
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KOLOLO
HCCS No. 202 of 2009

UGANDAPROSECUTOR

VERSUS

CHRISTIANO BULIRA }
.....ACCUSED
CHRISTINE KARITUNDU }

BEFORE HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE

JUDGMENT

The two accused persons, Christiano Bulira (A1) and Christine Karitundu (A2) were indicted for Murder, c/s 188 and 189 of the Penal Code Act Cap 120 of the Laws of Uganda.

The brief facts of this case were as follows:

The deceased Winkle Wakaritundu alias Rutamirika and his wife Christine Wakaritundu now A2, were at all material times joint proprietors of a pub and health club known as Texas Club located at Nsambya in Kampala City. The couple lived in a rented property half a mile from their work place.

Christiano Bulira (A2), a Congolese national was a regular customer at Texas Club who had over time grown into a close friend of the proprietors due to the substantial income derived from his expenditure at the Texas Club. In addition A2 was a businessman who owned a mine in the Democratic Republic of Congo and traded in minerals in Uganda.

It is alleged that on the 15th of March 2008 at approximately 1.00a.m the deceased and his wife (A2) left Texas Club and drove home. Upon arrival the deceased was attacked as he walked out of his car towards the rear side of the house. During the attack, he suffered two deep cut wounds on the head and a fractured skull. A2 called the supervisor of Texas club for help and together drove the deceased to Nsambya Hospital. Approximately half an hour after arrival at the Hospital, Winkle Wakaritundu was pronounced dead by a doctor. The post mortem report revealed that the cause of death was haemorrhagic shock due to excessive bleeding.

It is the prosecution case that A1 and A2 had become so romantically involved that they desperately needed to get Winkle Wakaritundu out of the way so they could progress the relationship to the next level. They therefore hatched a plan to eliminate him permanently. It was also alleged that in furtherance of their plan, A1 and A2 enlisted the support of one Eric who has since disappeared and is still at large. After the Winkle's death, A1 was actively involved in the funeral arrangements. He was however arrested on suspicion of the murder of the deceased just before the cortege left for Western Uganda. On the other hand, A2 was arrested three weeks after Wakaritundu's burial on suspicion of complicity in the murder. The two were subsequently charged.

Prosecution called a total of ten witnesses in support of their case.

PW1 Willy Kamugisha stated that he was a casual labourer and did odd jobs at Texas Club including cleaning. He testified that on 14th March 2008 Eric, a young Congolese national who was in A1 and A2's company borrowed a panga from the club. That upon receiving the panga he requested PW1 to provide him with a piece of wood from the stock of timber used for heating the Club's sauna. PW1 provided Eric with the timber as requested. But soon after, Eric asked Willy (PW1) to shape and mould the piece of timber using a panga. Willy did as requested until Eric expressed satisfaction with the shape and form using the following expressions,

“Ityo Itosha” and “Very Good”.

Eric then instructed PW1 (Willy) to place the piece of wood in the Honda CRV, a vehicle that belonged to A1. After the piece of timber had been kept in A1's car, Eric returned to the bar and joined A1 and A2.

In cross examination PW1 confirmed that he had worked at Texas Club for three years. He further stated that the club was run by Mr. And Mrs Wakaritundu. PW 1 also confirmed during cross examination that he had been charged with defilement well after Wakaritundu's murder. However the defilement proceedings had since been discontinued.

PW1 also confirmed that A1 and Eric were regular customers who routinely arrived at the Texas Club early in the morning, and left late in the evening. He further stated that A2 personally attended to these customers, spent time chatting with them and sometimes drove with them to buy stock for the club.

PW1 further stated in cross-examination that on the material day at around 1.00am, he saw the deceased and A2 leave the club and drive home. Later in the night, PW1 was informed by an Askari that the proprietor had been injured. He immediately ran to the sight and found the deceased lying in a pool of blood. He also saw what appeared to be brain matter spilled out of the deceased's head. The witness further stated that he saw the stick he had sharpened earlier that morning at the scene of the crime. PW1 told Elli (PW4) about what he had observed. In cross-examination he also stated that he never saw the deceased fraternise with the Congolese customers the way A2 did.

PW2 D/AIP Daniel Mwendo was the investigating officer. He stated that on 15/03/08 he was called to a murder scene at Kevina Zone in Nsambya, Kampala. He visited the scene in the company of the O/C CID Katwe. He also deployed scenes of crime officers. He further stated that he found a pool of blood and a moulded piece of wood stained with blood at the scene.. He picked up the piece of wood and stored it as an exhibit. His team was later joined by officers of the canine section. Sniffer dogs were let out and they led to the discovery of a panga which lay in the compound a few metres from the scene of crime. The panga was marked Exh. "P1" Remnants of the piece of wood were marked Exh."P2".

The investigating officer then proceeded to Nsambya hospital. It was from here that he transferred the body of the deceased to Mulago hospital for a post-mortem examination.

The witness also received information regarding another piece of wood that was found at Texas Club from which the murder weapon had been cut.

PW3 was Andrew Kizimula Mubiru a Forensic Scientist and Government Analyst. He received a controlled blood sample from the victim, "P7". Blood specimen from the scene is "P8". A piece of wood from the scene with blood stains "P2", "P3" from which P2 was extracted, a panga "P1", a controlled soil sample from the scene "P4", A soil sample from the perimeter wall and a pair of sandals from A2'S home Exh. "P5" all on PF 17A (exh.P18).

In his report (exh.P17) the government analyst stated that upon testing he found that there was evidence that the blood stain on the piece of wood "P3" was 99% likely to be that of the victim but the result of the blood sample on the panga was not conclusive. Other tests were not conclusive.

PW4 was Mr. Julius Shalita an Asst. Inspector General of Police. He was an uncle to the victim (deceased). He stated that on 14/March/2008 he went to Texas Club and spent some time in the sauna.

