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The Republic of Uganda

High Court of Uganda Holden at Soroti

High Court Criminal Session Case No. 0078 of 2018

UgandaProsecutor

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Versus

A1. Okello Lazaro Alia Okalebo

A2. Akello Joyce Mary

A3. Akello Joyce Mary

..... Accused

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Before: Hon. Justice Dr Henry Peter Adonyo

Judgment.

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Okello Lazaro Alia Okalebo, Akello Joyce Mary and Akello Joyce Mary (a juvenile and daughter of Okello Lazaro and A1 and Akello Joyce Mary, A2.) are charged with the offence of Murder contrary to sections 188 and 189 of the Penal Code Act Cap 120.

The indictment indicates that the accused on the 6th day of September at Ngora village in Ngora District murdered Acam Salume.

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The prosecution alleges that on 6th day of September 2017 A3 Akello Joyce Mary visited her friend, Acam Salume and asked for permission from the Acam Salume's mother for Acam Salume daughter of Okello Peter to accompany her.

Akello Joyce Mary (A3) and Acam Salume moved to Akello Joyce Mary's (A3's) home where they were seen together till late evening. At about 9:00pm that day, Okello Peter, Acam Salume's father went to Akello Joyce Mary's (A3's) home to pick Acam Salume but found no one home but all the doors locked.

The next day, the 7th September, 2017, Acam Salume's mother also went to check on Akello Joyce Mary's (A3's) home with the aim of seeing her daughter but the place was still locked with no one around.

On 8th September 2017, the deceased body was found in a garden with the whole face skinned, eyes gorged out, mouth cut chest opened and the heart removed. Hot water had burnt the whole body. The body was also covered with grass and was found not far from the home of the deceased father.

The deceased appeared to have been killed elsewhere then the body was transported to where it was found just near her father's home.

The matter was reported to Ngora Police Station. A1 and A2 were suspected for the death of the deceased because two days earlier they had been seen with the deceased.

A mob, in anger destroyed the homes of A1 and A2. A1 Okello Lazaro was further suspected of the killing of the deceased for in 2014 he was arrested for committing of a ritual murder in the same village but was acquitted only because failure of witnesses to appear in court.

All the accused persons disappeared and were later arrested in January 2018 in Amuria and charged accordingly with murder.

In proving its case, the prosecution adduced the evidence of three (3) witnesses. These are PW1: WOR- Okongo Richard, PW2 Asege Christine, PW3 Awuchuru Faustine and two documents. The documents tendered in court were the post mortem report in respect of the deceased Acam Salume and two police forms 24 in respect of A1 and A2.

Upon completion of the prosecution's case, a *prima facie* case was found as against the two accused persons by virtue of section 73(2) of the Trial on Indictment Act.

In law, a *prima facie* case is the establishment of a legally required rebuttable presumption. A *prima facie* case is a cause of action or defense that is sufficiently established by a party's evidence to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party.

Upon the court establishing a *prima facie* case against the two accused persons, the trial court by a ruling delivered by Hon. Justice Masalu Musene (Now retired) on 30th November, 2020, put the accused persons onto their defense.

The 1st accused person chose to give a sworn testimony and was to call five witnesses. Similarly, the 2nd accused person chose to give a sworn testimony and was to call similar witnesses like the 1st accused person. The 1st accused person testified as DW1 with the 2nd accused person testifying as DW2. DW3 Ongodia Raymond was the only other witness who testified for both accused persons who with his testimony decided to close the defence case.

In criminal cases, the burden to prove is squarely on the prosecution, the accused does not have to prove his innocence as provided for under **section 101 of the Evidence Act** which provides that;

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

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This position was emphasized in the case of *Woolmington vs DPP (1935) AC 462*.

An accused person does not have to prove his innocence and can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence.

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See: *Section 101, 102 of the Evidence Act, Cap 6* and *Woolmington Vs DPP [1935] A-C 462, Ssekitoleko v. Uganda [1967] EA 531*

The standard of proof required is beyond reasonable doubt. This standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent.

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See: *Miller v. Minister of Pensions [1947] 2 ALL ER 372*).

