

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KANUNGU
CRIMINAL SESSION CASE NO.172 OF 2023

UGANDA ::::::::::::::::::::::::::::::::::::::PROSECUTOR

VERSUS

KYOMUHENDO JEMIMAH :::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE HON. JUSTICE TOM CHEMUTAI

JUDGMENT

The Accused Person, Kyomuhendo Jemimah was indicted with the offence of Murder Contrary to Sections 188 and 189 of the Penal Code Act.

The particulars of the indictment are that, the accused person on 10th October, 2020 at Nyakashure Cell in the Kanungu District with malice aforethought unlawfully caused the death of Tumusiime Elly (deceased).

The accused person pleaded not guilty to the indictment.

The brief facts to this case are that; It was alleged on 10th October 2020, the deceased (Tumusiime Elly) sold his land to his brother (Mutesi Wilber) PW11. That the accused person did not approve of the said sale. That the following day, the deceased was found dead and his body was lying in Coffee plantation at Nyakashure Cell in Kanungu District. The deceased's body had bruises on the back. A sweater, stripped, with stains of a white substance and other samples were gotten from deceased's body and taken for further DNA and

toxicology examination. The Police conducted a search and recovered a mattress with suspected blood stains from the house where the deceased stayed with the accused person, which was also taken for examination.

The Prosecution called twelve witnesses. These include, Nuwagaba Victor (PW1), Musimenta Honest (PW2), Nuwagaba Robert, the brother to the deceased (PW3), Katura Justus (PW4), Ndyanabo Steven, LC1 Chairperson of Nyakashura village (PW5), Kyasimire Merab, (PW6), Jane Nabowe (PW7), Musa Kasoli Wakabi (PW8), Twesigire Godfrey, investigating officer (PW9), Dr Agaba Annet (PW10), Okwerede Alfred, (PW11), Mutesi Wilber, brother to the deceased (PW12).

The accused person chose to remain silent. She never called any witness.

During the hearing, the State was represented by Mr. Muhendo Peter, Resident State Attorney for Kanungu District while Counsel Atuheire Phiona appeared for the accused person on the State brief.

In all Criminal cases, the burden of proof solely rests on the Prosecution to prove the offence for which the accused person is charged beyond any reasonable doubt. See **Woolmington versus DPP (1935) A.C. 462**.

It is important to note that the burden does not shift to the accused person and the accused person is only convicted on the strength of the Prosecution case and not because of weaknesses in his/her defence. See **Sekitoleko v. Uganda [1967] EA 531**.

The accused person does not have any obligation to prove his innocence. By her plea of not guilty, the accused person put in issue each and every essential ingredient of the offence with which he was charged and the Prosecution has the onus to prove each of the ingredients beyond reasonable doubt before it can secure a conviction.

According to Sections 188 and 189 of the Penal Code Act under which the accused person was indicted, the following ingredients must be proved by the Prosecution beyond reasonable doubt;

1. That the deceased is dead.
2. That the death of the deceased was caused unlawfully.
3. That the death of the deceased was caused with malice aforethought.
4. That the accused person participated in causing the death of the deceased.

Ingredient 1: Death of the deceased

It is trite law that death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. See **Uganda Vs Anyao Milton and another, High Court Criminal Session No. 5 of 2017.**

The Prosecution witness PW1 stated that the deceased's body was found lying in a Coffee plantation. The testimony of PW1 was further confirmed by PW2, PW3, PW4 and the rest of the Prosecution witnesses about the death of the deceased

I therefore find that the Prosecution has proved this ingredient beyond reasonable doubt.

Ingredient 2: That the death of the deceased was caused unlawfully.

The Prosecution is further required to prove that the deceased's death was caused unlawfully. It is presumed by law that any homicide (the killing of a human being by another is caused unlawfully unless it was accidental or it was authorized by law see **R v. Gusambizi s/o Wesonga (1948) 15 EACA 65.**

As I have earlier indicated, the deceased body was found lying in a Coffee plantation as clearly shown by the prosecution witnesses. The Medical Officer, PW10, stated that the deceased's body had small bruises on the back and she took out the samples from the deceased's body, which were taken for toxicology examination. PW8 examined the samples from deceased's body for toxicology and found that samples contained a substance termed as "endosulfan" that is used as a pesticide. He added that the said pesticide is hazardous and when ingested by a person it may cause death. As per evidence, I find that the deceased was killed by poisoning which was unlawful.

I therefore find that the Prosecution has proved this ingredient beyond reasonable doubt.

Ingredient 3: That the death of the deceased was caused with malice aforethought

Thirdly, the Prosecution is required to prove that the cause of death was actuated by malice aforethought. According to **Section 191 of the Penal Code Act** malice aforethought is defined as either an intention to cause death of a

person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause her death or knew that the manner and degree of assault would probably cause death. This may be deduced from circumstantial evidence.

In the case of **R v. Tubere s/o Ochen (1945) 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, the part of the body affected and the conduct of the attacker before and after the attack. Malice aforethought being a mental element is difficult to prove by direct evidence.

I have already shown in this judgment that the deceased was poisoned using a pesticide, therefore who ever administered the said pesticide to the deceased, had the intention of killing him hence had malice aforethought. I find that the Prosecution has by evidence proved this ingredient beyond reasonable doubt.

Ingredient 4: That the accused participated in causing the death of the deceased.

