

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL SESSION CASE NO 77 OF 2010

UGANDA:.....PROSECUTOR

VERSUS

NTIHABOSE BENON:.....ACCUSED BEFORE HON.

JUSTICE J.W KWESIGA

JUDGMENT

The Accused person Ntihabose Benon is indicted for Murder contrary to Sections 188 and 189 of The Penal Code Act. It is stated in the particulars of the offence that on 25<sup>th</sup> June, 2009 at Bahuzi Village in Kisoro District murdered Nsekerabanzi Lydia. The Accused person was represented by Mr. Bwagi Jonathan on state brief and Mr. Kalinaki Brian, Resident State Attorney for the State.

The Accused person pleaded not guilty and the prosecution proceeded to prove the case. The State called six (6) witnesses and tendered a charge and caution statement in which the Accused admitted the offence. The Defence is comprised of the Accused's sworn evidence in which he denied killing the deceased and he retracted his charge and caution statement.

The facts of the case shall be disclosed by the summary of the evidence given below;

PW 1 SILAS NIYONZIMA, a senior Clinical Officer from Kisoro testified that he examined the Accused person and filled Police form PF 24. On 3<sup>rd</sup> July 2009, he had a cut wound on his face, see P1. The Accused appeared mentally normal.

PW 2 DR. BAGANIZI MICHAEL carried out a post mortem examination of Lydia Nsekerabanzi on 27<sup>th</sup> June, 2009. The body had several deep cut wounds on the head, the arms, the chest and both thighs and she died of excessive bleeding from the wounds.

PW 3 NSABAYEZE TROFINA, the Accused persons neighbour testified that on 25<sup>th</sup> June, 2009, she heard the deceased making alarm that she was being killed. She went to the scene and saw the Accused with a panga. He had already cut her on the head. The Accused chased her, ran after her threatening her with a panga. The Police came, the Accused stoned the Police, the Police fired a bullet in the air and the Accused was arrested with a panga. The deceased was already dead.

PW 4 RUKERA RONALD corroborated the evidence of PW 3 above. He responded to the alarm made by PW 3 Trofina. He found the Accused armed with a panga standing near the deceased who was already cut. The Accused attacked the Police with stones; he was over powered after a bullet was shot in the air. He was arrested with a blood stained panga. The panga was recovered by the police, it was admitted as prosecution exhibit 'P.4'.

PW 6 OWACHA (ASP) who was the officer in charge of CID at Kisoro obtained a charge and caution statement admitted as P.5 in which the Accused confessed that he picked a panga, found the deceased in the bathroom and cut her several times and that she made alarm which attracted people who eventually arrested him.

The Post mortem Report made on 27<sup>th</sup> June, 2009 contains findings of wounds on the exact parts of the body that the

Accused person mentions in his confession dated 5<sup>th</sup> July, 2009. This corroborated his statement in the charge and caution statement.

In his defence he repudiated the confession, he stated that some people came from the back yard while the deceased was bathing, she called him he picked an object he did not recognize and threw it in the direction where he suspected the attackers to be but the object turned out to be a panga that killed her. This explanation does not account for the several cut wounds which were found on the deceased's body.

The Prosecution, before securing a conviction in a case of murder must prove all the essential elements of the offence in this case;

- a) That Nsekerabanzi Lydia is dead.
- b) That the death was unlawfully caused.
- c) That the deceased was killed with malice aforethought.
- d) That the Accused person participated in causing the death of the deceased.

This is a homicide that was caused in obvious and straight forward manner.