For an offence of murder, the following ingredients must be proved by the prosecution as was pointed out in the case of *Uganda vs Bosco Okello [1992-93] HCB 68*;

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a) Death of a person. Death may be proved by production of a postmortem report or evidence of witnesses at the burial.

b) Death was caused unlawfully. It is trite law that any homicide is presumed to have caused unlawfully unless it was accidental or it was

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authorized by law as was held in the case R Vs Gusambuzi s/o Wesonga (1948) 15 EACA 65.

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c) Death was caused with malice afore thought. In malice aforethought, court takes into account the number of injuries inflicted, the part of the body where the injury was inflicted, nature of the weapon used and the conduct of the killer before and after the attack.

d) The accused participated in the cause of the offence. There must be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence.

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e) The prosecution must prove that the actions of the accused persons caused the death of the deceased.

a. The fact of death:

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The prosecution evidence specifically the post-mortem report proved the deceased was dead. The post-mortem report (P.E.X 1) authored by Dr. Ibalata Gorret indicates that the body of the deceased was identified by one Adupa Martin. The deceased's body was found laid under a tree covered by leaves. The body was intact except for the scalp which was peeling off leaving the skull exposed, the eyes were gorged out and there was also a deep cut on the right side of the neck and stomach with the heart missing.

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The cause of death was established as severe haemorrhage. The death of the deceased, Acam Salume, a juvenile is not disputed. I do thus accordingly finds that Acam Salume is dead and the first ingredient was proved to the required standard.

b. Unlawful death:

The next ingredient is whether the death of Acam Salume was unlawful. As stated above it is trite law that any homicide is presumed to have been caused unlawfully unless it was accidental or was authorized by law.

130 In this case, the defence does not agree that the death was unlawful. Counsel for A1 submitted that the post-mortem report does not name the cause of death. That the doctor who conducted the post-mortem was never called to court as a witness and there is no doctor's evidence to prove cause of death. That the deceased could have died of natural causes or an accident or other causes.

135 Prosecution submitted that the death was unlawful as seen from the post-mortem report tendered in court and allowed as evidence and the fact that the death was done without any order of court.

140 I am inclined to agree with the prosecution that the death of Acam Salume was unlawful for indeed the post-mortem report indicates that the head was skinned exposing the skull, the neck had a deep cut on the right side. The post-mortem report goes on to state that the cause of death was severe haemorrhage.

145 Furthermore, the evidence of PW2 and PW3 who saw the body stated that the deceased's eyes had been removed, the mouth was cut, the chest was opened and heart removed, finger nails and skin of the face removed and hot water had burnt the whole body.

With all these facts taken into account, even if the doctor who carried out the posts mortem never came to court to testify, it is obvious to me that without any other circumstances shown to justify and prove the death of

150 Acam Salome, I am inclined to agree that the death of the deceased was
unlawful for the reason that those who saw the body testified without any
contradiction that the deceased's eyes had been removed, the mouth was cut,
the chest was opened and heart removed, finger nails pulled out and the skin
of the face and the whole body scalped as if burnt with hot water. Also the
155 post mortem report confirmed death as arising from severe haemorrhage.
These circumstances are not compatible with lawful death or an accident.
Usually, one's eyes or heart are not removed in a lawful execution not even
in accident.

The action of gorging out the eyes, the cutting of the mouth, the opening of
160 the chest to remove the heart, the plucking of the finger nails and the
skinning of the face and body are systematic actions compatible with ritual
murder and attempts to deface and eliminate the identity of the deceased.

I would thus find that the second ingredient has been proved and hold that
the death of Acam Salome was unlawful.

165 c. Malice Aforethought:

The third ingredient is malice aforethought. This is provided for by section
191 of the Penal Code Act which s defines malice aforethought as the
intentional killing of a human being or knowledge that the act or omission
will result into death of a human being. In *R v. Tubere s/o Ochen (1945)*
170 **12 EACA 63**, court set out circumstances which the trial court should
consider in deciding whether there was malice aforethought in the killing of
a person. These are:

- The type of weapon used,
- The nature of injury or injuries inflicted,

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- The part of the body affected and
- The conduct of the attacker before and after the attack.

