72 hours earlier, being Wednesday 28th.

The other evidence which could shed light in this regard was from eye witnesses. PW4 Nakirya Joan was the girlfriend of A2. She used to stay with him at the home of A1, residing in the boys quarters or more accurately in the guard house at the gate. Her testimony was that Brenda arrived at 6 pm on Thursday 21st and A1 was around. They even sent for food. The following day about 8.00 am, Joan PW4 saw Brenda wrapped in a towel, and Brenda called A2 and sent him for food. A2 went and bought the food.

According to Joan PW4, A1 drove out at 4.00 pm. She was the one who opened the gate for him as A2 had gone to buy their own provisions. Joan never saw Brenda again. She never saw her get out of the house or even catch a glimpse of her inside the house. Indeed that was the last time any person saw Brenda alive save maybe the one who killed her.

A2 in his testimony to court said that the day 22nd , Brenda sent him for food as she was wrapped ion a towel standing in A1's room. He brought it and she even tipped him with shs 2,200/-. A2 told court that he went away and returned at 6.00pm, and by this time A1 had already driven out. He never saw Brenda again alive.

Carol Nibarungi was a close friend of Brenda. According to her evidence, they spent the day of 21st Thursday together from about 10.00 am, till about 5.00 pm. They even had lunch together. When they were parting at 5.00 pm, Brenda told her that she was going to spend the night at the home of A1. She never heard from Brenda again. On 25th she rang Brenda but her phone was off. The same thing happened on 27th. When she rang A1 on 28th morning he told her that he did not see her on 21st or 22, but that they had agreed to meet on Saturday 23rd at Kabalagala, but when he rang, her numbers were off. So he did not know where she was.

Obviously A1 was telling a pack of lies to Carol Nibarungi PW2 that he did not see Brenda on 21st or 22nd. His own testimony under oath was that she was at his house on those days and he communicated with her. The point is that by 25th Brenda could not pick her phones. The evidence of Amelia PW3 Brenda's sister was that she also tried calling Brenda in vain. The mother Joy Karamuzi PW1 told court that her daughter spent the night of 20th at her home in Ndejje Namasuba, and left early morning of 21st in preparation for an interview. She was going to pickup clothes for the same. The mother waited for the daughter and called her on 21st and 22nd but her phones were off. She started frantically looking for her.

The prosecution tendered in court phone printouts. Exhibit P18 was the printout of Brenda's phone, for the period 1st to 30th January 2010. It showed that the last call Brenda received on that phone was on 22nd at 7.05 pm. Pope Ahimbisibwe DW2 told court that he made that call to Brenda and they discussed a business deal. That was the last time anyone apparently communicated with Brenda. Her phone was used later in the morning of 23rd, but from the evidence, this was by A2, who later sold it to PW10.

That means Brenda must have died sometime between 7.05 pm of 22nd and 8.45 am of 23rd when A2 used her phone.

The prosecution evidence was that the printout of the phone of A1 exhibit PE 26 showed that A1 was at or near the vicinity of his house between 8.34 pm and 9.36 pm of 22nd, thus giving him the opportunity to commit the crime alleged.

The evidence of Joan PW4 was that A1 returned home at between 2 and 3 am and A2 opened the gate for him. He was with his car, and when he packed, near the septic tank he left all the doors of the car open. He sent A2 to buy cigarettes and she escorted him as it was later and raining. That was how she saw the open car doors. A2 remained in A1's house for a long time after delivering the cigarettes. When she asked him for the reason, he said there was some cleaning he had to do first, hence the delay.

That was true as A2 had to clean up the blood of Brenda before or after the body was lifted to out and thrown in the septic tank. A2 in his own testimony corroborated what PW4 told court in this regard. He stated that A1 returned at 3.00 am and sent him for cigarettes. He went with Joan and upon return, he was asked to lift the body of Brenda. He took a long time as he and A1 accomplished that gruesome business.

Conduct of A1

The other circumstantial evidence which the prosecution sought to rely on was the conduct of A1 during this whole period from the time Brenda went missing up to the time her body was discovered in the septic tank.

The evidence of A1 was that Brenda was his guest from 18th January. His evidence was that before she arrived at his house, he had lost a friend, one Elias Kagimu who passed away in the USA, and arrangements were underway to have the body returned for burial. That means he and his friends were grieving the death of their friend. They often went for

the vigil at the home of Kagimu's parents in Kansanga. That was the evidence from DW3 Peter Kasedde, DW4 Jonathan Bakwega and DW5 Uthman Mayanja.