While in the sauna Mr Shalita was joined by A1 and A2. They were each wrapped in a loose cotton cloth commonly known as "lesu". A1 and A2 left the sauna together and

sat in the bar area. PW4 further stated that he sat with the deceased and they watched a football match. He left the deceased at about 11.00p.m and went home. The witness further stated that at 1.00a.m he received a phone call from a one Munabi, an old friend and was informed that Winkle had been attacked. He immediately went to the scene and found the land lady who directed him to the scene of crime. He found a pool of blood and a substance which appeared like vomit. The witness called police to cover the scene as he rushed to Nsambya hospital to check on the victim.

He found Winkle Wakaritundu lying unconscious. A1 soon joined him. He was present when Winkle Wakaritundu was declared dead. The witness and A1 wheeled the body to the mortuary. They later dropped off other family members home. A2 was driven home by one Rwangyezi of Ndere Troupe. The witness further stated that he returned home for a brief night's rest before returning to the scene early in the morning. He found policemen continuing with investigations at the scene of crime. D/AIP Mwendu informed PW4 that he had recovered a piece of wood and a panga which he believed were the murder weapons.

The witness further stated that he received a call from Elli (a supervisor at Texas Club) to say that the piece of wood at the scene of crime had been moulded at Texas Club. PW4 further stated that he went with the Regional CID Officer a one Musana to Texas Club and was shown another piece of wood from which the murder weapon had been shaped. The piece of wood was handed to Mr. Musana. PW4 further stated that he asked the police to monitor the activities of A1 and his group. He further stated that later that evening A1 was arrested at his home.

In cross –examination PW4 stated that he saw A1 and A2 in the sauna. The witness further stated that being a police officer and A1's relative he offered support where he could but in general let the police do their job. He passed on to the police any information he received. The witness also stated that he did not know how A1 got information about the incident so quickly as to join them in hospital. The witness also stated that he called the deceased's phone but it was answered by his daughter Sheila. In cross-examination he confirmed that Elli gave him information regarding the piece of wood used as the murder weapon. In further cross-examination by Counsel for A2 the

witness revealed he had been involved in resolving marital problems between A2 and the deceased. He stated that in 2003 and 2004 he counselled A2 to return to her matrimonial which she had deserted.

He further stated that he was the patron of Texas Club and went to the Club at least 3 times a week. Texas Club was the family business of A2 and the deceased. He stated that A1 and A2 were very close but surprisingly, the deceased never complained about their relationship. In his opinion A1 and A2 related as though they were “cohabiting”. This raised eyebrows but his nephew did not verbalise his concerns.

PW5 Ayebazibwe Elli stated that he was a supervisor at Texas Club. He further stated that the deceased and A2 had been at Texas Club on the night of 14/March/08 and left at 1.00a.m (15/March/08).

That ten minutes after the couple left Texas Club A2 called him. She told him that they had gotten a problem. PW5 in turn called one Abel and they rushed to A2’s home. They found that the deceased had been beaten and was bleeding profusely. The witness helped carry the deceased into a vehicle and A2 drove to Nsambya hospital. The witness further stated that he was able to observe the scene by use of electricity bulbs

The witness further identified a pang, a piece of and what looked like brain matter at the scene of crime. That soon after arrival at the hospital they were informed that the deceased had passed on. The witness further stated that he confronted PW1 about information regarding the piece of wood at the scene. He also stated that the piece which was used to murder the deceased had been shaped at Texas Club. He relayed the information to Mr Shalita and they looked for the remnant from which it had been sliced.

He stated that A1 and A2 were close and were always in each other’s company. He stated that A1 always typically arrived at the club by 9.00a.m or earlier. A1 whom he constantly referred to as Chris was sometimes in the company of his driver one Eric. He further stated that he never saw the driver again after the incident.

In cross-examination, PW5 stated that he used to see A1 and A2 on daily basis. He stated that the deceased rarely joined the company of A1 and A2. The witness said he had never seen Chris sit with the deceased. He stated that at 4.00p.m Chris was at the bar and that he had arrived very early in the morning. He stated that he thought Eric was Chris (A1's) driver since he always drove Chris in his vehicle. Apparently Eric was always with Chris. Chris always brought guests from DRC to the Club. He further stated that the deceased did not appear bothered by the close relationship between A1 and Christine A2. Regarding the call from A2, he stated that A2 informed him that she had a problem and needed his help.

PW6 D/Sgt Tom Murangi testified that he was assigned by his boss the Regional CID Officer, to obtain phone print outs in respect of phone numbers; 0772411111, belonging to the late Rutamirika, 0758411111 and 0782916391 belonging to A2 and phone No.0712595712 belonging to Christiano (A1). He obtained a court order for the purpose and took the court orders to MTN, Celtel and Mango the network subscribers. He analysed the print outs and found that on 15/March/08 at 00.22, Celtel no.0758411111 communicated to mango (UTL) no.0712595712. That MTN phone no.078916391 also communicated to 0712595712 at about the same time. He stated that 07548411111 communicated to 0712595712 at 1.40a.m, 1.52a.m, and at 2.00a.m. The phone print outs were tendered in evidence and marked exh.P19, P20 and P21 respectively.

In cross-examination he stated that indeed 07548411111 called another number at 8.00p.m but this was not the subject of his investigation. He further stated in cross-examination that at 8.22p.m the deceased called his wife while at Bunamwaya.

The Post mortem report prepared by Dr. Wandira was admitted in evidence under s.66 of the T.I.A.

PW8 Rtd. Captain Ivan Tumwebaze told this court that on 15/March/08 he received a call from Sheila Ayebare a daughter of the deceased. She informed him that robbers had attacked the home and hit her father on the head and that he was unconscious. He found the scene already deserted and proceeded to hospital (Nsambya) where he found a doctor attending to Winkle in the casualty area. Winkle had suffered a big cut and a

depression in the head. In cross-examination PW8 stated that the scene was not cordoned off. He further stated that as the doctor tried to save Winkle in the casualty room, Christine vomited in the corner of the room.

This witness stated in cross-exam that the relationship between A1 and A2 was deeper than that of a business woman and customer. He further stated that the deceased rarely joined the A1-led Congolese customers but that Christine was always in their company. He also stated that Winkle did not say anything about the suspiciously close relationship between his wife and A1 although the witness did point out to Winkle that it was a matter of concern. The witness further told court that the couple had a lot of problems and that he served as a constant shoulder to cry on that on several occasions, he intervened and tried to save their marriage. In cross-examination the witness said that the deceased once told him that he was suspected the possibility of an affair between A1 and A2 but he was not sure.

