

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

HCT-11-CSC No.112/2011

CR CASE NO. KAB. -00-CR-AA 12/2010 CRB 785 OF 2010

UGANDA:: ::PROSECUTOR

VERSUS

A1 BYAMUKAMA SWALLEY A2
MUGANDA GAD A3 MUGARURA
DAVIS

ACCUSED

BEFORE HON. MR. JUSTICE J.W. KWESIGA R U L I N G

Byamukama Swalley (A1), Muganda Gad (A2) and Mugarura Davis (A3) are indicted for Murder under sections 188 and 189 of the Penal Code Act. The particulars of the offence stated that the three Accused persons, on the 1st day of April, 2010 at Nyakahita, Kahungye, Butanda Sub-county in Kabale District murdered BARIKURUNGI WILLIAM. The Accused persons pleaded not guilty. They were represented by Mr. Murumba on state brief and Mr. Arajab Arinaitwe represented

the Prosecution. The prosecution called 8 witnesses and closed the case. The Defence Advocate submitted that there is no prima-facie made out against any of the Accused persons to require them to defend themselves. He criticized the prosecution evidence as evidence of mere suspicions and not enough in proving the essential elements of the offence.

For the prosecution evidence to disclose a **prima facie case** the evidence must establish all the essential elements of the offence. In the case of murder the essential elements of the offence are the following:-

- (a) Proof death of the named deceased,
- (b) Proof that the death was caused unlawfully.
- (c) That there was malice aforethought in causing the said death.
- (d) That the Accused persons participated in causing death.

The moment there is no evidence that establishes any of the elements of the offence **No prima facie case** will have been made.

There is overwhelming evidence given by Dr. Aharizira Moses PW 8 in the Post-mortem Report admitted as **P.IV**. Barikurungi's dead body was identified to him for examination by Tukamuhabwa Ezra. The body had multiple cuts on the abdomen. Lungs and intestines were found hanging out. The kidney and heart were missing. The forehead bone was shattered. The injuries and bleeding caused death. This was confirmed by PW2

Barikurungi Jackline, the deceased's widow who saw and buried the body. The deceased was cut to death. His death was not accidental and there is no justification. This was unlawful death. From the injuries observed by the doctor that examined the dead body had multiple cuts on the abdomen. Malice aforethought has been inferred from the multiple cuts on the abdomen. This was violent cutting to the extent that the internal organs were damaged. The forehead had been shattered and the only inference is that whoever inflicted the injuries intended to cause death. The defence contends there is no evidence to connect the Accused persons to the death of the deceased. PW 1 found the deceased dead half kilometre from home on the morning following the death. A1 and A2 are her step-brothers while A3 is their friend.

The deceased and A1 and A2 had an on-going grudge over the estate of the father of A1 and A2 who was the father-in-law of deceased. P.W 3 Mbabazi saw the deceased buying beers in her bar for the accused persons in presence of other people. She learnt the next day that he was dead. PW4 **TUKAMUHABWA EZRAH** did not provide an evidence except hearsay information that the Accused persons killed the deceased because they had a conflict. PW 5 confirmed that there was a land conflict between the Accused and deceased. P.W 6 AIP MAGARA arrested the Accused. He found A1 about to be killed by the mob he arrested A1 and took him in cells without any incriminating evidence. PW 7 D/Sgt Tumushabe searched the Accused person's homes and found nothing to connect

the Accused to homicide.

All the prosecution witnesses confirmed the existence of a land conflict. It was also proved that the Accused person were seen drinking with the deceased at Mbabazi's bar.

The deceased purchased bears to A1 and A2 who were his brothers-in-law.

They left the bar at the same time. There was no evidence to show that when the deceased died he was with the Accused persons or that they had a hand in the death.

Where there is no evidence to prove an essential element, participation, even if the Accused person chose to keep quiet and offer no explanation, the Accused persons would not be convicted for the offence. Save for the bad relationship existing between the Accused and the deceased, I have found nothing in the prosecution evidence to link the Accused persons to the offence. I agree with the submissions made by Mr. Murumba for the Accused that mere evidence suspicions can not be sufficient to require the Accused to be put to their defence. This court would not convict them if they opted to keep quiet in their defence. I hold that **No prima facie case** been made against any of the three Accused persons. Each of the Accused persons is here by Acquitted.

J.W KWESIGA JUDGE 25-8-2011