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Counsel for the A1 submitted that malice aforethought has not been proved beyond reasonable doubt as none of the prosecution witnesses saw the deceased die or being killed. The Prosecution submitted that the areas targeted by the killer show that the killer had real intention to kill.

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As noted from the above, the body of the deceased had deep cuts in the neck, the face was skinned, the eyes, finger nails and the heart were gorged out and removed also the mouth was cut. These areas which attacked are vulnerable parts of the body. The manner of killing was so brutal bearing hallmarks of ritual murder and child sacrifice given the systematic mutilation of the corpse and the resultant skinning of the body and the cutting of the stomach with the heart removed, the finger nails plucked and the eyes gorged out.

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Ritual murders invariably involve human sacrifice, in this case a child sacrifice which usually is undertaken either for religious or commercial gains.

There may also be cultural, psychological, and psychosexual elements to a child sacrifice and or ritual murder. The hallmark of a ritual systematic and excessive violence. Human sacrifice sometimes may be a result of occult belief.

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Violence motivated by religion may not be a crime in the eyes of the perpetrator, but it is treated no differently from any other murder in the eyes of the law. Such killings can involve the rapid slitting of the throat, the removal of vital body organs or can be slower and torturous. Blood may be drained from the corpse as is found at autopsy. Mutilation post-mortem,

200 along with sexual abuse, carving symbols into flesh, and dismemberment,
are not uncommon in such killings. Research into motivation for ritual
killings has shown that the practice is thought to lead to transformation, self-
deification, and healing. Many people also believe that satanic human
sacrifice is done as a way of drawing down dark forces. Investigators may
205 assume that those involved in human sacrifice are simply mentally disturbed
and hiding behind a belief system that seems to justify their actions. Yet
understanding the beliefs that led to the crime, however distorted they
appear, may actually be helpful in solving it and aid in the prevention of
future occurrences.

210 In the instant matter, the evidence adduced in this matter, proves malice
aforethought beyond reasonable doubt given the violence which was
occasioned to the body of the deceased Acam Salome.

What is left for court to determine is whether the accused persons caused the
death of Acam Salome, a juvenile and whether there was common intention.

215 d. Participation of the accused persons and Common intention:

Counsel for A1 submitted that none of the prosecution witnesses saw the
accused persons at the crime scene and that the prosecution's evidence is
purely circumstantial. Counsel further argued that the running away of the
accused persons to Mayuge then Amuria and then later to Abim was
220 explainable because a mob in their village wanted them dead and that the
said mob had even burnt the accused persons houses and so they had
nowhere to live. That the prosecution cannot secure a conviction based on its
weak evidence.

225 Counsel for A2 also submitted that the case against A2 was mainly on hearsay and circumstantial. That hearsay evidence of PW2 was inadmissible. Counsel further submitted that the prosecution did not produce any independent evidence such a search carried out at the home of A2 with any articles recovered which were used in the crime that would connect and implicate the 2nd accused.

230 Counsel further pointed out the circumstances that weaken and destroy the inference of guilt of the 2nd accused includes the fact that the body was recovered near the deceased's home, no article for committal of the offence was recovered from A2's home or A2 was placed at the scene of crime as no witnesses testified to the fact of seeing the deceased at the accused's home.
235 Counsel further explained that A2 run away from the village was because her life was in danger.

In submissions, the prosecution submitted that the evidence relied upon to place the accused at the scene and therefore prove their participation is wholly circumstantial.

240 Prosecution submitted that the evidence on record show that A1 and A2 were guilty as charged for the daughter of the accused persons who was a playmate of the deceased went to the deceased home and called the deceased who went with her friend to the home of A1 and A2 which was less than one kilometer from her home.

245 The prosecution further submitted that the conduct of the accused persons fleeing their home immediately after the death of the deceased and not being seen around within the time the deceased died and their failure even to attend the burial of the deceased circumstantially points to their guilt and complicity in killing of the deceased and the accused's claim that they ran

50 away to save their lives should be taken with a pinch of salt for as was held in ***Uganda Vs Ajionzi and others [2020] UGHCCRD 4*** the flight or fleeing from the vicinity of the crime is most times inconsistent with innocence of an accused person.

