

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CRIMINAL SESSION NO. 0166 OF 2019

(Arising from Kisoro Criminal Case No. 0008 of 2019

(Arising from Kisoro CRB 288 of 2019)

UGANDA ::::::::::::::::::::::::::::::::::::::: PROSECUTION

VERSUS

A1: NYAYISABA DENIS

A2: HASHAKIMANA FRED :::::::::::::::::::::::::::::::::::::::ACCUSED

BEFORE HON. JUSTICE SAMUEL EMOKOR

JUDGMENT

The accused persons herein Ndayisaba Denis (A1) and HashaKimana Fred (A2) are indicted for the offence of Murder contrary to **Section 18 and 189** of the **Penal Code Act**. The facts giving rise to this Indictment are that Ndayisaba Denis (A1) and Hashakimana Fred (A2) on the night of 09/0/2019 at suma village, Nteko Parish, Nyabwishenya subcounty

within Kisoro District with Malice aforethought unlawfully caused the death of Serugumwe Jack.

Ndayisaba Denis (A1) on the 1/08/2020 through a plea bargain agreement pleaded guilty to the charge, was convicted and sentenced accordingly.

Hashakimana Fred (A2) pleaded not guilty.

REPRESENTATION

Mr. Mugisha Raymond (SA) appeared for the Prosecution while Mr. Nicholas Kibulirani represented the accused on State Brief. The Assessors in this case were Ms. Sylvia Muhawenimana and Ms Kembabazi Christine.

The Prosecution in a bid to prove its case presented 08 witnesses that include Bahati Bosco (PW1), DC Muhawe Edison (PW2), Nzeimana Aloysius (PW3) , Tunezerwe Robert (PW4) , SSebagenzi George (PW5), Byamugisha Alex (PW6), DC Badongo Wilson (PW7) and His Worship Vueni Rapheal (PW8).

The accused in turn gave his evidence on oath and summoned no witnesses.

During the Preliminary Hearing sanctioned under **section 66 of the Trial on Indictment Act (TIA)** Medical evidence in PF448C and PF24 were admitted uncontested.

PF48C is the postmortem report made at the request of D/ASP Mubangizi Innocent and conducted in the presence of D/CPL Eyath Peter. The body was identified by a one Kanani Fred as belonging to Serugume Jack. The description of the position of the body and surroundings is that the body was found beheaded with the skull separated from the main body. The trunk was located in a passion fruit garden while the skull was found in a cassava garden about 400 metres apart. The description of the state of the clothing was that the clothes were heavily stained with blood. The cause of death was a cut neck with the head separated from the trunk and that weapon that is likely to have been used was a sharp object. The general observation in the report is that the main body was recovered on 10/04/2019 and the head was recovered on the 11/04/2019 at a distance of 400 metres apart. The report was signed by Dr.Sengoma Benjamin and received as Exh.P1.

PF24 was in respect to the Medical Examination of the accused on 12/04/2019 that indicated that the accused had a bitten finger on the right pointing finger that is described as a laceration measuring (2x2)

cm and the accused was found to be sane with a normal mental state. The report was received as Exh.P2.

The Burden and Standard of Proof

The accused in pleading not guilty and this being a criminal case placed the burden of proving this case on the Prosecution and this beyond reasonable doubt. The burden does not shift to the accused person and the accused can only be convicted on the strength of the Prosecution case and not on the weakness of the defense case.

(See Sekitoleko vs Uganda (1961)E.A 531.)

The accused does not have the obligation to prove his innocence and the onus is on the prosecution to prove each of the ingredients beyond reasonable doubt before it can secure a conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused at best creates a mere fanciful possibility but not any probability that the accused is innocent.

(See Miller Vs Minister of Pensions (197) 2 ALLER 72)

Ingredients of the offence:

The Prosecution must prove each of the following essential ingredients beyond reasonable doubt for the accused to be convicted of murder.

1. Death of a Human Being;
2. The Death was caused by some unlawful act
3. The unlawful act was actuated by Malice aforethought: and lastly
4. The it was the accused who caused the unlawful death.

a) Death of a Human Being

Death may be proved by production of a post mortem report or evidence of a witness who states that they knew the deceased, attended the burial and saw the dead body.