He further stated that he indeed warned the deceased against relying too much on A1's Honda CRV for transport. He had on a few occasions seen the deceased drive A1's Honda CRV. A1 had put the vehicle at A2's disposal. He even let her drive it to Western Uganda.

In further cross-examination the witness stated that there was no physical violence between the deceased and A2 but on re-examination he noted that the deceased suffered prolonged emotional abuse at the hands of A2. The witness also admitted being a frequent guest of the Texas Club. He was aware that the property belonged to a one Mugarura from whom A2 and the deceased rented it as joint managers and proprietors of the business.

PW8 also stated that A2 spent most of the time at the business while the deceased frequently travelled on business as a comedian. He stated that the deceased had a special love and confidence in his wife.

PW9 D/IP Edmond Sendi drew a sketch plan showing that the couple lived in one of the two houses in an enclosure.

PW10 Professor Abwoli Yabezi Banana is a Professor of Wood Science and Technology at Makerere University. He examined samples of timber recovered from both the murder scene and Texas Club. He confirmed that the two pieces of wood he sampled were of the same species. Indeed the shaped piece Exh 'P2' still had remnants of green bark on the top which was identical to the bark on the specimen piece Exh 'P3'. They had similar density range and arrangement of cells. He therefore concluded that the two pieces of wood were of the same species. In cross-examination he stated that the reason the pieces of wood were cut up several times was because the experts deemed it necessary to use destructive testing methods to reach the inner chance of the wood.

DW1 Bulira Christiano (alias Musesambili) a 35 year old Congolese businessman told this Court that he first met the late Winkle Wakaritundu at Kampala Casino in 2007. The deceased introduced DW1 to his wife within days of meeting and he became a fervent customer of Texas Club. He was a dealer in precious stones and had a company called Bulira Mining at Beni and Barazana in the Democratic Republic of Congo. To his recollection A1 and the deceased conducted various financial transactions which involved lending each other money from time to time. To put it in his own words

'We borrowed each other money'.

A1 (DW1) recalls that at the time of death, the deceased owed him money although he could not say how much he was owed.

A1's evidence was that on 14/Nov/08 he called A2 early in the morning and ordered breakfast of milk tea and "katogo" a mix of green banana plantain with either peanut sauce or meat. A1 further stated that he proceeded to the club and enjoyed the breakfast with his live-in partner who coincidentally was suffering a miscarriage at the time. A1 further stated that apart from his live-in partner there was no one else in his company on the 14th March 2008.

He further stated that on completing his breakfast meal, he drove his partner to hospital where she unfortunately suffered a miscarriage. He further testified that in the afternoon of the material day, he left Texas bar to meet an Italian client. He stated so to

contradict the contention by the prosecution to the effect that A1 had spent the entire day at the Texas club. A2 left the Club at some point and drove off with A1's driver called Eric. A1 further testified that he spent sometime in the Texas club sauna then left to sit around the Bar area, where he was joined by other customers. A1 further stated that he left Texas Club between 9.00pm and 10.00pm. A1 further testified that at 2.00am he received a call from a one Sheila who called using A2's number. Sheila is A2's daughter. Sheila called to say that they had been attacked. A1 immediately woke up a one Betty who lived with him and they drove to Nsambya Hospital where they joined the family of the deceased.

A1 further stated that he was deeply involved with the funeral of the deceased. He was active in chauffeuring the family as they made burial arrangements. A1 made a contribution of US \$ 300 dollars towards the funeral expenses. He however denied buying the burial clothes of the deceased insisting that although he transported the children to the shops; the children carried money which they used to buy the burial cloths. In cross-examination he stated that the two families, his and that of Wakaritundu, often ate together. When eating at A1's home his wife would prepare Congolese food such as cassava leaves. When asked about Betty he stated that she was the wife of his friend who had been dealing in the same business but who had since died. Ironically Betty moved out of A1's residence soon after the murder incident and could not be located. A1 also provided accommodation for a one Eric in his servant's quarters. He however could not account for Eric's movements on 14th March 2008. A1 actually denied being with the said Eric on the material day. A1 also narrated details of torture that he allegedly suffered at the hands of the Rapid Response Unit (RRU).

DW2 (A2) Christine Karitundu, 37 years old is the widow of the deceased Wakaritundu. They met in 1991 at Kabale Secondary School when she was in S.2 and where he served as a teacher. The relationship grew and the two got 2 children Nayebare Sheila, 18 and Ainabyona Peter 16. They were wedded at All Saints Cathedral Kampala in 1998. A2 described the late Winkle Wakaritundu as a husband and friend. A2 was quick to add that the deceased had two children, Nicholas Tumwine and Byamukama Edison before she met him. DW2 (A2) stated that A1 was introduced to her by her late

husband and became her customer. A2 denied having any sexual relations with A1 and affirmed that they enjoyed a happy and contented marriage with the deceased who also doubled as a good business partner.

A2 also confirmed that she run the Texas Club business jointly with the late Wakaritundu in premises rented from a one Mugarura. In her evidence on oath she stated that on 14/March/2008 Bulira called her and ordered for breakfast. She prepared him milk tea and “katogo”. Bulira arrived at the club with his partner who seemed to be feeling unwell. After breakfast A1 and his partner proceeded to an undisclosed hospital. The deceased had stayed home because he was suffering from malaria. He only managed to get to Texas Club at 4.00p.m. The deceased immediately got a hand massage to ease the pain from intravenous malaria treatment. She further stated that the deceased left the Club at 8.00p.m. The deceased told her that he was going to meet Hon. Rukutana to discuss an important sponsorship for a film. The deceased needed financial help from Rukutana to develop the film.

