

At Arua CPS the D.P.C directed A1 as the OC station to search for and recover a gun used in the alleged robbery. Upon those instruction A-1 led a team which included himself as the team leader, CID officers and mobile police staff to the home of the deceased among others for the search of the gun.

It is clear from the evidence so far on record that during the recovery of the motorcycle no harm or beating was caused to PW-1 and the deceased.

However on return in the afternoon of 11/11/2008 the search group led by A-1 started beating the deceased and PW-1 to reveal where the gun was. After the search was conducted, it was recorded that no gun had been recovered.

Unfortunately at that time FRED ODAMA the deceased had been badly beaten. Both the deceased and PW1 were taken back to Arua CPS for detention but the deceased died that same night either in the police cells according to some witnesses or at the entrance of Arua Hospital.

Upon those facts A1, A2 and A3 were identified as participants in the commission of the murder.

They were subsequently arrested and charged with that offence.

By the closure of the prosecution case a total of 8 witnesses had been called by the state. At that point the defence elected to make a submission of no case to answer.

Mr. Manzi Paul who represented the accused person submitted that two of the four essential elements of Murder had not been proved by the state against any of the accused person. Hence, in his view there was no need to put the accused persons on their defence.

He referred this court to several decision for consideration and supplied copy thereof. They included;-

- BIHATT =VS= R 1957 EA 332
- U =VS= ARAMANZANE MUBIRU [1996] HCB 35
- UGANDA =VS= LUMU LUTANS [1975] HCB 33
- JOSEPH RUJUMBA =VS= UGANDA [1992] HCB 36
- UGANDA =VS= MICHAEL PARIYO [1975] HCB 241
- E. SANTOGO & P. SEBUGWAWO =VS= UGNADA [1975] HCB

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In reply the learned State Attorney Harriet Adubango disagreed. She argued that the state had adduced enough evidence to establish all the ingredients of

a charge of Murder and asked this court to put the accused persons on defence.

She further argued that the accused person acted with a common purpose as joint offenders who would be found guilty under S.20 of the PCA.

I agree with Mr. Manzi on the citation of ***Bhatt =Vs= R*** (supra) to offer one of best definition of what a prima facie case is.

A submission of no case to answer is upheld in two known situations. In simple terms they are where no evidence has been adduced to prove an essential ingredient of the offence or where the evidence available has been so discredited as a result of cross-examination that no tribunal would believe it. See the decision in ***FRED SABAHASHI =VS= UGANDA SC Crim. Appeal No. 23 of 1993.***

I have had the opportunity to review the evidence so far on the record. I have found that none of the 8 state witnesses gave any evidence implicating A-2 in any participation of this offence. The worst the state witnesses referred to him to have done, was preventing on-lookers to come to the place where the deceased was being beaten from.

As far as A-2 is concerned I agree with the submission of Mr. Manzi that the important ingredient that he participated at any level of the crime of killing FRED ODAMA was not proved. To the contrary state witnesses gave evidence which distanced him from the crime even where they confirmed that they identified him, they would add that he did not beat the deceased.

For those reasons I find that there is no evidence given against him to establish a prima facie case that would acquit him to offer his defence. I accordingly **acquit** him of the offence he is charged with and set him free unless if held on other lawful charges. I also order that the amount of money he deposited in this court for his bail be refunded to him.

NYANZI YASIN

JUDGE

My observation is however different in respect of A1 and A3.

In respect of A-3, all the state witness gave consistent evidence that they saw him beat the deceased. He used a black rubber cain to strike him several times among other places on the head.

The claim that he was driving is weak. There is a lot of evidence indicating that the police patrol vehicle he drove also stopped several times and the victim disembarked from it and then taken back.

Looking at the evidence of Pw-8 both in court orally and what he documented, a circumstantial inference is early made that whoever was beating the deceased and in whose custody he was caused the nature of injuries that caused the deceased's death.

For those reasons I find A-3 to have a case to answer.

As for A-1, evidence from fellow police officers indicate and prove that he lead a team that went to search for the gun. By the time PW1 and the deceased were handed over to him to return for the gun search, they were two normal people who had not been beaten. All the force that occurred and caused death occurred in his face as the team leader. If he wished to stop it, by just a word it would have stopped. He is however on record to have threatened PW-2 that if they do not produce the gun they would go at BARIFA – in the forest. In my view he omitted to stop the beating of the deceased and this omission caused death, which death was unlawful. He is liable under S. 19 (1) (b) PCA as well as S.20 PCA.

Just for clarity I will produce the provisions of S.19 (1) (b) PCA.

S.19 (a) Where an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it.

(b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence.

My strong view is that A-1's omission to stop the beating of the suspects was for the purpose of enabling A-3 to commit the offence with the others who were not arrested but were vividly seen beating the deceased without being stopped.

If A-1 did not commit this omission there is no way this offence would have been committed. He was the assigned leader of the search team whose membership committed the offence – Defence Exh. D1, 2, & 3 contain such evidence.

A-1 did not attend the search as a party for tea or as an on-looker. He led an official operation and ought to have reported back to the DPC. I would not expect him to be happy to report a murder. He was under a duty to ensure security which he omitted to do so.

My further view is that the search team was overwhelmed by the allegations that the deceased used a gun in the robbery and strongly felt that they had to recover the gun by all means torture or death and they achieved death.

I would for the above reasons hold that A-1 like his co-accused A3 has a case to answer. He is accordingly put to his defence.

NYANZI YASIN

JUDGE

05/03/2012

05/3/2012

Harriet Adubango for state

Mr. Manzi Paul on private brief for accused persons.

Assessors in Court.

Accused person all in court

State:

Case is for ruling on no case to answer. Mr. Manzi is not in but Okello
Oyarmoi is holding his brief.

We are ready to receive the ruling.

Court:

Ruling read in open court in presence of the above.

NYANZI YASIN

JUDGE