PW1 Bahati Bosco testified the on the 10/04/2019 at around 7:00am on his way to the fruit garden he was called by his sister in law a one Meridah and that when he went to where she was he saw a headless body with the trunk wearing a jacket. According to PW1 he identified the body as belonging to Serugume Jack by the clothes it wore like the jacket and gumboots. It is his evidence that the head was discovered the following day in a cassava garden.

PW3, PW4, PW5 and PW6 al testified that the accused was their villagemate and known to them and that they viewed the body of the deceased. Exh.P1 the Post Mortem Report carried out also corroborates the evidence of the Prosecution witnesses that indeed Serugume was killed.

The Defense it must be noted did not contest the death of Serugume Jack.

It is therefore this Court's finding that the Prosecution has proved beyond reasonable doubt the first ingredient of death.

b) That Death was caused by some unlawful act:

The law presumes that any homicide (killing of a human being by another) is presumed to have been caused unlawfully unless it was excusable, accidental or authorized by the law.

(See Rvs Gusambizi S/o Wesonga (1948) EACA 65)

It is the undisputed evidence of PW1, PW2, PW3, PW4, PW5, PW6 and PW7 that on 10/04/2019 they moved to the scene in suma village where they viewed the headless body of Serugume Jack in a passion fruit garden. While PW2, and PW7 testified to having been present the following day on the 11/04/2019 when the head of the accused was recovered in a cassava garden.

There absolutely no evidence on record to suggest that the death was either excusable or authorized by the law

It is therefore this Court's finding that the Prosecution has proved beyond reasonable doubt that the death of Serugume Jack was unlawful.

c) That the unlawful act was actuated by Malice a forethought;

Section 191 of the **Penal Code Act** provided that Malice aforethought may be proved by evidence in either of the following circumstances;

1. An intention to cause death of any person;
2. 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.

However, the 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 vs Tubere (1945) 12 EACA 63** the following guide of circumstances were given from which an inference of malicious intent can be deduced.

- a) The Weapon used i.e. whether it was a lethal weapon or not;
- b) The part of the body that was targeted i.e. whether it's a vulnerable part or not;
- c) The manner in which the weapon was used i.e. whether repeatedly or not or number of injuries inflicted and;
- d) The conduct of the accused before during and after the incident i.e whether there was impunity.

It is the evidence of PW1, PW2, PW3, PW4, PW5 and PW6 that the deceased was beheaded and they all saw the trunk. The Post-mortem Report in Exh.P1 indicates that it was a sharp object that was used to cut the neck of the deceased and separate the head from the trunk.

This Court is convinced that the part of the body targeted which is the neck in this case is a vulnerable and sensitive part of the body.

(See Uganda vs Twinamatisiko Criminal Session No. 0070/2011)

It is therefore this Court's finding that the prosecution has proved beyond reasonable doubt that the unlawful death of Serugume Jack was actuated by Malice aforethought.

d) That the accused participated in causing the death of the accused.

It is the evidence of **PW1** that on the 10/04/2019 at around 7:0 am he was on his way to his fruit garden in Suma Village when his sister in law Meridah called him and when he went to where she was he saw a headless body covered by a jacket and that he informed the LCI Chairperson of the same and the matter was reported to the police who came to the scene. According to PW1 he identified the body as belonging to Serugume Jack by the Jacket worn on the trunk and the gumboots.

The Prosecution also presented **PW2** a police officer who in 2019 was stationed at Kisoro police station under the forensics department as the Scene of Crimes Officer in this case.

It is the evidence of PW2 that on the 10/04/2019 he together with other officers visited the scene of murder in Suma Village to investigate the same and that at the scene they found when the territorial OC Sgt Sserugendo had cordoned off the same and after a preliminary survey he also cordoned off the scene. It is the testimony of PW2 that at the scene was a body trunk of a male that was headless. The body had started to stiffen on the legs and arms and 5 feet from the body was a mobile phone that was red in color Itec type and that he took a photograph of the same. The body was lying in a passion fruit garden belonging to a one Bahati PW2 stated. It is the evidence of PW2 that he handed over the exhibits to DC Badongo Wilson who was the Investigating officer and that they told locals that they were still looking for the head of the victim and owner of the phone. The Post Mortem was carried out at the scene after which they returned to the station.