A2 further stated that A1 was at the Texas Club on the evening of 14/March/2008 and left between 10.00 and 11.00p.m but she stayed on at the club with the late Winkle Wakaritundu until 1.00a.m when they left. The deceased drove them in the family car, a Corona UDQ 667. Upon arrival A2 who was in the co-driver’s seat opened the main gate as was the practice- the co-driver opens the gate. As the deceased pulled into the parking yard, A2 walked ahead to open the back door of the house. As she opened the back door she heard Wakaritundu scream in pain. She ran back to the scene and found Winkle Wakaritundu fallen on the ground. She also saw two assailants trying to get away from the scene. She further stated that she was frightened. By this time, the children had opened the door for her. A2 then called her worker (Elli) from Texas Club to come and help. Winkle Wakaritundu was still alive. Elli helped put the deceased in the car and she drove him to Nsambya hospital. She further stated that the doctors did their best to save him but he died approximately half an hour later.

In cross examination A2 stated that when she phoned Elli, she told him that they had been attacked by robbers and needed help. She further stated that she had to drive the deceased to hospital since she was the only one who could drive. In further cross examination by Counsel for A1 she stated that she got on with the deceased very well and he never complained about A1. When asked by the assessors how she managed to drive the deceased she stated that she had the strength to drive.

It is a cardinal principle of criminal law that the burden to prove a case against the accused lies throughout on the prosecution and does not shift. In addition it is the duty of the prosecution to prove the case against the accused beyond reasonable doubt. Any doubt must be resolved in favour of the accused. Further still, an accused person should not be convicted on the weakness of his or her defence but rather on the strength of the prosecution case. See cases:

Sekitoleko v Uganda 1967EA 531.

Okethi Okale & others v R 1965 EA 585

Uganda v Oloya 1977 HCB 4

Uganda v DC Ojok 1992 HCB 54

Seuri v R 1972 EA 486.

Before proceeding any further, let me point out that this case has been cause- listed several times but for one reason or the other, it was passed from one session to the next and from one judge to the other. In HCCs 97 of 2008 a nolle prosequi was entered by the DPP after more than five witnesses had been called. Because of the existence of a prior court record, objections were raised as to whether questions could be put to witnesses regarding their evidence in the earlier proceedings. A finding was made that witnesses could be questioned regarding the veracity of their assertions in earlier proceedings.

As was held in **Damodar Jinabhai & Co Ltd & Anor v Eustace Sisal Estates Ltd 1967 EA 162.**

The record of the earlier case brought by the broker could be referred to only for purposes of contradicting or corroborating the evidence adduced in this case.

I agree with the findings in **EUSTACE 1967 EA 162** but hasten to add that although the case involved civil proceedings, the principle was applicable to criminal proceedings as well. Whether proceedings are civil or criminal, previous proceedings may be referred to for purposes of validating, contradicting or affirming evidence adduced in a subsequent trial.

The other issue which I wish to address relates to A1's alibi. In his defence Accused No.1 put up an alibi. He stated that he was not at the Texas pub at the times the prosecution claimed he was. DW1 (A1) stated that in the hours leading to the murder, he was attending a meeting with an Italian client in down town Kampala. A1 further stated that he left Texas Club between 10.00p.m and by 11.00p.m and he was safely tucked away in his bed and could therefore not have been near or at the scene of crime. He further stated in his defence that he only got to know about the murder when he received a call from A2's phone informing him of the nasty incident at Wakaritundu's home. On receiving this call at 2.00a.m A2 stated that he immediately proceeded to Nsambya hospital.

This court would like to note that as held in **Sekitoleko v Uganda 1967 EA 531** "... the burden of proving an alibi does not lie on the prisoner." When an accused puts up an alibi he passes the burden to the prosecution to adduce evidence to destroy the alibi by placing the accused at the scene of the crime. See also the cases of:

Uganda v Sebyala 1969 EA 204.

Raphael v Republic 1973 EA 473 CA

Bogere v Uganda 1998 KLR, Supreme Court of Uganda.

I will return to this issue later in the judgment.

Indeed, the prosecution did concede that some contradictions had emerged particularly with regard to the source of lighting at the deceased's home on the night he was murdered. On the one hand, PW5 testified that he observed the scene of crime with light from an electric bulb. This was however contradicted by other prosecution witnesses who testified that there had been a blackout on the night in question but flash lights from mobile phones had been used as sources of light. Defence lawyers also argued that there had been a broken chain of evidence in the movement of the piece of timber recovered at Texas Club from which the murder weapon had been curved. In their view this rendered the entire prosecution evidence unreliable. In response, the prosecution invited court to find that the contradictions were minor and did not go to the root of the prosecution case and could be explained away due to passage of time.

In my view the contradictions were minor. The contradictions relating to lighting is minor as lighting at the scene of crime was not essential to the identification of the accused persons in this case. In any case the type of light at the deceased's home at the material time was not in contention. Further still, such a contradiction could be attributed to loss of memory due to passage of time.

I now turn to the main elements. In order to constitute the offence of murder, the following ingredients have to be proved beyond reasonable doubt.

1. That the person alleged to have been killed is dead.
2. That his death was unlawfully caused.
3. That there was malice aforethought.
4. That it is the accused who caused the death.

Whether Death occurred?

In this case the death of Wakaritundu is not in contention. The post mortem report signed by Dr. Wandira was admitted under S.66 of the T.I.A. PW2 D/IP Mwendo stated in his evidence that he collected the body or remains of the late Winkle Wakaritundu Rutamirika from Nsambya Hospital and took them to Mulago Hospital for post mortem. PW2 was issued with a post mortem report “Exh.P22” certifying the death of Winkle Wakaritundu. In agreement with both assessors I find that there is overwhelming proof that Winkle Wakaritundu Rutamirika is dead.

Whilst Rutamarika’s death is not in contention, I will briefly examine the question as to when death may be deemed to have occurred. In several jurisdictions including some states in the United States such as Washington DC and New York a law has been passed providing for a unified definition of what amounts to death. The Unified Determination of Death Act of the United States provides some uniformity to what amounts to death. States such as Texas and Washington are yet to pass this law. It is unclear whether death occurs after the heart stops, the breathing ceases or when the brain stem is dead. This issue is a subject of discussion in Elliot and Quinn (2008) Criminal Law a Pearson and Longman Publication at pg 62.