The Prosecution further submitted that the participation of the accused can
255 also be adduced from the evidence that the deceased was last seen alive at the home of the accused persons after being invited by the daughter of the accused and more so that immediately thereafter the deceased went missing.

i. The evidence on record:

PW1 WOR- Okongo Richard told court that on 06 /09/2017 he received a
260 report of a deceased person from area LC1, Omaditok, Ngora Parish, Ngora District, there a dead body been seen and found in a garden and that the dead body was identified as that of Acam Salome, a juvenile daughter of Okello Peter. That thee whole face of the body had skinned and was covered with grass and it was not far from the home of Okello Peter whom is father of the
265 deceased.

According to this witness the deceased appeared to have been killed elsewhere with the body transported and carried to the spot where it was found. That after the body was removed, it was taken for medical action and a postmortem was performed and the body handed over to the relatives for
270 burial. The two accused were suspected but were nowhere to be seen and that an enraged mob destroyed their homes. That he got information that two days before the body the deceased was killed she was seen at A1's and A2's home which was less than a kilometer from the home of her father. This witness further told court that (A1) Okello Lazaro was suspected of killing the
275 deceased because in 2014 a similar ritual murder was committed in the same

village and he was arrested and taken to court but because witnesses failed appear in court out of fear he was released. This witness also told court that accused persons were arrested after three months from their hiding place in Abim and that A3, a juvenile confirmed to him that that the deceased was indeed her friend.

PW2 Asege Christine, the mother to the deceased testified that she knew both the accused. A1 Okello Lazaro was clan brother to her husband and A2 the wife of A1. That A3 Akello Joyce Mary was a daughter to A1 and A2. She told court that on the fateful day, A3 Akello Joyce Mary, the daughter to A1 and collected her daughter Acam Salome who is now the deceased from their and they went to A1's and A2's home but that Acam Salome did not return home even the next day. Asege Christine further told court that she was forced to go to the home of the two accused persons the next day to look for her child but that when she reached there she found that they were not there and they had run away. That she went to the father of A1 Okello Lazaro who told her that his son and wife had ran away after killing the deceased. That an old woman discovered the body of the deceased under a tree. This witness while crying in court further told court that later on when the body of her daughter was recovered she saw that her eyes had been gorged out, the mouth cut, the chest was opened and the heart removed. That even her face skin was removed as if hot water had been poured on her body with the whole body apparently burnt.

PW3 Awuchuru Faustine, the LC1 Chairman Omaditok testified that the deceased was his subject and the two accused are her neighbors. He further told court that the eyes of the deceased had been removed, the mouth was cut and skin removed and corroborated the fact of the deceased having gone

to the house of A1 a day before she had died. He further intimated to court that previously in the same village one Amutaka had been killed in a similar manner as the deceased Acam Salome and A1 was the main suspect.

305 DW1, Okello Lazaro, testified that he did not kill Acam and he even told court that he did not know her. He insisted that his daughter did not go to the complainant's home and he did not see the deceased at his home. That on 6.09.2017 he had gone to the garden to dig and when he returned home his son told him of a squirrel to be hunted and so he went to hunt the same but
310 at the same time took his cattle for grazing and returned home at 4.30 pm when he saw that his kitchen was on fire. That on seeing that he rushed to his mother's home nearby but also found it on fire and that his mother then unformed him that Aseke and Ekelot had come around inquiring about the cause of the death of their daughter and that his father and his brother had
315 been arrested with his mother warning him to take care as he was a wanted man. That upon receiving such information, he decided to run away immediately taking his children and wife to Mayuge in Busoga in fear for his life and that they stayed for four months in Mayuge and left it on 02/02/2018 and went to Amuria where he was subsequently arrested and charged with
320 the murder of Acam Salome in court.