According to PW2 it was the following day of 11/04/2019 that the district CID Officer received a call that the missing head had been recovered and that the same police team that had been mobilized the

day before set out a second time. PW2 testified that they found when the accused Fred (A2) and his co-accused (A1) had been arrested by the security officers who were guarding the area MP Hon Kamara Nzeimana and that A1 and A2 led them to where they had hidden the head in a cassava garden belonging to a one Eudes Mani about 100 metres from the position where the trunk was discovered and that he took photographs of the head at the scene and the doctor examined the same. It is also his evidence that the head was identified as belonging to Serugume Jack and the same was handed over to the family of the for burial and he drew a sketch plan of the scene.

PW2 under Cross Examination admitted that he was only informed of the recovery of the head and when he got to the scene, he found A1 and A2 already there.

Six Photographs taken at the scene by PW2 were admitted as Exh.P3 collectively while the sketch plan was admitted as Exh.P4.

PW3 testified that he is the LCI Chairperson of Suma Village and knows the accused (A2) as a resident of the village and has known him since birth. PW3 further testified that on the 10/04/2019 at around 8:00AM he received a phone call from his secretary a one John who informed him that there was a death in the village that somebody had been killed in Suma Village in Bahati's passion fruit garden. It is the

evidence of PW3 that he moved to the scene where he found a headless body and that next to the body was a red mobile phone Itel Make and that he called Nyabwishenya Police Post and informed them and that the police officers at the post after arriving at the scene in turn called Kisoro Police Station and this team responded as well. According to PW3 they identified the body as belonging to Serugume Jack by the clothes it was wearing and that as local leaders they began to look for the owner of the phone and found him. Pw states that the owner of the phone was Ssebagenzi George and that he admitted that the Phone was his but that he had sold it to Hasakimana Fred (A2) about a week before.

PW3 additionally stated that their investigations also revealed that A1 and A2 had been drinking the night before the body was discovered in a one Tunezerwa Robert's bar and that this information was given to them by Tunezrwa himself. PW3 testified that they found A1 at his home at around 10:00PM and took him to Nyabishenywa police station where he admitted that he was one those that had murdered the deceased and he revealed that he was with Hashakimana Fred(A2) and thus the hunt for A2 began. It is also the evidence of Pw3 that Byamukama Alex called him and informed him that he had gotten A2 and that he directed him to take A2 to Suma trading centre where he

was and that when A2 was brought at around 9:00am he questioned him and A2 told him that he had held the accused down and it was Denis (A1) who cut the head off. PW3 states that they then took A2 to Nyabwishenga Police Station where A2 again admitted to killing the deceased stating that they had intended to sell the skull to a one to a one Mukulu and that he was present at this confession. PW2 further Testified that A1 and A2 offered to lead the police to where they had kept the head and that he moved with the police to Suma Village to the cassava garden of a one Maniriho where A1 and A2 showed them the exact location of the head in the cassava garden and that the head belonged to Serugume Jack and this was between 10:00 am -11:00am on 11/04/2019.

PW4 testified that he has known Hashakimana Fred (A2) for the last 18years as a village mate and that on the 09/04/2019 at around 6:00 Pm he was in Suma Village where he operates a bar when A1 and A2 came into his bar and that they were in possession of a panga that was being carried by A1. According to PW4 he asked them to hand over the panga before they could drink in his bar and they accepted and handed over the panga to him and ordered for waragi that they drank until 8:00pm when they demanded for their panga and he handed the same over to them and they left. It is the evidence of PW4 that the panga was

sharpened on one side. PW₄ states that it was the following day the 10/04/2019 at around 10:00am after hearing that a headless body had been found in the garden of Bahati (PW₁) that he moved to the scene where he observed the lifeless body that had been beheaded and saw that there was a red phone mobile phone Itel Make that he testifies had been sold by Sebagenzi George and that he was present when the phone was being sold at Shs. 5,000/= on the 08/04/2019- outside his bar.