The evidence of the above friends and A1 was that they would indulge in heavy drinking before and after such visit to the home of their fallen friend. A1 told court that about midnight of 22nd, he called Brenda and her phones were off. They had arranged to meet at Kabalagala after he returned from the vigil. From that time he ceased to be in contact with a person who according to him, came to him when her life was in distress as she was financially unwell and was desperately looking for a job. He confessed that he did not disclose to his friends that Brenda was missing. PW3 one of the close friends of A1 told court that A1 never told them that Brenda was missing. Yet they were together practically everyday. The question that remains unanswered is why not tell your closest friends of the disappearance of your friend. DW3 only knew about all this at the police station when A1 was arrested.

Equally puzzling was the fact that Brenda was a social and outgoing person, according to A1 and her friend PW2 Carol Nibarungi. A1 was all the days when she was at his house going out, but not once did he take her out. He told court that this was a busy time for him and his friends as they were organising the return of the body of their friend Elias Kagimu. In the same breath, A1 told court that the group of friends would before and after their meetings go for drinks and merry making, hoping from one bar to another till the wee hours of the morning. PW5 called it unwinding. It therefore had nothing to do with the business of the burial of Kagimu that A1 failed or refused or neglected to take his equally outgoing socialite with him on his outings. That was quite telling. Was it because she was no more after 22nd and A1 had to keep up appearances and avoid mentioning Brenda at all? That was the inference the prosecution sought to put on A1's conduct.

A1 told court that he failed to get in contact with Brenda after 22nd. Her sister PW3 called him on 27th and asked about Brenda, equally Carol Nibarungi PW2 called on 28th and he told each of them he had no idea where Brenda was. The family and all those who cared

for Brenda were by this time frantically looking for her. That must have put him on notice that there might be something the matter with his house guest. A1 told court he never disclosed this to any of his friends. According to DW3 he all along acted normal and it was business as usual, drinking till the wee hours of the morning.

The best advice A1 could and did offer when asked about the missing Brenda was that they should look into hospitals and the morgue, as if to prepare them for the worst. That was also quite telling that for a friend as close as A1 said Brenda was to him, the best he could do was to ask her relatives to look for her among the dead. He told court that he did this because he once had a friend who went missing and his body finally turned up in the morgue. With that experience one would have been even more vigilant looking for a missing friend. The other reason why he did not do much by way of looking for Brenda was because he was very busy looking after his dead friends interests.

For a person who had earlier experienced loss of a friend in circumstances similar to what he was faced with, the only natural reaction would be to inform his friends and the vigour which they put to get a dead colleague back from USA would also have been put to try and uncover the whereabouts of the one A1 called his girlfriend. But then possibly the reason he did not seek such help from his friends was because he did not need it.

The last aspect in the conduct of A1 was the fact that after 22nd he kept away from his home. A1 told court that he was away from his home on 28th and 29th. He said he did not want a confrontation with his landlord who was becoming impatient with his failure to pay up his rent. A2 told court that A1 kept away from his house from 24th.

Whatever the period he was away; keeping out of one's house when a crime is proved to have been committed therein is not consistent with innocence. A1 had already accessed his house when he needed the remote of his car. He could no doubt access it if he wanted and he did so when he came with Apollo Tumwine after a night of carousing. So his sleeping away was not because of the fear of the confrontation with the landlord, though

the timing of the demand and locking up of the house by the landlord appears to have come in at a very convenient time.

At each time when A1 came by when he was not staying at his home, he would ask A2 whether Brenda had appeared. Even on 29th morning when he came with Apollo Tumwine, he so asked and accessed his house. The police found all the evidence that Brenda was killed in this same house, and the findings were made the following day on 30th. That evidence of the presence of Brenda in his house was so overwhelming it could not have been planted in one day.

Lies by A1

The prosecution sought to rely on what they alleged were lies by A1 as further evidence which corroborated the circumstantial evidence that he caused the death of the deceased.