During cross-examination A1 told court that he escaped to Mayuge after finding that his home had been burnt down and that people around wanted to kill him for the reason that he had killed Acam Salome. He also told court during cross examination that he did report the incident of the burning of his
325 house to police but not the police in his area of residence. He also told court that he went to Abim to cultivate.

DW2, Akello Joyce Mary, testified that she did not kill the deceased and on that day she was at home in Ngora, she went early in the morning with A1. When she returned she went to the well and her daughter went to gather greens but before she reached home her father in law told her that a child had died in the home of Ekelot and the villagers were holding them responsible. She then ran away and hid under the rock and people burnt their houses. That when her husband returned from hunting at around 4:00 pm he was told by the villagers that they killed the deceased. That in fear for their lives they ran away to Mayuge and later Amuria where they were arrested. She told court that her daughter (A3) had no relationship with the deceased and never gone to their home.

DW3 Ongodia Raymond, A1's father, testified that the Asege and her brothers came to his home screaming that his son had killed the late Acam Salome and that those people in that process burnt his houses as well as those of Okello Lazaro (A1), took 8 goats, 9 cows, an ox plough, 3 pigs from his home and also beat him. That the police came and arrested both A1 and A2 accused. He further told court that the deceased was not a friend of A3. During cross examination he told court that he changed his testimony when he told court that he was not sure as to whether A3 were friends with the deceased. He further told court that on the day in question A1 had gone hunting and subsequently hid in nearby bushes after learning of the fact that his houses had been burnt. This witness could not confirm as a matter of fact whether A1 and A2 killed Acam Salome or not.

350 ii. Circumstantial Evidence:

In this case, the prosecution relies on circumstantial evidence which is proof of a fact or set of facts from which one can infer the fact in question. Such

evidence that tends to prove a fact by demonstrating other events or circumstances which can afford the basis for a reasonable inference of the occurrence of the fact at issue. It usually involves stuffs like the conduct of an accused before and after the commission of the offence. The law on circumstantial evidence has been well considered in great detail in ***Abuja Tajudeen Iliyasu Vs The State SC 241 of 2013*** where it was held that circumstantial evidence; -

360 ***“... is evidence of surrounding circumstances which by undersigned coincidence, is capable of proving a proposition with the accuracy of mathematics...., this is so for in their aggregate content, such circumstances lead cogently, strongly and unequivocally to the conclusion that***
365 ***the act, conduct or omission of the accused person, caused the death of the deceased person. Simply put, it meant that there are circumstances which are accepted so as to make a complete and unbroken chain of evidence.***

The same court in ***Abuja(above)*** went on to caution that;

370 ***“... such circumstantial evidence must point to only one conclusion, namely that the offence had been committed and that it was the accused person who committed it.***

In the case of ***Byaruhanga Fodori vs. Uganda, Supreme Court Criminal Appeal No. 18 of 2002; [2005] 1 U.L.S.R. 12*** at page 14, the Supreme Court of Uganda had this to say in relations to circumstantial evidence. It stated that: -

380 ***“It is trite law that where the prosecution case depends solely on circumstantial evidence, the Court must, before deciding on a conviction, find that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.”***

In addition to the above, the Supreme Court of Uganda in ***Tindigwihura Mbahe vs. Uganda S.C. Crim. Appeal No. 9 of 1987*** issued a warning
385 to courts that circumstantial evidence must be treated with caution and must be narrowly examined because evidence of such kind can easily be fabricated.

Accordingly, this court before drawing an inference of the accused person’s guilt from the largely circumstantial evidence presented in this case is enjoined to consider that there are no other co-existing circumstances which
390 would weaken or altogether destroy inference arising from the circumstantial evidence adduced herein by the prosecution.

