

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT LIRA**  
**CRIMINAL SESSION CASE NO. 0086 OF 2020**

**UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**1. OKOT TOBIAS**

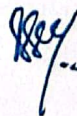
**2. ANUME JACINTA**

**3. APIO SHARON :::::::::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**JUDGMENT**

- [1] The three accused persons: Okot Tobias (A1), Anume Jacinta (A2) and Apio Sharon (A3) were jointly charged with the offence of murder C/S 188 and 189 of the Penal Code Act. The particulars allege that on the 24/09/2019 at Abako village in Amolatar district, with malice aforethought, the accused persons unlawfully caused the death of Opio Jimmy, the deceased. They denied the offence. At the closure of the prosecution case, the accused were put on their defence and they each testified on oath but called no witnesses in their aid.



- [2] Prosecution relied on the testimonies of three witnesses in a bid to prove their case. The brief facts of the case were that; on 24/09/2019, the deceased's wife went to the garden and found people including the accused persons, and others still at large, harvesting sweet potatoes. She informed the deceased who came and questioned those in the garden. A fight ensued and the deceased was killed after being hit on the head and also stabbed several times.
- [3] The prosecution has the burden to prove a case against the accused person. This case should be proved beyond reasonable doubt. See **Ojapan Ignatius Vs Uganda Cr. App. No.25 of 1995 (Unreported)** where the Supreme Court held that; *"the onus was on the prosecution, as it is always on the prosecution in all criminal cases except a few statutory offences, to prove the guilt of the accused beyond any reasonable doubt."* See also **Abdu Ngobi Vs Uganda Cr. App. No. 10 of 1991, (SC) (Unreported)**. The prosecution therefore ought to prove to the required standard each of the ingredients of the offence charged. See **Uganda Vs. Nkurugira Thomas alias Tonku HCT-00-CR-SC-0426-2010**.
- [4] In a charge of murder, the prosecution ought to prove the following ingredients;
- 1. Death of the deceased**
  - 2. That the death was caused by an unlawful act or omission**
  - 3. That the death was caused with malice aforethought**

**4. That the accused person participated/  
caused the death.**

**Ingredients 1 & 2.**

- [5] Evidence on record indeed indicates that Opio Jimmy (deceased) died on 24/09/2019. The cause of death as indicated in PF48B (Post-mortem report) **(PE1)** was Anaemia due to profuse bleeding which led to the oxygen supply being cut off. The body had external injuries with three deep cut wounds on the chest, fracture on right temporal bone extending to the frontal bone with white brain tissues protruding from the fractured point. PW1, PW2, PW3 confirmed that indeed Opio Jimmy died during the fight. From the evidence on record, the death of Opio Jimmy was not legally justifiable, neither was it accidental. As such it was caused by an unlawful act or omission. See the case of **Gusambizi s/o Wesonga Vs R (1948) EACA 65**. The defence does not contest these ingredients. I find that the prosecution has proved the first two ingredients beyond reasonable doubt.
- [6] **Malice aforethought** is a mental element, that cannot be easily proved by way of direct evidence. However, evidence of surrounding circumstances may be applied in order to determine whether there was malice aforethought. **Section 191 of the Penal Code Act** defines Malice aforethought in the following terms;

***“Malice aforethought shall be deemed to be  
established by evidence proving either of  
the following circumstances:***



- a) an intention to cause the death of any person, whether such person is the person actually killed or not; or*
- b) knowledge that the act or omission causing death will probably cause the death of some person, whether such person is the person 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."*

[7] In R Vs Tubere [1945] 12 EACA 63, court held that malice aforethought can be inferred from;

- a) the nature of the weapon used (whether lethal or not);*
- b) the part of the body targeted (whether vulnerable or not);*
- c) the manner in which the weapon was used (whether repeatedly or not); and*
- d) the conduct of the accused before, during and after the incident (whether with impunity).*

[8] From the evidence on record, there is no doubt that the injuries that the deceased sustained are the ones from which he died. It was further the evidence of PW1 and PW2, that at the scene were deadly weapons, lethal in nature to wit; a panga, spears and long sticks. In his testimony to this court, PW1 stated that: "Okot Tobias and Okello Dakatal came with

sticks and started beating the deceased and Apio Anna pierced the deceased. Auma Jacinta came with a stick and hit the deceased once at the back of his head. After the deceased had fallen down, Tobias came and hit him on the head. In further testimony, PW2 and PW3 informed the court that when they reached the scene, deceased was dead and when he was carried, his brain fell out. That his chest had been speared eight times. The head and the chest are sensitive parts of the human body which when hit in such manner, would live a person for dead.