PW 3 and PW 4 saw the Accused person armed with a panga cutting the deceased, the Accused person was arrested immediately in possession of the killer weapon. The weapon was recovered and tendered in evidence as P.4. The Accused person confessed to the killing and the confession contains detailed account of how he killed his wife. The details in the confession materially corroborates what PW 3 Trofina observed at the scene. It accurately ties up with the medical report on the material details covering the parts of the body cut which led to bleeding to death of Lydia Nsekerabanzi. The Accused person's confession which he repudiated has been examined and passed the test set out in the decision of TUWAMOI VS UGANDA (1967)EA 84 which settled that a trial court should accept with caution a confession which has been retracted or repudiated or both retracted and repudiated and it must first be fully satisfied that in all circumstances of the case that the confession is true. I have already held that the confession was voluntarily made at the earlier stage in the trial in a trial within a trial, secondly, the above discussed evidence of Dr. Baganizi Michael, and the evidence of Trofina, the eye witness at the scene of crime materially corroborate the confession. I

have considered the fact that there was no forensic evidence to

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prove that the panga P.4 was the Actual killer weapon. This did not create any doubt in my mind as to the fact that the deceased was killed with a panga which was seen by PW 3 and PW 4 at the time of commission of the offence and the fact that the fatal wounds were consistent with use of a panga. Even without the exhibit the prosecution evidence had adequately described the killer weapon. Was this killing unlawful and if so was it

caused with malice aforethought' There is presumptive that every homicide is unlawful unless excused by the law or unless there is evidence that it was caused accidentally. See UGANDA VS OKELLO [1992-93] HCB 68, BUSAMBIZI VS SON OF WESONGA VS R [1948] 15 EACA 65, UGANDA VS EGUMA CHARLES. CR. SESS.0034 2007 [unreported].

In the instant case the deceased was cut to death. It was not in self defence or accidental. The multiple cuts also rule out a possibility of killing under provocation. The confessing shows that the accused picked a panga and followed the deceased in the bath room where she was and there was no evidence of acting in self defence or under provocation. This death was caused both unlawful and with malice aforethought. The intention to cause death is clearly proved .The tents for

determining the existence of malice aforethought were discussed in; UGANDA VS TURWOMWE [1978] HCB 15, NNALU VS UGANDA [1978] 182, UGANDA VS KATO [1976] HCB204, AKOL PATRIK VS UGANDA [2006] HCB 4.

Consideration is made to the nature of the weapon used, the nature of the injuries inflicted and the parts of the body on which the injuries were inflicted. In this case a panga, deadly weapon was used. There were multiple wounds inflicted on vulnerable parts of the deceased body such as the head and the chest. There was a great deal of violence used as evidence by the injuries proved.

In view of the above evidence the Prosecution proved beyond reasonable doubt that Nsekerabanzi Lydia was unlawfully killed by the Accused person with malice aforethought. The Defence that he threw an object to her not aware it was a panga is a total lie, that cannot explain the multiple injuries. It is also a lie told when he said there were other attackers because PW 3 and PW 4 found him in a red-handed execution of the criminal homicide. The two Assessors advised me to find the Accused person guilty as charged and I agree, the

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Accused person is found guilty of murder of his wife Nsekerabanzi Lydia, he is accordingly convicted.

J.W.KWESIGA  
JUDGE

## 30-4-2011 **SENTENCE AND REASONS FOR IT**

### STATE SUBMISSIONS:-

He has been on remand 1 year 9 months. The offence attracts death sentence. He killed his wife with impunity, domestic violence should not be encouraged. He deprived her of a right to life. I pray for a death sentence.

### DEFENCE:

The convict is 43 years old. He has a family of children below 10 years. The children are innocent, they should not suffer for their father's criminal act. We pray for a sentence that would enable him to come out and look after his children.

ACCUSED: I request court for a lenient sentence.

The Accused person committed murder of his wife in the most cruel manner. He cut her with a panga on the several parts of the body. She must have died a painful death. This is a typical example of men who do not value life of their wives as equal partners with equal right to life. I can not be lenient as requested by the Accused on account of the suffering of the orphans. He is the one who deprived them of their mother and for that I will punish him. He exhibited total lack of respect for human life and he does not deserve to return to society when he is still a strong young man with the excessive energy that he misused. He is said to be 43 years old and I have found it appropriate to sentence him to 30 (Thirty years imprisonment) so that he will return to society as a reformed and

exhausted by age not to be a danger to other people.

J.W.KWESIGA

JUDGE

29-4-2011

In the Presence of:

Mr. Bwagi for Accused on state brief.

Mr. Kalinaki Brian Resident State Attorney for the State. Mr. Turyamubona

Militon - Court Clerk.