In this case, each of the two accused persons raised the defence of alibi and it is trite law that they are not required to prove their alibi. That is for the prosecution to do so by discrediting the same and to prove and place the
395 accused at the scene of the crime as was emphasized in the case of ***Ssekitoleko vs Uganda.***

The evidence as summarized above shows that the deceased Acam Salome went to the accused’s home after being collected by Akello Joyce Mary, her playmate and the daughter of the accused persons. She did not return home.
400 This is the testimony of (PW2) Asege Christine who is the mother to the deceased. This same witness told court that Akello Joyce came from the neighbourhood and were friends with her daughter Acam Salome . She

insisted that Akello Joyce, the friend to her daughter came to her home and she allowed Acam Salome to go with her given that her daughter was her a
405 friend to Akello Joyce who came from the neighbourhood. PW2 further told court that both herself and her husband as parents went to the home of the accused persons to check on their daughter on 6th/09/2017 when she left home and even on the next day but at the home of the accused persons no one was at home and the house was securely locked with a padlock only to
410 later to be confronted with the information and the fact of her daughter who had gone visiting with her friend to the accused persons home was dead. The accused denied the fact that the deceased was their daughter's friend and a neighbor and that she went to their home.

However, this denial was controverted by evidence of PW2 who as the
415 mother of the deceased clearly told court unchallenged that A3 Akello Joyce Mary went to her home when she was present and sought her personal permission to go with the late Acam Salome and upon giving her permission Akello Joyce left together with the late who was her playmate to their home (A1's and A2's home) since they were neighbor and friends. Also PW1, whose
420 testimony was also unchallenged, additionally told court that A3 Akello Joyce informed him that the deceased was her friend.

Accordingly, I would conclude that since the fact of the late Acam Salome leaving her parent's home in the presence of her mother, Asege Christine (PW2) and going to the accused persons' home is uncontroverted, then that
425 fact is proved. This is because (PW2) Asege Christine, under any normal circumstances as a mother, would have no reason to deny her daughter, the late Acam Salome, the opportunity to go with her playmate and friend who was a neighbor, if (A3) Akello Joyce Mary and her daughter were not friends

as both were nearly of the same ages and were juvenile girls and neighbors.
430 In fact, given the fact of Acam Salome and Akello Joyce being close friends,
I am more inclined to believe that A1 and A2 must took that friendship and
the trust of PW2 and used their daughter Akello Joyce Mary to lure the late
Acam Salome to their home and subsequently sacrificed her based on the
that trust and belief that PW2 Asege Christine would have no reason to not
435 trust Akello Joyce Mary go with her daughter as she ordinarily believe that
no harm could be occasioned onto her daughter given their being neighbours
and the two juveniles being friends.

The other fact which I do take into account is that, when the body of the
deceased was discovered, the accused persons, who are close neighbors
440 disappeared from their home immediately the next day after the deceased
allegedly went to their home even before the body of the deceased was found
as testified to by PW2 Asege Christine who told court that after her daughter
failed to return from the neighbours the previous night she was forced to go
to the accused home the next morning to check on her daughter and find out
445 why she had not returned home only to find the accused persons' home
abandoned with the accused persons nowhere to be seen yet according to the
testimonies and admissions of the accused persons, they were always at
home and that even on the day when the body of the deceased was found
both had gone to their gardens with A1 later going hunting for squirrels while
450 A2 went to the well.

First of all, from the admissions of the accused persons, it means that on the
day when the deceased left her home and went with Akello Joyce Mary to
their home, they were there but the next morning and the subsequent days
when the father and the mother of the deceased, respectively, went on to to

455 their home check on Acam Salome and even before the body of the deceased was recovered, the accused persons had already disappeared.

The act of disappearance immediately after the deceased died before and even the body was found does not point towards the innocence of the accused persons but to their guilt for as PW2 Asege Christine told court in her
460 unchallenged testimony, her late daughter left her home in her presence and with her permission together with the daughter of the accused persons called Akello Joyce Mary and went to the home of the accused persons yet deceased never return home the same very day or even the next day only for her lifeless
465 body to be found dragged and placed near her home in a cover up of her murder with the next set of action being a confirmation that the accused had long since ran away!

The question one would ask is, if as it is suggested by the accused persons they were innocent, why would they disappear immediately from the village even before the body of the deceased was discovered if they were not guilty?