- [9] Evidence on record indicates that the deceased was pierced eight times in the chest. This is indicative of a repeated action that shows intent to have the deceased killed. According to PW1, Okwir Isaac, Apio Anna (DW3) speared the deceased in the chest. On the other hand, DW3 denies having been at the scene and testified that she did not participate in the fight. It should however be noted that shortly after the fight, DW3 disappeared from the village and was arrested at Nakasongola a year later, a fact that is not disputed by her. This is conduct of a guilty person. I am in disagreement with her version of the story that she ran to Nakasongola because the chairman LCI had said that she had to be arrested and killed. In this regard therefore, I find the prosecution to have proved that the deceased's death was caused with malice aforethought.

**Participation of the accused Persons.**

- [10] The prosecution is bound to prove that each one of the accused persons participated in the crime. DW2 Okot Tobias confirmed that he engaged in a fight with the deceased and

that the injuries he inflicted on the deceased caused his death. It was the testimony of PW1 Okwir Isaac, who knew the accused persons very well because they were his relatives and neighbours, that he saw the accused persons engaged in a fight with the deceased. He stated that he saw Okot Tobias and Okello Dakatal coming with sticks and beating the deceased while Apio Anna pierced the deceased. That as for Auma Jacinta she hit the deceased with a stick on the head. Tobias also hit him on the head. This evidence is corroborated by PW2 who confirms that she found all the accused persons at the scene of crime at the material time.


- [11] PW3 stated that he found Anume Jacinta at the scene. That she was arrested on the same day. This record of events is denied by the accused persons (DW1 and DW3) who fronted the defence of alibi. DW1 stated that when she heard an alarm, she ran to the scene and found people fighting. That her sister (DW3) came after the alarm was made. She stated that the injuries on Opio were inflicted by Okot Tobias (DW2). DW3 on the other hand stated that while at her home preparing lunch, she heard an alarm and made her way towards the scene of crime. That she reached the scene and found Okot Tobias, Okwir and Omol standing while Opio Jimmy (deceased) was lying down. That she went and reported to the chairman. After the incident she took her grandchildren and went to Nakasongola because the chairman had said that she would be arrested and killed.

- [12] When an accused person relies on the defence of alibi, they do not have the burden of proving it. See **Sekitoleko Vs.**



Uganda [1967] EA 531. However, the onus is on the prosecution to place the accused person at the scene of crime and disprove/ discredit the defence of alibi. Merely placing them at the scene is not enough. See Matete Vs Uganda, SC Crim App No. 53 of 2001. In such a scenario as the one in the instant case, where the accused person denies evidence of participation and relies on the defence of alibi, court ought to judicially consider evidence of both sides and give reasons why one and not the other is accepted. See Bogere Moses Vs Uganda SC Crim App No.1 of 1997.

- [13] DW2 and DW3 were identified by two witnesses PW1 and PW2 who I find to be credible. The aforementioned witnesses were very familiar with the two accused persons who were their family members and also neighbours which is indicative of the fact that they had interacted with them before. Moreover, the offence was committed in broad day light with no interference or impediment of their view. I am further inclined to believe the prosecution evidence that the accused persons indeed participated in the commission of the offence basing on earlier threats made by the accused persons towards PW2. She stated in her testimony that on 23/09/2019, just a day before the fateful incident, she had found the two harvesting sweet potatoes in the deceased's garden and DW3 had warned her to keep off saying that they did not want anyone to die. That they also had weapons i.e, a panga, a hoe and a stick. So she left.
- [14] In Jackline Uwera Nsenga Vs Uganda Crim. App. No. 0824 of 2015, the Court of Appeal while discussing the value to be

7 

attached to evidence of a prior threat relied on the case of **Waihi and Another Vs Uganda (1968) E.A 278** where the East African Court of Appeal held that;