In Uganda the post mortem report is the best proof of death- (PF 48B), Exhibit “p22”. However as was held in **Kassim Musa Obura and Anor 1981 HCB 9** the failure to produce a post mortem report is not fatal to the prosecution and does not bar the court from inferring death.

2. Whether the death was unlawfully caused?

In homicide cases, death is always presumed to be unlawfully caused unless it was accidental or it was caused in circumstances which make it excusable. Homicide is excusable where it is authorised by law. See **Gusambizi s/o Wesonga v R 1948 EACA 65**. See also **Akol Patrick & others v Uganda 2006 HCB 4**. Death due to natural causes such as illness is not punishable. In this case however the deceased had been at the Texas Club from around 4.00 pm on 14/March /2008 to 1.00a.m on 15th March 2008. Before that he had mentioned to PW4 and DW2 that he was suffering from malaria and was on treatment. While at the club the deceased requested to be massaged

in the arm in order to ease the pain of intravenous treatment pricks. Other than these ordinary complaints the deceased was going about his business normally. It is DW2 (A2's) evidence that on 15/3/2008 at 1.00a.m she heard the deceased scream and immediately ran to where deceased was but found the deceased fallen down. Two men receded into the background and run off after assaulting the deceased. The wounds he suffered were fatal. In these circumstances I find that Wakaritundu's death was indeed unlawfully caused.

Principal State Attorney Margaret Nakigudde submitted, and correctly so in my view, that the death of Wakaritundu was anything but lawful. The defence was in agreement. I therefore find that this ingredient of the offence has been proved beyond reasonable doubt.

I now examine whether the death was caused with **malice aforethought**?

Malice aforethought is defined under S.191 of the Penal Code of Uganda and may be proved by direct evidence or may be inferred by evidence of circumstances indicating knowledge that the conduct of an accused would probably cause death. However courts are cognisant of the difficulty of proving an accused person's mental disposition but are agreeable to an inference of such disposition from the circumstances surrounding the homicide under investigation **R v Tubere 1946 (12) EACA 63.**

Malice aforethought is an intention to cause death of any person whether such a person is the person actually killed or not. Under S.191 (b) knowledge that the act or omission causing death will probably cause the death of some person, whether such a person is actually killed or not although such knowledge is accompanied by indifference whether death is caused or not, or by a wish that it may not be caused. See case of **Uganda v John Ailing (1992-93) HCB 80** which defines what constitutes malice aforethought.

The cause of death of Winkle Wakaritundu was found to be haemorrhagic shock due to over-bleeding resulting from deep cut wounds on his head. According to Dr. Wandira's report which was admitted, the head injuries caused multiple skull fractures. There is no contention that whoever hit the late Wakaritundu on the head with a blunt or sharp object intended to kill him.

I further find that malice aforethought in this case can be inferred from the part of the body on which the injuries were inflicted. The deceased suffered severe head injuries which would suggest that the killer intended to kill him by hitting a vulnerable part of the body. Exh. "p22" the post mortem report revealed that the deceased suffered deep cut wounds measuring up to 10cm on his head. I do agree with assessors that malice aforethought has been proved beyond reasonable doubt.

We now turn to the issue as to **who caused the death** of Winkle Wakaritundu. It was correctly noted by the prosecution and the defence that there is no direct evidence linking any of the two accused persons to the murder of Winkle Wakaritundu.

The prosecution case relied on circumstantial evidence. In her submissions the learned Principal State Attorney cited the case of **Simon Musoke v R 1958 EA 775** in which it was held that 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. In **Teper v R (2) 1952 AC 480** it was held that before drawing the inference of the accused's guilt from circumstantial evidence, the court has to make certain that there are no other co-existing circumstances which would weaken or destroy that inference. Circumstantial evidence is evidence of surrounding circumstances. It is the reliance on a set of existing circumstances which when put together irresistibly lead to no other inference but the guilt of the accused. See also the case of **Mureeba Janet and others v Uganda (2006) HCB 1**.

I have cautioned myself that in examining the evidence adduced before me, no inference of guilt should be drawn unless it meets the standard of proof stated above.

Principal State Attorney, Margaret Nakigudde submitted that the following series of circumstances invariably point to the guilt of the accused. The prosecution relied on the evidence of PW1 who stated that for un-explained reasons A1 and A2 were always in each other's company from dawn to dusk on daily basis. He further stated that A1 always arrived at the Texas Club very early in the morning and enjoyed A2's undivided attention. This evidence was supported by PW4 AIG Shalita, a relative of the deceased who stated that he had observed a budding romance between A1 and A2 which caused him significant discomfort. As a senior police officer, and member of the family and indeed patron of Texas, he had concluded that A1 and A2 were in co-habitation mode.

PW8 made similar observations as PW4. He stated that he had alerted the deceased about the appearances of an affair between A1 and A2. He also stated that the deceased had been a victim A2's verbal and emotional abuse over a long period of time. The deceased appeared resigned and unable to challenge A2 who clearly enjoyed enormous support from A1 with whom they spent an enormous amount of time together on a daily basis.

The prosecution further invited court to find that the piece of wood which had been sharpened at Texas club earlier in the morning was the same one recovered at the scene of crime. They relied on the evidence of PW1 who sharpened the stick and saw a one Eric place the stick in A1's Honda CRV motor vehicle. Moreover, A1 had been present at the Texas Club at all material times.

The prosecution also relied on PW10 Professor Banana who stated that the texture of the outer and inner back of the pieces of wood recovered at the scene of crime and the one from Texas Club were similar.

The prosecution also relied on telephone records which indicated that a few minutes before the deceased and A2 left Texas Club, A2 dialled A1 twice. The prosecution argued that it was reasonable to infer that the two calls were made to put the assailants on alert that the victim's arrival at the scene was imminent.

In reply the defence contended that there was no link between the accused persons and the crime. That A1's only mistake was ironically the generosity he extended to a struggling family.

A1 and A2 categorically denied being in love. A1 further disputed the presence of a one Eric at Texas club on the day in question. He further argued that Eric could not have placed the piece of timber in his car since he was not present on the morning of the 14/03/2008.