470 They ran away because of the fact that thy used the close friendship connection between their daughter and the deceased and had the deceased lured to their home within which they sacrificed and then when things became hot they took off from their village to Mayuge without even seeking for the safety of police in their local area then even went later to Abim and
475 finally Amuria where they were arrested and subsequently charged which sequence of movement show nothing other than persons who were on the run from the law. These continued change of residence and the failure to seek police protection, in my view are compatible with and are consistent with guilty persons and not innocent ones.

480 A1 Okello Lazaro even had the audacity to tell court that he did not report threat on his life to a nearby police station in Ngora where he was resident but did so to another one in Mayuge which fact remained unproven as I have found no evidence that he or his family had any grudges with the local authorities and or police in Ngora.

485 His alleged reporting to police outside his area of residence is a concocted story which any reasonable person on the street or village path cannot believe that it is true.

Further gaps and inconsistencies in the story of the accused persons can also be seen from DW3, who is the father of A1 Okello who told court that the
490 deceased's parents burnt his and Okello's and took a number of animals and property and yet he went on to tell court that when police came to village they arrested the accused. I wonder from which home then the accused persons arrested from yet the accused persons themselves told court that they ran away from their home after the same had been burnt for fear for their lives
495 before even the police went there. It is hard to believe that police could reach a burnt home where there was nobody and at the same time arrest the accused persons and even did not arrest any person who had burnt their houses.

In law it is settled law that grave inconsistencies and contradictions unless
500 satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected though minor ones unless they point to deliberate untruthfulness will be ignored.

See: *Alfred Tajar v. Uganda, EACA Cr. Appeal No.167 of 1969, Uganda v. F. Ssembatya and another [1974] HCB 278, Sarapio*
505 *Tinkamalirwe v. Uganda, S.C. Criminal Appeal No. 27 of 1989,*

Twinomugisha Alex and two others v. Uganda, S. C. Criminal Appeal No. 35 of 2002 and Uganda v. Abdallah Nasir [1982] HCB).

Further, the gravity of the contradiction will depend on the centrality of the matter which it relates to in the determination of the key issues in the case.

In the instant case, I am more inclined to believe the prosecution's case that the accused persons were responsible for the human sacrifice of the deceased person given the very grave inconsistent and contradictory of the accused persons.

Although each of the accused persons all raised the defence of alibi that they were on that date in their gardens and one and the other went hunting and to the well, testimony of DW1 that from hunting he went home and found that his kitchen had been set on fire and that from there he proceeded to his mother's home whom he found at home who informed him that his brother and father had been arrested and that he found his mother's house also burnt yet his mother was with the deceased's parents present asking about the cause of her deceased death contradicts that of (DW3) Ongodia Raymond A1's father as he told court that it was A1 and A2 who were arrested not himself. At the same time (DW3) Ongodia Raymond told court that he did not know how the accused persons were arrested.

In my view, the contradiction of who A1 found at his mother's home and who was arrested either at the home of the accused or at the home of A1's parents, creates gaps in the accused persons alibi

Furthermore, the other contradiction which I ifnd not cured by any evidence relates to the fact of accused persons stating that they hid when they found

their home on fire. A2, (A1's wife) told court that she hid under a rock. A1 did not mention any hiding whereas DW3 told court that both A1 and A2 hid in surrounding bushes but at the same time told court that they were arrested!

535 I find that the circumstances surrounding the death of the deceased from the time when she left her home in the company of Akello Joyce and the behaviour of the accused persons thereafter all point towards nothing but guilt given the major inconsistencies in their testimonies which are not satisfactorily explained.

540 These inconsistencies leave me to arrive the conclusion that the accused persons participated in the heinous murder and ritual sacrifice of the late Acam Salome who had gone to their home. I am left with no other conclusion than find that all the evidence adduced though circumstantial point to the guilt of the accused persons.

545 Accordingly, I do find each of the accused persons guilty of the offence of murder contrary to section 188 and 189 and each is convicted of the same.



.....
Hon. Justice Dr Henry Peter Adonyo

Judge

1st September 2022

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6th October 2022

555 All convicts before court represented as before.

Two Assessors present.

M/s Everline Kongai Clerk.

Emesu: My Lord this is for sentence.

Olobo: That is correct.