*"...the evidence of a prior threat or of an announced intention to kill is always admissible evidence against a person accused of murder, even if it may amount to nothing. Regard must be had to the manner in which a threat is uttered, whether it is spoken bitterly or if impulsively in sudden anger or jokingly, and reason for the threat, if given, and the length of time between the threat and killing are also material. Being admissible and being evidence tending to connect the accused person with the offence charged, a prior threat is, we think capable of corroborating a confession...."*

- [15] I found the evidence of PW2 credible in this regard and this evidence had also been tested on the touchstone of cross examination. In addition, there was a land wrangle between the accused's family and that of the deceased which seems to have set pace for the intention to kill the deceased. As such, it is indicative that the threats made by the accused persons on 23/09/2019 were indeed a precursor to the murder of the deceased on 24/09/2019. I am therefore unable to agree with the evidence of DW1 and DW3 and consequently reject it. It cannot be that DW2 and DW3 were at different places, other than the scene of crime, at the material time. They have been



squarely and firmly placed at the scene of crime at the material time by the evidence on record. For a person cannot be in two different places at the same time.

- [16] This offence having been committed by more than one person, is indicative of a common intention.
- [17] Section 20 of the Penal Code Act states thus;

**20. Joint offenders in prosecution of common purpose**

*"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence."*

- [18] In **No.441 PC Ismail Kisegerwa & Anor Vs Uganda Cr. Appeal No. 6 of 1978** it was held that;

*"In order to make the doctrine of common intention applicable it must be shown that the accused had shared with the actual perpetrator of the crime a common intention to pursue a specific unlawful purpose which led to the commission of the offence. If it can be shown that the accused persons shared with one another a common intention to pursue a specific unlawful purpose, and in the prosecution of that unlawful purpose an offence was committed, the doctrine of common intention would apply irrespective of whether the offence committed was murder or manslaughter, it is now settled that an unlawful common intention does not imply a pre-arranged plan. See **P Vs Okute [1941] 8 E.A.C.A at p.80**. common*

*intention may be inferred from the presence of the accused persons, their actions and the omission of any of them to dissociate himself from the assault. See R Vs Tabulayenka s/o Kirya and Others [1943] 10E.A.C.A 51. It can develop in the course of events though it might not have been present from the start, See Wanjiro Wamiro Vs R [1955] 22 E.A.C.A 521 at p.52 quoted with approval in Mungai's case. It is immaterial whether the original common intention was lawful so long as an unlawful purpose develops in the course of events. It is also irrelevant whether the two participated in the commission of the offence. See Andrea Mutebi and Anor Vs Uganda Cr. App. 144/75 E.A.C.A.*

- [19] As earlier stated, it was the testimony of PW1 Okwir Isaac, who knew the accused persons very well because they were his relatives and neighbours, that he saw the accused persons engaged in a fight with the deceased. He stated that he saw Okot Tobias and Okello Dakatal coming with sticks and beating the deceased while Apio Anna pierced the deceased. That as for Auma Jacinta she hit the deceased with a stick on the head. Tobias also hit him on the head. This evidence is corroborated by PW2 who confirms that she found all the accused persons at the scene of crime at the material time. This is indicative of a common intention to commit the offence herein. It should be noted that even when this intention is not verbally communicated, the same can be inferred through the accused persons acting tacitly. See Kisegerwa (supra). As was the case herein, while one person hit the head of the deceased, another speared the deceased



while another was just beating the deceased. This is compounded by the conduct of the accused persons the day before the commission of the offence. On that day, PW2 had found the two accused persons (DW2 and DW3) harvesting sweet potatoes in the deceased's garden, where the murder later occurred, and DW3 had warned her to keep off saying that they did not want anyone to die. That they also had weapons i.e, a panga, a hoe and a stick.

[20] Accordingly, I find the prosecution to have proved this ingredient beyond reasonable doubt.

[21] **According to the gentlemen Assessors, the prosecution has proved all the ingredients of the offence beyond reasonable doubt. They have advised that I convict the accused persons as charged. I agree with them and hereby find each of the three accused persons guilty of murder and convict them accordingly.**

**Dated, signed and delivered at Lira, this 13<sup>th</sup> Day of February, 2023.**

  
**Duncan Gaswaga**

**JUDGE**