A1 denied having received any phone calls from A2 before 1.00a.m on the fateful night. Turning to A2, she testified that she and the deceased enjoyed a happy marriage free of any tensions as alleged. She also stated that she did not see Eric on the morning of 14/March/2008, neither did she recognise the deceased's assailants. She further stated that as a couple, they had a tradition of letting the co-driver open the gate and the house. That on this occasion the deceased was the driver and she had the benefit of walking ahead of her husband in order to open the back door. A2 denied being involved emotionally with A1 whom she described as an ordinary customer. She also denied making any phone calls to A1 on the fateful night.

Having listened to the arguments of both the prosecution and the defence I once again note from the outset that no direct evidence has been adduced before me to link the two accused persons to the offence. The offence was executed in the early hours of the 15/March/2008 under the cover of darkness. I will nonetheless evaluate the totality of all the evidence laid before me.

Essentially three areas of circumstantial evidence have been adduced.

1. The similarity of the piece of timber found at the murder scene and the sample from which it was allegedly cut.
2. The close relationship between A1 and A2.
3. The proximity of the phone calls to the time of the murder.

In professor Banana's report exh.p17 he stated that the outer and inner back of the pieces of wood were similar. The two pieces of timber had the same wood colour,

indistinct sapwood and heartwood and both had invisible growth rings. They also had similar grain orientation and the same base density range. Lastly both pieces had similar arrangement of cells (vessels, fibres, vertically along the length of the tree).

The professor noted that exh."p2" found at the scene had been shaped and part of the bark removed but a considerable amount of the bark left. He noted that the bark is one of the most essential features of identifying tree species. In addition, exh.p2 had sufficient blood samples for analysis.

Earlier, PW1 had stated that when he was instructed by one Eric to sharpen the piece of wood, Eric insisted that only one part of the timber is sharpened and the rest is left intact. By leaving the bark on the piece which became a murder weapon, it was possible to compare and contrast the piece of timber and a similar one found at the Texas Club. From the contents of the bark, the two pieces were found to have the same amount of sap stains. This would mean that they were exposed to sunshine at about the same time. This observation reinforces the evidence of PW5 who stated that with the help of PW1 they had found the other piece of timber from which the murder weapon was cut. This leads me to the inference that the piece of timber recovered from the scene of crime is the very one which Eric had earlier in the day kept in A1's car. This finding further reinforces the evidence adduced by PW1 which established the chain of movement of the pieces of timber from the Club where it was sharpened to the car where it was kept and to the scene of crime from where it was recovered. I therefore find PW1 to be a credible witness and believe his evidence which shows that on Eric's instruction, the murder weapon was kept in the safety of A1's car prior to the commission of the offence.

With regard to the deceased's family situation, the prosecution adduced evidence to shows that A2 and the deceased were a struggling family. Indeed the two had faced serious financial challenges for a long time which prompted A2 to desert her matrimonial home. A2 had on several occasions deserted the husband citing financial problems. The emergence of A1 gave A2 the financial security which she had always longed for. In A1, Christine had found a man who could provide for her needs in abundance. A1 also met her transport requirements by laying at her disposal a Honda

CRV motor vehicle for her to use at beck and call. A2 was known to be a big spender at Texas Club who also happened to exercise considerable control over one of the proprietors, A2. The elimination of the deceased provided A1 with the twin benefit of not only cementing the relationship with A2 but also gaining full control of the business. It could be inferred that the motive to eliminate Wakaritundu organically evolved at the same pace as the growth of the romantic relationship between A1 and A2. Similarly, the complexity of the relationship between A1 and A2 created the motive for the deceased's murder. A2 had grown to be financially dependent on A1, a situation PW8 warned the deceased about, to no avail. The situation was aggravated by the fact that A2 and the deceased were living in a loveless marriage which she often walked in and out of. This was confirmed by PW8 who had been a childhood friend of the deceased for over 30 years.

I therefore find that the totality of the circumstantial evidence adduced in relation to the dynamics of the parties involved in this case which include; the budding romantic relationship between A1 and A2, the financial difficulties which A2 and the deceased faced, the prospect of a big financier taking over a struggling business from the deceased coupled with the loveless marriage of the Wakaritundus rendered the prospect of eliminating the deceased an attractive option to A2.

Turning to A2, I agree with the prosecution that the fact that the piece of timber which had been sharpened, shaped, carved out at the Texas Club and stored in A1's vehicle Honda CRV and subsequently found at the murder scene squarely links A1 to the offence. The piece of wood used to assault Wakaritundu was left at the scene while the panga was discarded a few metres away. Blood stains on the deadly piece of timber were captured by forensics as containing the deceased's DNA. PW1's evidence is indeed material in so far as it points out that he sharpened the piece of wood and stored it in A1's car on A1's driver's instructions. It is probable that if the piece of wood had not been left at the scene of crime, A1's involvement in the murder would have gone unnoticed.

Finally the calls made by A2 to A1 a few minutes before the murder points to the fact that A1 and A2 were working together at the material time and they kept each appraised

of the developments as they progressed towards the deceased's death. The phone print outs which were exhibited as exh.P19, P20, P21 are material. A2's phone called A1's phone. A2's phone called again on another line. A2 repeated this alert; the action was repeated with a phone beep. The inference drawn from these set of actions is that by the time A1 and the deceased arrived at their gate, the two assailants, were ready to strike.

I have also carefully considered the accused's defence. A1 stated that on the morning of 14/March/2008 he rose very early (by his own admission) and ordered breakfast at A2's pub. A2 was on call and was identified by PW1 and PW5. They both confirmed that A2 was in the company of A1 and another Congolese man known as Eric. A1 denies this version of facts although he claims he left Eric at his (A1's) home that morning. What caught my attention though is A1's statement to the effect that at the time they went to have breakfast, his wife was experiencing a miscarriage. Apparently her illness had started prior to their arrival at the club. It is inconceivable that one would enjoy a breakfast meal at a club with a spouse who is undergoing the pangs of miscarriage. I do not believe that A1's partner was at Texas Club on the material day as A1 claimed because other witnesses would have seen her. In any case A1 whose movements are the subject matter of this case admitted that he was at Texas Club on the morning in question and that he drove himself to the Texas Club in his Honda CRV in which the murder weapon had been stored earlier in the day.