An accused person has no duty to put up a formidable or incredible defence. All that he needs to do is to raise a doubt in the prosecution case as such doubt will be resolved in his favour. However, where an accused person opts to give evidence on oath, he or she has a duty to tell the truth. The duty to tell the truth under oath is onerous. When a witness takes an oath in court, he or she thereby makes a solemn affirmation, a promise or pledge before God and in the presence of court to tell the truth. Deviation from that pledge or promise has legal consequences. Among them, the evidence of such a person will be treated with a lot of suspicion. The veracity of such a witness will be greatly undermined. Such lies will be a further corroboration of prosecution evidence in proof of the charge.

The lies allegedly told by A1 were two fold. There those are lies which he told before he was arrested, and those which he told in court. Before his arrest he told Carol Nibarungi PW2 that he did not see or hear from Brenda from 21st. That they arranged to meet on Saturday 23rd at Kabalagala, but Brenda's phones were off when he rang her. He told the same thing to Amelia PW3. There was no denial that A1 stated as the two witnesses testified. In his testimony under oath, A1 told court that Brenda was at his house on 21st and 22nd. PW4 Joan saw Brenda arrive at the home of A1 in the evening of 21st. A2

carried the bag of Brenda inside the house in the evening of 21st when she arrived. He saw her in the bedroom window of A1 in the morning of 22nd when she sent him for food and A1 was still around.

The question then was why A1 told PW2 and PW3 lies that he did not see Brenda on 21st and 22nd. The two ladies were asking about Brenda on 27th and 28th, well after the presumed death of Brenda. That lie was more revealing than what it concealed.

The defence evidence of DW3 Peter Kasedde was that on 22nd night he was in Kansanga at the vigil with A1 and other friends. He left after midnight when the group moved from Divas bar, and he went home. He told court that it was out of sync for his friends to go to Club Silk when they were supposed to be grieving the death of their friend. A1 in his sworn testimony told court during his examination in chief that after Divas Bar they moved to a bar across the road and had drinks for about 30 minutes and that;

‘From there, in Mayanja’s car, we went to Club Silk – Royale section. We got there at Club Silk after 2.00 am and left after 5.00am. I was with Uthman. We met several people at Club Silk – Peter Kasedde, David Kigozi, Ben Bitature. All this time Uthman Mayanja was seated next to me.’

That was another lie as Peter Kasedde never went to Club Silk but went home. He did not look favourably to his friends going to celebrate when they were supposed to be commiserating.

The accused A1 told court that they were in Royale section of Club Silk and Uthman Mayanja DW5 was all the time seated next to him. The defence tendered in evidence the plain statement of DW5 which was exhibited as DE6. In that statement Uthman Mayanja categorically stated that they went to Club Silk and were in the downstairs section. That was not Royale section. If DW5 was telling the truth, then A1 told a lie when he told court that they went to Club Silk and sat in Royale section.

A1 told court that DW5 dropped him at his home at about 5.00am in the morning of 23rd, after Club Silk. He stated that there was light by then, trying to emphasise that it was

morning by the time he got home. DW5 in cross examination told court that it was still dark when he dropped A1 at his home. He still had to use his car lights because of the darkness. That was another lie by A1. Those lies put a lot of question marks whether A1 was indeed in Club Silk or at the time as he claimed.

A2 told court that his salary was not paid up for 5 months. At a rate of shs 40,000/- per month, that totalled to 200,000/-. That was the money A1 owed him. A1 told court that A2 used to earn a salary of 80,000/- per month. Aziz Kakooza would pay half and he would meet the other half. He however told court that A2's salary was fully paid up. That was certainly a lie. A1 had no money and he admitted that he had for more than 4 months failed to pay his rent. The landlord PW6 had even attempted to lock up the house for that reason. He admitted that at one time he had to ask his friend Jesse Lule for shs 5,000/- for lunch.

PW6 told court that A1 gave him a cheque which bounced. The landlord eventually decided to lock up the house A1 was renting as A1 had failed to meet his rental obligations. A1 promised to meet the landlord plus the area Chairperson on Saturday at 11 am, to settle his rent. Up to 4.00pm, he had not appeared, in spite of several calls by the Chairperson. A1 told court that he was on his way to settle the rent, but decided to go to the police to assist his friend. That was a lie. A1 told Peter Kasedde where he spent the night that he had no money even to bail out his friend from the police, and Kasedde DW3 told him to move and commence on the paper work, and he would turn up with the money. Kasedde told court that time was after 4.00 pm. A1 therefore had no intention of meeting his landlord whose appointment was at 11 am, or paying his rent, because as he confessed to Kasedde, he had no money.