Lastly, the Prosecution is required to prove beyond reasonable doubt that it was the accused person that caused the unlawful death of the deceased. This is done by adducing direct or circumstantial evidence, placing the accused person at the scene of crime as the perpetrator of the offence.

In this case, The Prosecution witnesses did not give direct evidence as to how the deceased was killed, however, there was circumstantial evidence which

included the DNA and toxicology examination report which clearly showed that the deceased was poisoned with a pesticide.

In the case of **Simoni Musoke versus R [1958] E.A 715**, it was held that;

"In a case depending exclusively upon circumstantial evidence, the Court must find before deciding upon 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. That the circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt. That it is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would destroy the inference."

PW1, stated that she went to the scene and found the deceased body was in a Coffee plantation. That it had rained at night but the body looked dry. That there were was no signs of dirt or scuffle at the scene. The evidence of **PW1** was collaborated by the evidence of **PW2** that the body was lying up in a Coffee plantation and that the body was clean, with dry clothes yet it had rained.

From the evidence of **PW1** and **PW2**, it is clear that the deceased was killed somewhere else and the body was dumped in the Coffee plantation, where it was later discovered by the residents.

PW3, stated that the deceased called him to his home for help to draft a land sale agreement between the deceased and his brother **PW12** (Mutesi Wilber). That the accused person refused to sign the sale agreement and she disappeared. That the accused person had objected to the sale of the family

land. In cross-examination PW3 stated that he suspected that the accused person killed the deceased because the deceased was found dead the following day after the land sale transaction which the accused person had strongly objected to.

PW12, confirmed the evidence of PW3, that he indeed he had purchased a half acre piece of land from the deceased a day before he met his death. That the accused person was aware of the land sale transaction between him and the deceased but she had objected to the transaction and refused to sign the agreement.

PW5, was the LC1 Chairperson stated that the deceased and accused person were his subjects. He stated that he knew both the accused person and deceased. That he went to the scene of crime and found the locals gathered there. That he called the Police who reported immediately. That he directed the Police to the home of the deceased where they recovered a blood stained mattress in the home of the deceased. That the accused person and deceased had a stressful relationship as husband and wife. That the accused person had run away 3 months before the incident. That the accused person returned three days before the death of the deceased. That the deceased and accused person were always involved in domestic violence and fights. That at one time the deceased reported to him that the accused person sold off his pig, after which she disappeared with the money and also took some household properties. In cross examination he stated that he suspected the accused to have killed the deceased.

PW7, was Government Analyst from Directorate of Government Analytical Laboratory (GAL) in Wandegaya. She stated that she carried out DNA tests on a light blue mattress cover with suspected blood stains recovered from the house of the deceased. That after examination she found that the mattress cover contained visible stains of human blood and the samples of the accused person and deceased were found to be the donor of the blood on the mattress cover.

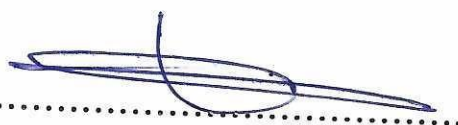
From the prosecution evidence, it is clear that the deceased and accused person had earlier before the incidence had domestic violence/ conflicts. They had separated after the accused person had sold off the deceased's pig and run away with his properties. Upon the accused person returning, she was not happy with deceased selling off the family land. I have no doubt in my mind that the accused person is the very person who poisoned the deceased and dumped his body in the Coffee plantation where his body was discovered because the deceased had sold off the land. This can be further corroborated by the evidence that the deceased's body had bruises on the back and the DNA results/report by PW7 showed that Deceased was also donor of the blood which was found on the Mattress. Further, the body of the deceased was found near his house, half a kilometer away as per evidence of PW9.

There is evidence showing that the body of the deceased was dumped at the scene of crime after it had ceased raining.

I am convinced by the circumstantial evidence of the Prosecution witnesses that it was the accused person who poisoned the deceased and thereafter dumped his body in the Coffee plantation, where it was discovered.

I therefore in agreement with the opinion of the Assessors, find the accused person, Kyomuhendo Jemimah, guilty of Murder Contrary to Sections 188 and 189 of the Penal Code Act and I hereby convict her accordingly.

Dated this ...12th....day ofOctober.....2023

A handwritten signature in blue ink, consisting of a large, stylized 'T' and 'C' intertwined, positioned above a dotted line.

TOM CHEMUTAI
JUDGE

ALLOCUTUS

Aggravating factors:-

Prosecution:-

The accused person betrayed the husband.

The loss of life impacted on everybody.

The convict should be sentenced to the maximum period in Prison.

Mitigation:-

Defence Counsel: -

The convict was 24 years of age.

She is still productive.

I pray for a lenient sentence.

Accused person: -

I am a widow.

I have orphans.

I pray for a lenient sentence.

Sentence: -

I have taken into account the Aggravating and Mitigating factors in this case.

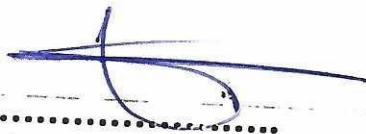
I find that this kind of crime is rampant in this region.

I, therefore, sentence the convict to a jail term of 30 years.

Time spent on remand shall be deducted from the sentence (30 – 2 years, 11 months and 16 days).

She will serve a jail term of 27 years and 14 days.

Right of Appeal explained.



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TOM CHEMUTAI
JUDGE
12/10/2023