On the other hand, A2 painted a picture of a normal working day gone badly at the close of business. Her account is however contradicted by PW1 and patrons who were at the club on the material day. She denied having sat with A1 but this again was contradicted by PW1, 4 and 8 who stated that A1 and A2 were seen in each others' company in the sauna and later at the bar, taking drinks. A1 then left the pub between 9.00p.m and 10.00p.m leaving A2 in the pub with the late Wakaritundu. A few minutes before the two left Texas Club, A2 dialled A1.

A2 and the deceased drove home as usual only that on this occasion, deadly stalkers awaited the deceased and he would never live to tell the story. As he parked the car, the assailants struck down the unsuspecting Wakaritundu.

A1's conduct just before and just after the murder was suspicious. On the morning of the murder, A1 swung into overdrive. He indeed mourned more than the bereaved. He out-did himself in displaying affection for the bereaved family or was it for the deceased's wife. His contribution was touching except for factors listed above that exposed the facade. While A1's defence is that he is a victim of his own generosity towards a family friend, the inference here was that his, enthusiasm was a way of covering his tracks under the cloak of care and concern. Indeed his deep concern for A2 was not in dispute.

A1's hyper activity during the funeral arrangements was intended to divert attention from his involvement in the crime. I have carefully looked for any other hypothesis that could destroy the inference of accused's guilt and have found none.

The circumstantial evidence in this case leads to one conclusion. That A1 and A2 acted jointly to plan the death of the deceased.

Having considered the totality of the evidence assembled, it fits the proverbial jig saw puzzle analogy. The pieces of wood curved at the Texas club, the instruction to keep the sharpened timber in A1's Honda CRV car, A2's two calls to A1 just before leaving Texas Club, the match between the piece of wood left at the scene of crime and the one found at the Club, the romance between A1 and A2, the unreciprocated love that the deceased had for A2, the numerous attempts A2 made to leave the matrimonial home and the financial prospects that the new relationship between A1 and A2 presented to A2, the prospect of taking over ownership of the club business which A1 greatly cherished as shown by the amount of time he spent at the club, all pointed to the involvement of A1 and A2 in the plan to cause Wakaritundu's death. The two A1 and A2 were partners in this crime. A1 had the intention to murder Winkle in order to take over his business and his wife. A2 was a willing accomplice. I therefore find each of A1 and A2 guilty of the murder of Winkle Wakaritundu Rutamirika c/s 188 and 189 of the PCA and convict each of A1 and A2 accordingly.

Hon. Lady Justice Catherine Bamugemereire,

Judge of the High Court.

23rd February 2012

SENTENCE

06.03.2012

NakiguddeMargaret-Principle State Attorney Present

Babu Rashid-Counsel for A1 Present

Julius Ospelem- Counsel for A2 Present

Support:

Uwineza Christine-Transcriber

Akot Catherine –Court Clerk

NAKIGUDDE

MARGARET:

May it please you My Lord am Margaret Nakigudde appearing for the State,Mr Rashid Babu appears for A1 while David Matovu and Justin Osupelem appear for A2.

My Lord this case is coming for sentencing. The accused persons were convicted of murder but have been on remand since 31st of March 2008. Therefore they have spent three years and eleven months on remand.

Both accused have to my knowledge no previous criminal record. However in sentencing the accused I invite this Court to consider the aggravating factors in this case. I also invite this Court to take into account the seriousness of the offence under Section 189 of the Penal Code Act which attracts a death sentence. My Lord I also invite you to consider the fact that this was a brutal murder of an innocent man. The victim was a vulnerable man as shown

by the prosecution evidence revealed that the deceased had been sick on the material day. I also invite Court to take into account the strange relationship between the accused persons which no doubt inflicted mental torture on the victim before his death. My Lord in addition, A2 Christine Karitundu abused her position of trust and confidence that the deceased had in her and conspired with A1 to get rid of him. My Lord the deceased was a highly regarded member of society especially in the entertainment world and his death caused a lot of suffering and loss to his fans. My Lord in the case of Attorney General Vs Susan Kigula and others Constitution Appeal No.03/2006 it was held that Court had discretion to sentence or not to sentence an accused person to death. My Lord I agree with this position however I wish to emphasize that this is a proper case for Court to sentence the accused persons to death. I also wish to highlight to this Court that during the trial of this case, the accused persons did not show any signs of remorse. I therefore pray that this Court imposes a deterrent sentence. I so pray My Lord.

COURT:

Out of interest, could you please let me know how information was gathered about A1's previous criminal record. Have you been in touch with the Democratic Republic of Congo?

**NAKIGUDDE
MARGARET:**

My Lord I would not want to rely on suspicion. To my knowledge there is no previous criminal record against A1 available to me.

BABU RASHID:

My Lord it is true A1 has no previous criminal record as admitted by the Prosecution. He has been on remand for

three years and eleven months. My Lord the convict as the evidence showed is a family man,he has a wife and a child. Other than this conviction My Lord he should be treated as a first offender.

My Lord having been in prison for three years and eleven months he has undergone both mental and psychological advancement and improved.He is remorseful and repentant for his actions. My Lord much as A1 was convicted of the offence of murder,all the evidence that was adduced by the Prosecution was merely circumstantial. My Lord the Prosecution has also submitted about the strange relationship between the convicts but as shown by the evidence My Lord it was more of a customer and client relationship.My Lord I would like to invite this Honourable Court to consider that this conviction was based purely on circumstantial evidence and I invite this Court to be lenient while sentencing A1 who upon interview My Lord still maintains his innocence.My Lord I pray that this Court takes these factors into consideration while passing sentence.We so pray.