560 Court:

Sentence and reasons for the Sentence:

The accused persons were found guilty and convicted of the offence of Murder c/s 188 and 189 of The Penal Code Act.

565 Parties were to provide written final submissions regarding the appropriate sentence in respect of this case after the accused persons were convicted. The prosecution urged court to sentence the accused persons to the maximum sentence given that the deceased died as a result of ritual sacrifice while the defence provided no allocutus.

570 It is true that Acam Solome, the deceased died a horrible death given the mutilation of her body parts after being lured away from her home by Akello Joyce who visited their home and even asked for permission from the deceased mother for the decease to go with her.

575 Acam Salome went with Akello Joyce to play with a friend. She never returned home but ended up losing her life in a gruesome manner. Her lifeless body was only later found in a garden with the whole of her face skinned, eyes gorged out, mouth cut , finger nails removed and the heart

removed after her chest was cut opened. The whole body even thereafter was mutilated and an attempt was made to burn and it was covered in grass in an effort to disguise and disfigure her so that she could not be recognized. This
580 is horrible to say the least.

The deceased was killed for ritual purposes given the fact that her body was viciously mutilated. Such kind of offences are not only terrifying but of recent have seen an upward trend. It is the duty of this court to put such offences to a stop.

585 Acam Salome did not deserve to die the way she did. She was a young girl who still had a long life to live. The pride of her family yet her youthful and playful life was snapped away leaving her parent in great pains. I am sure her parents are yet to get over the pain of losing her at such a tender age and in such a gruesome manner. Such pain may never come to pass.

590 The convicts before me have been in custody since their arrest in 2018. That is four years now. That period of remand is to be taken into account. No victim or community impact statements are on record. The offence of murder c/sections 188 and 189 of The Penal Code Act is a serious felony which attracts a maximum punishment of death.

595 I am guided by the sentencing practice directions as well as previous decisions such as that of the Supreme Court in *Kato Kajubi v Uganda (Criminal Appeal 20 of 2014) cited as [2021] UGSC 57* in which the Supreme Court upheld the conviction and the sentencing of Kato Kajubi by the High Court of Uganda to life in prison for the sacrificial murder of a
600 twelve-year-old juvenile.

In the instant case, I am convinced that the instant murder was committed as a child sacrifice within the context of a ritual murder given the cold-hearted way with which the deceased body was mutilated and subsequently dumped.

605 We all desire that the world we live in is devoid of fear of devilish and monstrous persons. Our hearts need not skip even for a moment because our children have gone visiting a known neighbor and have taken a little longer than usual to return home from playing with their age mates.

610 However, the world is not what we believe it to be. Monsters abound and individuals with evil hearts are everywhere always hanging in the dark ready to pounce on the innocent.

I invariably take serious view of the manner in which the deceased was killed and her vital body organs such as the eyes and heart mutilated. These and other injuries resulted in the death of the deceased.

615 Although I may consider that the accused persons are first offenders, the offence and the nature with which they committed is not only detestable but revolting.

The convicts deserve a deterrent sentence considering the level of violence involved and the rampant incidents of violence of this nature.

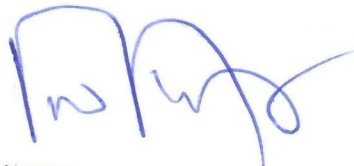
620 I have considered the fact that the victim in this matter was a juvenile who lost her life needlessly as a result of inhuman acts of the accused persons. Those circumstances of substantial gravity are not, in my view, mitigated by the fact that the accused persons are considered likely to be first offenders, who must be punished for this single offence even if there is no previous
625 record of conviction of any other offences presented before me.

The convicts have expressed no remorse. The offence was one that was the product of a carefully planned and executed mission to sacrificially cause the death of the deceased as her vital bodily organs such as the eyes and the heart were removed.

630 In these circumstances I am disposed to impose the maximum sentence but I do exercise some leniency and sentence the accused persons to life in prison for each as was so in ***Kajubi's case*** (cited above).

The convicts are advised that they each have a right of appeal against decision of this court within fourteen days from the date of this sentence.

635 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

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6th October 2022