That was the circumstantial evidence from which court was invited to find that the irresistible inference to be drawn there from was one of the guilt of A1 as the person who caused the death of Brenda.

Defence denied the offence totally. A1 put alibi as his defence. He told court he was not present when the deceased presumably met her death.

The law relating to alibi as a defence is well settled by the cases. In the case of Uganda v. George Wilson Simbwa, (SC) Cr. App. No. 37 of 1995, and it was held that the court must examine both the prosecution evidence and the defence evidence before coming to a decision. Prosecution evidence ought not to be examined in isolation of the defence evidence. The accused, when he sets up an alibi as a defence, he or she does not thereby assume any responsibility of proving the alibi. The prosecution is under a duty to negative the alibi by evidence. The prosecution must produce evidence, which places the accused squarely at the scene of crime.

In Bogere Moses & another v. Uganda Cr. App. No. 1 of 1997, (SC) (unreported), the court gave what amounts to putting the accused at the scene of crime. It held that this,

“ must mean proof to the required standard that the accused was at the scene of crime at the material time. To hold that such proof has been achieved, the court must not base itself on the isolated evaluation of the prosecution evidence alone, but must base itself upon the evaluation of the evidence as a whole. Where the prosecution adduces evidence showing that the accused person was at the scene of crime, and the defence not only denies it, but also adduces evidence showing that the accused person was elsewhere at the material time, it is incumbent on the court to evaluate both versions judicially and give reasons why one and not the other version is accepted. It is a misdirection to accept the one version and then hold that because of that acceptance per se the other version is unsustainable.”

A1 gave a detailed account of where he was not only on the 22nd, but on all the days subsequent to that till his arrest on 30th. He gave evidence on oath and told court how on 22nd he woke up early about 9.00am, and commended Brenda on her braided hair style. He left for work in town, leaving Brenda at home drinking Waragi. He got problems with the car and he took it to Auto Mend engineering garage. Rita Musoke gave him a lift to

Kasedde's office. He then went to Lule Jesse's office and thereafter proceeded to Dewinton Road at a pub for lunch and drinks with friends.

He left at about 7 or 8 pm, and headed for the vigil at Kansanga. He remained there with the friends till about 11pm, when they moved to Divas Bar. Around midnight the group moved to another bar across the road and later about 2.00 am, with Uthman Mayanja they went to Club Silk where they remained till 5.00 am, when Uthman Mayanja dropped him at home.

A1 showed PE26 the phone printout which he said proved that he was indeed away from his home from morning till late on 22nd. They showed that between 9.46am, 1.45 pm, he received calls with site locations in town centre. At 4pm, he also received a call serviced by site location in town centre. From that point A1 adduced the evidence of DW3, DW4 and DW5 to show that he was at the vigil in Kansanga, and not at his home in Bukasa Muyenga till 5.00 am of 23rd.

The site locations on his phone in exhibit P26 show that the calls he received from 8.17 pm, up to the last call of that day at 9.36p.m he was served by the site location Konge. The evidence from PW15 Ochwo Patrick was that Konge cell was one of those site locations which served the home of A1. That would mean A1 was at or in the vicinity of his home at those times.

With respect to A2, he gave evidence not on oath. There was a statement which was tendered in evidence and referred to as a confession statement. I did not put any reliance on it for the reason that this was not in the true sense a confession statement by A2. He was charged with murder. In that statement he nowhere admitted to having taken part in the death of Brenda. He made admissions to certain facts, which if proved constitute a criminal; offence, but he was not charged with those offences.

A denied having caused or taken part in the death of Brenda. The evidence of A2 was that he was asked by his boss A1 to carry the body of Brenda into the septic tank, and he did

so. The defence of A1 criticised the evidence of A2 as being unreliable. I found that criticism not borne out from the evidence. He told court that the body of Brenda was dumped in the septic tank. That was where the body of Brenda was recovered from on 30th. He told court that there was blood in the house of A1 when he went to assist his boss to lift the body. The police forensic evidence was to the effect that there were blood stains and brain matter in the house of A1. The DNA analysis proved that the blood and brain matter belonged to Brenda.

Police evidence from PW7 and PW8 was that A2 led them to the recovery of two sim cards and these were proved to belong to Brenda. He confessed to the police that he stole a phone of Brenda and this led to its recovery from Alex Ssali PW10. This was the phone which Brenda used while in the house of A1.