JUSTIN OSPELEM:

My Lord am Mr.Ospelem Justin for A1. My Lord A1 and A2 are co-accused or convicts for that matter and as my Learned friend rightly observed,the evidence adduced by the Prosecution as to the guilt of A2 and A1 for that matter My Lord is purely circumstantial. My Lord I shall not dwell much on the issue of the relationship as the Prosecution sought to bring in as evidence against A2 and A1 because my Learned friend has already addressed it at length. My Lord A2 is a first offender and I agree with the Prosecution in saying she has no past criminal record. My

Lord A2 prior to her incarceration had and still has family responsibilities. My Lord A2 has so far spent four years on remand and My Lord during the time she spent on remand she has undertaken rehabilitation courses. My Lord that puts A2 in a position of becoming a useful citizen of the community. My Lord the Prosecution had alluded to none contrition on the part of A2 but My Lord at the time of the incident from which this case arises My Lord A2 is on record under oath My Lord as having tried to save the life of the deceased, her husband by rushing him to hospital after the attack. My Lord it is clear from that connection that A2 had no intention to observe the demise of the deceased. My Lord A2 has children between the ages of 14 and 19 some of whom are in court. My Lord these children need her unconditional love, attention, guidance and above all this her presence as a mother to some of them who happen to be girls who need her support and guidance. My Lord A2 notwithstanding all that has been said and adduced in evidence in this court, is a woman of good character and this can be borne out by the way she has conducted herself while on remand. In conclusion My Lord A2 Karitundu Christine prays that this Court exercises a light hand and lenience basing on the reasons she has just advanced to this Court and thereby accord her an opportunity to reform and be of use to the community. Much obliged My Lord.

COURT:

This court will adjourn for 30 minutes and will return to hand down the sentence.

30 MINUTES LATER

Christiano Bulira and Christine Karitundu were convicted of the murder of Winkle Wakaritundu Rutamirika contrary to s.188 and 189 of the Penal Code Act Cap 120 Laws of Uganda. The two were convicted by this court on 23rd February 2012 but the case was adjourned to today the 6th March 2012 for sentencing.

Principal State Attorney for the state informed court that the two convicts are both first offenders. She however drew this court's attention to the seriousness of the offence of murder of which the two were convicted and therefore prayed that Court passes a Death Penalty against the convicts. She further argued that the deceased was an innocent loving man whose life was cut short by the brutal actions of the two convicts.

Learned counsel for A2 argued that his client although convicted was not directly involved in assaulting the deceased. He further argued that she was a loving wife who got caught up trying to save the deceased and maintains her innocence. He further prayed that court considers that she is a mother of children aged 19 to 14 who need her love, support and guidance. On the other hand Counsel for A1 argued that his client was a Congolese national who came to this country to conduct business but was caught up in a regrettable incident. That A1 is remorseful and repentant. He also prayed that court takes into consideration lack of direct evidence in this trial. He further submitted that A1 maintains his innocence.

I have listened carefully to the submissions by both sides. I do agree with the Principal State Attorney Margaret Nakigudde that both convicts are first offenders and that A1 and A2 have no known record of previous convictions

and that both have been on remand close to four years. However, in arriving at a sentence, this court will also take into account the apt descriptions of the deceased that some of the witnesses gave to this court during the trial. Winkle Wakaritundu was described as an entertainer and comedian who brought happiness to many people particularly in Western Uganda. He was also described as a deeply committed husband who loved his wife dearly. His love for A2 was so much that even when friends and family warned the deceased about the budding romance between A1 and A2 he chose the honourable and noble path of silence.

One would have expected a wife to have at the very least reciprocated this love by ensuring the safety of her unsuspecting and vulnerable spouse. Sadly this was probably too much to ask. In exchange for his enduring love, Winkle was rewarded with verbal and emotional abuse. It would appear to me that Winkle Wakaritundu had suffered longstanding emotional abuse and had become susceptible and dependant on his tormentor-Christine Karitundu. Obviously A2 was aware of the vulnerable state of mind of her husband most of which she had orchestrated.

Once again one would have expected A2 to call on her conscience to protect the man who loved her so dearly. Unfortunately, she was playing a different game. A2 used her inside knowledge of her husband's pattern to hand him over to callous and cold-hearted killers. Although I do not believe that she directly bludgeoned the deceased, I found that she participated in planning and setting up the trap into which her husband fell like easy prey.

To A1: You were a traitor. You wrapped yourself in the

cloak of a compassionate big-spending customer while you groomed your friend's wife into a lover and business partner. You betrayed the arm of friendship the late Wakaritundu extended to you by introducing his wife to you. In response you stabbed him in the back.

I have had the opportunity to observe the demeanour of both of you throughout the trial. You are both cold and without remorse. Only the two of you know what prompted you to take such a drastic and fatal action against a man you interacted with so closely for such a long time. That information would have probably provided the much needed closure to the bereaved family regarding the dying moments of their loved one - Wakaritundu. Unfortunately both of you are indifferent to the feelings of others. None of you will provide the solace to the children by being open about Wakaritundu's dying moments. I find this conduct totally unacceptable and hope that the sentence that will be imposed will serve to help you reflect on your actions for a long time. The sentence will serve to help you remember your cold-hearted and callous acts for the rest of your natural lives.

Sentence: Having carefully considered the arguments of both the prosecution and the defence, I have found that no sentence under our laws would ever bring Winkle Karitundu back to life. However this court will impose a sentence deemed appropriate to ensure that you live with a fresh memory of this horrific act so that it remains a thorn in your flesh you for the greater part of your natural lives.

- I sentence Convict No.1 – Christiano Bulira to Fifty Year's Imprisonment
- I sentence Convict No.2- Christine Wakaritundu to

Twenty Five Years' imprisonment.

- These determinate prison terms have taken into consideration the four years you have already spent on remand.

Convict No.1 Christiano Bulira is a Congolese National. He shall be deported on completion of serving his sentence in Uganda.

May the time you spend in prison help you to reflect, repent and reform?

This court has a duty to send out a strong signal to abusive spouses that acts of extreme aggression such as this will not be tolerated this by this court.

Equally may it send a signal to those of similar inclination; that

Society abhors such heartless, cruel and callous acts.

Right of Appeal against Conviction and Sentence is explained to each Convict

HON.LADY JUSTICE

CATHERINE BAMUGEMEREIRE.

JUDGE OF THE HIGH COURT