From the evidence, A2 would be an accessory after the fact. Section 393 of the Penal Code Act provides that a person who receives or assists another who is, guilty of an offence, in order to enable him or her escape punishment, becomes an accessory after the fact to the offence. His evidence would be the further evidence of corroboration to the prosecution evidence that A1 caused the death of Brenda.

It was submitted and rightly so that for evidence of an accomplice, which is similar to that of an accessory after the fact, to be used to found or corroborate evidence of a co accused, it had to be credible and reliable. Section 27 of the Penal Code Act provides that such evidence is admissible as against a co accused. It was further argued that such evidence requires corroboration.

I would agree only to the extent where there is indeed a confession. The case before me, A2 made what would amount to a confession in respect of being an accessory after the fact. He could not from the evidence be said to have abetted in the commission of the offence. He did not confess to the offence which he was charged with of murder. Therefore the need for corroboration would arise not because of the evidence of A2 was a confession, but because of the general rule which requires evidence of an accused, which

adversely affects a co accused to be taken with caution, and hence the need for corroboration.

The Indian case of *Ramshaw v. The State of Rajasthan* AIR [1959] SC 54, is quite persuasive. It set out the rules of evidence regarding corroboration. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. What is required is 'some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it.'

Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.

Thirdly, the corroboration must come from independent sources, and fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.

The above was summarised by the Supreme court when it defined evidence of corroboration to mean, independent evidence which affects the accused by connecting him or tending to connect him with the crime, confirming in some material particulars not only the evidence that the crime has been committed, but also that the accused committed it. See *Kibale Ishma vs. Uganda* Cr. App. No. 21 of 1998, (SC), (unreported).

According to C. J. Monir on *Law of Evidence* 14th edition vol. I page 2164 also states that corroboration need not be direct evidence. Circumstantial evidence can properly be used as corroboration. I respectfully agree.

The evidence of A2 was accomplice evidence in so far as he was charged with the same offence as A1.

It has been held that accomplice evidence is not different from evidence of an accessory after the fact. Such evidence is admissible. In *The King v. Baskerville* [1916] 2 K.B. 658, it was held that 'there is no doubt that the uncorroborated evidence of an accomplice is admissible in law'. This is the law in Uganda. Section 132 of the Evidence Act provides that an accomplice is a competent witness against an accused person and a conviction will not be illegal merely because it proceeds on the uncorroborated testimony of an accomplice.

The evidence of A2 was quite detailed. He told court how A1 returned at about 3. 00 am, and sent him out to buy cigarettes at that odd hour. It was raining. He went with his girlfriend PW4 and when they returned, that was when A1 asked his help to clean up and lift the body of Brenda into his car.

A2 told court how A1 switched off the security lights, and was anxious to know whether Joan was still awake. He proceeded to assist A1 to accomplish that macabre task of pushing the body of Brenda into the septic tank. The next day A1 gave A2 clothes to wash and they were blood stained. Later A1 picked up all these clothes and took them. But before that, he gave A2 a cushion cover to wash. It was also blood stained, and he insisted it should be dried up soon enough so that it is put back on its cushion. A2 did so. He showed the police that cushion cover and DNA analysis showed it had Brenda's blood exhibit PE21. This was further independent evidence which connected A1 with the death of Brenda.

Joan PW4 was a live-in girlfriend of A2. A1 admitted this in his testimony in court. She escorted A2 when A1 sent him to buy cigarettes at 3.00 am. She asked about the delay of A2 to get back into the house after delivering the cigarettes. The next morning she saw A2 washing clothes which had blood on them. These were clothes of A1. That evidence placed A1 directly at the scene of crime. Joan was described as a simple village girl from Masaka. She gave her testimony in a simple quiet but firm manner, devoid of

exaggeration or emotion. She had nothing to gain from her testimony. It is even possible she was not aware of the consequences of her evidence. she testified to matters which were adverse to her boyfriend. She was believable. I found her to be a truthful witness. This was independent evidence which corroborated evidence that A1 participated in the death of the deceased.

The evidence of A2 was not that A1 killed Brenda. He found Brenda already dead. But A2's evidence is put together with all the other circumstantial evidence, placed the accused A1 squarely at the scene of crime, thereby breaking his alibi.

I am mindful of the fact that the evidence of A2 was not given on oath and therefore it was not subjected to cross examination. A2 exercised his right to give un sworn testimony.

In *Lubogo v Uganda* [1967] EA 440, It was held that there can be no doubt that a judge in assessing the evidence in order to arrive at his verdict can take into account the fact that an accused person has not given evidence on oath but this right must be exercised with caution and must not be used to bolster up a weak prosecution case or be taken as an admission of guilt on the part of an accused.

I did not find that because evidence was not given on oath, it was of any less weight. It is admissible evidence, and if any comment has to be made on it, it only goes to credibility but not admissibility.

I did not find A2 an unreliable witness. He was accused of a very serious crime. He admitted only those aspects as he knew them to be true. He did not allege or even allude to the fact that his boss A1 caused the death of Brenda. I found him to be a far more credible witness than A1, who told court a pack of lies. His evidence that A1 returned home at 3 am and left the car doors open was a detail one needed not mention unless it was true. He was corroborated by Joan PW4 in this regard. A1 told lies that he did not have a car on 22nd and that he was dropped by DW5.

The lies which the accused A1 told court and peddled to the relatives and friends of Brenda soon after her death were inconsistent with innocence. They were the evidence of corroboration of the prosecution case.

Court is however always mindful of the constitutional protection of an accused person regarding his presumption of innocence.

The prosecution evidence was that the accused A1 agreed to host Brenda at his house. He told so many lies about her when her relatives and friends realised she was missing. He denied seeing her even when she was in his house. He insisted that she spent the night of 20th in his house when all evidence was that she was at her mother's house. Even when it was brought to him directly that Brenda was missing, he took an unconcerned attitude, yet he claimed she was at one time his girlfriend. He was quick assist the dead friend Elias Kagimu, than to look for the supposedly and hopefully still living Brenda.

He continued going out on drinking bouts and it was business as usual. He never reported to anyone, not even to her relatives or friends that Brenda was missing, yet she was on his own admission, living in his house. All the above could only lead to one inference that he was aware that Brenda was no more.

He advised the friends and relatives who were frantically looking for Brenda that they should look for her in the morgue. For a person who was talking about a supposed girlfriend that was not just callous, it was suggestive that he had some idea that she was dead. After all, according to his own evidence he had experience of a similar occurrence. No doubt he then knew Brenda was dead.

When the lies eventually caught up with him, and he was arrested, he had nothing more than an apology for his friend Chris Bagaruka, who, according to A1 and A2 was devastated by the news that Brenda was dead. A1 told court that he was apologising to

Chris Bagaruka for getting arrested when he came to visit him. Surely it was not just his arrest which devastated Chris Bagaruka.

According to A2, A1 kept asking him A2 what happened, but being a wise and obedient, if rather foolish servant, he denied knowledge of anything, but he was aware that A1 knew exactly what had happened, that their dirty mission to hide from justice had been discovered.

That apology was further evidence that A1 was always aware that Brenda was dead, but he never informed his friends, and now his misdeeds had landed his friend into this torrid mess.

There was evidence that one Phyllis Katana DW6 spent the night of 23rd in the house of A1. The entire story was as bizarre as it was unbelievable. The young lady claimed that after spending virtually the entire night chasing an elusive boyfriend, she landed on A1, who this time round had not only a car, but even a driver, but she still could not be driven to her home, but decided to go and spent a night with A1, and also like Brenda, in the visitors room. I wondered what it was meant to prove. I dismissed it as nothing but a pack of lies.

I found that the evidence of going to Club Silk was a red herring to try and bolster the accused's alibi. Simple but telling untruths in his evidence and the lies in that regard showed that A1 was desperate to prove that he was not at his home during the early hours of 23rd morning, when the body of Brenda was thrown into the septic tank.

A1 admitted that it was only him and A2 who had access to his house. The discovery of Brenda's bags in his ceiling, and his non reporting the her absence all place him at the centre of the whole episode. He denied seeing Brenda on 27th and 28th, when she must have died on or around 22nd or 23rd. *CJ Monir in Law on Evidence* (supra) states that evidence of false explanation is not only relevant, but is of considerable importance when it was given soon after the occurrence of the crime and when it was apparently designed to be to the facts, favourable to the accused. That was what exactly happened in this case.

In Dhalay v Republic [1995-1998] 1 E.A 29 CAK, it was held that for circumstantial evidence to justify the inference of guilt, two tests had to be proved, first the circumstances had to be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis but that of guilt and secondly it was necessary that there be no other co-existing circumstances which would weaken or destroy the inference of guilt. If such circumstances existed then the case had not been proved beyond reasonable doubt.

From all the above I found that all the evidence pointed to the irresistible inference that the accused A1 participated in the death of Brenda Karamuzi. I did not find any co existing circumstances to weaken or destroy that inference.

The defence argument was that Brenda was A1's girlfriend and so there was no way he would cause her death. That was never a convincing argument. A1 himself told court in cross examination that he described Brenda as an ex girlfriend. That could well be the nearest the truth that he came. He denied this and said she was current and not ex girlfriend. When the girlfriend came to stay with him albeit briefly, she was relegated to the visitors room, and there was no other woman in the house.

His own closest friends who came to stand by him in court and even testify on his behalf DW5 Uthman Mayanja and DW6 Phyllis Katana did not know Brenda. Each of these was a friend since 2006, about 5 years. Either they were not that close friends or Brenda was not what A1 claimed her to be in court. No wonder they were able to freely come to give testimony only so as to save their friend, after all they did not know the dead girl.

Carol Nibarungi PW2 and Amelia Karamuzi PW3 each told court that so far as they were aware, the relationship between Brenda and A1 was plutonic. That would explain why she freely and one must say with innocent naivety went to stay with an unmarried man. These two would know such matters if indeed A1 was Brenda's girlfriend. Amelia mentioned the men she knew Brenda was close to.

A1's friend who knew Brenda very well DW3 Kasedde told court he was not aware that Brenda was A1's girlfriend. So then who knew her so to be? PW 17 D/ASP Namukasa Prossy told court that during her investigations she noted that Brenda appeared to have a low opinion of A1 as a lover.

A1 told that when he returned from one of his drinking escapades, A2 told him that Brenda had gone out to Seebo Grill. He simply went to bed, and did not know when she returned. This story was corroborated by A2, who said that Brenda was dropped by a white double cabin vehicle. But that A1 refused to open for her and she could have spent the night outside in the cold, but for A2 who had the keys to the back door and he opened for her.

The above show the reverse that Brenda was a girlfriend of A1. No wonder then that when she died the conduct of A1 was one of nonchalance. The fact was that here was a pretty girl, a single lady who, according to him was taking refuge in his house who decided to go out for a good time in spite of him and all his play boyish lifestyle. Court cannot speculate on how this type of lifestyle worked on or affected these people. What is not speculative is that one of them ended up dead and her was body dumped in the septic tank of the other.

There were a number of contradictions and inconsistencies in the prosecution case. In *Oketcho Alfred v. Uganda* SC. C.A. No. 24 of 2001, the court cited with approval the holding in *Alfred Tarjar -V- Uganda*, Criminal Appeal No. 167 of 1969 EACA (unreported) that a contradiction or inconsistency in the prosecution case which is major and goes to the root of the case should be resolved in favour of the accused; but where it is minor and was not a deliberate lie intended to deceive the court, it should be ignored.

I may point out here that where a witness gives one version of events, the fact that the defence disagrees with that version or brings evidence which contradicts or is at variance with such evidence does not per se, make the evidence of the prosecution witness contradictory.

The testimony of Joan PW4 was attacked as being full of inconsistencies and therefore not being reliable. The inconsistencies were in respect of her evidence as to where exactly she was when the body of Brenda was recovered from the septic tank. There was some inconsistency as to who exactly wrote the agreement in respect of the sale of the phone exhibit P ID 1 between her boyfriend A2 then under arrest and Alex Ssali PW10. These were in my opinion minor inconsistencies. None of them went to the root of the case. They were not intended to deceive or tell lies to court.

The other complaints, particularly in respect of the evidence of A2 were not inconsistencies, but different versions of events as seen by the witness.

The prosecution by the circumstantial evidence adduced before court placed the accused squarely at the scene of crime. On this evidence alone, this court would not hesitate in the slightest to make the finding that the accused A1 caused the death of Brenda. The prosecution evidence was corroborated by the evidence of A2 who assisted A1 to throw the body of Brenda in the septic tank. On the above evidence I found that A1 participated in the death of Brenda Karamuzi. The prosecution proved that ingredient beyond reasonable doubt.

On the other hand I was not satisfied that accused A2 participated in the death of Brenda Karamuzi, but I was satisfied that he assisted A1 to try and hide the body of Brenda knowing that A1 was a participant in that death, and with the intention, for a monetary gain, to help A1 escape justice.

The two ladies assessors each advised court to find the accused A1 guilty of murder as charged, and A2 guilty of being an accessory after the fact.

I have no reasons to differ from the opinion of the ladies assessors. I hereby find the accused A1 Nkulungira Thomas alias Tom guilty of the murder of Brenda Karamuzi c/s 188 of the Penal Code Act, and I convict him accordingly.

I find accused A2 Sempijja Fred not guilty of murder as charged and I acquit him of those charges. But I find him guilty of being an accessory after the fact to murder c/c 393 of the Penal Code Act, and I convict him accordingly.

Sentencing

S.P.S.A: There is no record, so both accused should be treated as 1st offenders.

A2- Sempijja:I leave the sentence to the discretion of court. Offence carries maximum of 7years-per section 206 of the Penal code act.

A1-We pray for maximum penalty-death provided the aggravating factors that exist, deceased Brenda was only 27years old, fresh graduate in search of a job. Accused was more than 10years older than her. He took advantage of her vulnerable state. A young girl, woman desperate for a job. Issue of graduates seeking employment is one of the national concerns. Girls have been tricked and trafficked and prostitution, others corrupted to join armed gangs and are being abused. Pray court considers all these and takes a deterrent sentence. Pray court considers the impact the death has had on the family. They are still suffering. They invested in her education before celebrating the fruits of that investment,A1 took away her life. They are still hurting.

Pray court considers the gravity of the offence. This is a heinous crime. Pray court considers the brutality with which the offence was committed. Submit that for lack of remorse on the part of A1,he deserves no mercy but the maximum penalty. We so pray.

Nakakande: A2 was 21years and is a 1st offender. He has been in prison for about 1½ years and this should be considered. The convict A2 is a father of a 11month baby with PW4-Joan.Both are present in court. At the time of arrest she was about 2months pregnant.PW4 is only 18years.Pray that court gives him a chance to be a father and help this very young mother. Convict is an orphan. His father died when he was 2years. He tried self education up to Pr.4.He lived a humble life. The only light was this job with A1 and he treasured it. He could see nothing beyond this. Therefore he was easily lured into keeping this a secret. He was an obedient servant and was at the time demanding

shs.200,000/= and had been promised shs 1m/=.With this background, pray court treats him leniently.A2 has been convicted of an offence to which he pleaded guilty soon as he was charged from the statement in court. He was obedient and cooperated with the police. This is a sign of remorse and repentance.His demeanor at the trial has shown it. Pray court gives A2 a lenient sentence.So pray.

Barenzi: It is established practice in mitigation to issue submissions. However A1 is not going to make any submissions in that regard. He maintains his innocence. He is not satisfied with the findings of court and intends to appeal. Bearing in mind that law requires this court to pass sentence, so be it. We leave it to court to consider the circumstances and pass sentence as court finds it fit. We so pray.

A1 : I maintain my innocence in this matter. That is all.

A2: I have nothing to add.

Sentence Reasons

A1 and A2 were charged with murder.A1 was convicted of the same and A2 was convicted of being an accessory after the fact. The offence was committed in respect of a girl 27 years old who went to visit A1 and she believed was a friend and was to help her find a job opportunity. All was in vain as her life was extinguished in a very brutal manner. She was battered to death with such brutality, one is dismayed that a human being is capable of committing that kind of brutal offence on another .This was more over one who was alleged to be or have been a girlfriend. Whatever the case that was totally unjustified. Court condemns that on the strongest

Terms and must send out a clear message that crime does not pay.Life is sacred and must be respected. We do not bring our selves in this world and should only go out by God's will, not that brute force of man.

The accused A1 told court he maintains his innocence and his counsel stated they are ready to appeal this decision. That is their right. Court however finds that the kind of

brutality that Brenda was subjected to leaves no room for mercy on her killers. I therefore sentence A1 to death.

A2 admitted the offence with which he was convicted. For a promise of shs.1million, he assisted A1 to hide the body of Brenda in a septic tank. He is 21 years old and a first offender. He has spent 1 ½ years on remand all of which facts I have duly considered. I have noted that he has a young family but was foolish to have money make him commit the offence. I sentence him to imprisonment for 5 years.

Court: Right of appeal against conviction and sentence within 14 days.

Judgement delivered in open court.

Rugadya Atwoki

Judge

12/08/2011.