PW₄ described the phone as being a used phone that Sebagenzi had used for almost one year. Pw₄ further testified that Sebagenzi was at the scene and admitted that the red phone used to belong to him but that he had sold it to Hashakimana Fred(A₂) and that the police took him to make a statement.

PW₅ testified that he knew Hashakimana (A₂) and that they were village mates and that he had known him since his birth. It is the evidence of PW₅ that on the 09/04/2019 he sold a phone to A₂ and that it was red in color, Itel Make and that Tunezerwe Robert (PW₄) was present at the sale because it was done in his bar at around 6:00PM for Shs. 5,000/= and that this was because the phone had a problem with the mouth piece. The next day according to PW₅ he heard that Serugume Jack had been killed and that when he went to

the scene next to the body, he realized was a red phone that he had sold to (A2) the previous Day. PW5 states that he informed the defense secretary and the Police that the Red Phone at the scene had been sold by him to A2 and that he made a statement over the same.

PW6 testified that he was a village mate to A2 Hashakimana Fred and that he had known him for the last 20 years. It's the evidence of PW6 that on the 10/04/2019 he learnt of the death of Serugume Jack and that he visited the scene where he found his headless body and observed that there was a red mobile phone next to the body that was taken by the police later. According to PW6 he spent the night of 11/04/2019 at the vigil held at Serugume's home and at 6:00am he went back home to check on his sick people. It is further the testimony of PW6 that while at his home he saw A2 in the banana plantation and that he was shivering and appeared to be freezing. PW6 states that he asked A2 where he was coming from and A2 told him that he had slept in the bush because it was suspected that he is the one who killed Serugume Jack and that PW6 in turn told him that that he was hearing the same. PW6 testified that he and his brother a one Yubu who was also present arrested A2 called the LCI Chairperson Aloysious (PW1) and handed him over at Suma Trading Centre.

PW7 testified that in April of 2019 he was attached to Kisoro Police Station and that he was the investigating officer in this case and that on the 10/04/2019 they received a report of a murder in Suma Village and together with other Police officers they moved to the scene in Suma Village where they found a body with only the trunk and a missing head. The trunk was in a passion fruit garden belonging to a one Bahati (PW1). It is the testimony of PW7 that that next to the trunk was phone that was identified by a one Tunerzerwe Robert (PW4) as belonging to Sssebagenzi (PW5) and that Sssebagenzi who was at the scene informed them that on the 09/04/2019 Hashakimana Fred (A2) had bought the phone from him at a cost of Shs.5,000/=, PW7 stated that the body was examined by the doctor and released to the family for burial.

According to PW7 the next day 11/04/2019 he received a call from the chairperson who informed him that A1 and A2 had been arrested and shown them where they had thrown the head of the deceased and that they mobilized and moved to the scene which was in Suma Village in a cassava garden and the head was identified by a one pastor Ndezigimana as belonging to the deceased Serugume Jack and the doctor examined the head before releasing to the relatives for burial. PW7 states that they then headed to Kisoro Police station with A1 and

A2 and that when PW7 took down their plain statements they both admitted murdering the deceased and A2 also admitted that the phone recovered at the scene belonged to him. As a result of this statement PW7 stated that A1 and A2 were then taken to Kisoro Chief Magistrates Court where they appeared before His Worship Vueni Rafael and recorded extra-judicial statements. It is also the evidence of PW7 that he prepared the exhibits slip for the phone recovered at the scene and exhibited the phone as well. The Exhibit slip was recovered as Exh.P5. PW7 under cross examination revealed that he was present in the chamber of the Magistrate as the statements of A1 and A2 was being taken together with the Court Orderly.

PW8 testified that he is a Magistrate Grade One attached to Kisoro Chief Magistrates Court and that on the 16/04/2019 at around 2:15 PM DC Badongo (PW7) came to his Chambers with Hashskimana Fred (A2) and informed him that A2 had been charged over the murder of a one Serugume Jack and wished to talk to him. It is the evidence of PW8 that he then asked DC Badongo (PW7) to leave his chambers and using an Interpreter at the Court a one Tugume Pauline was able to take down the Statement of A2 who confessed to participating with A1 in the Murder of Serugume Jack.

The extra judicial statement was received as Exh.P6.

PW8 under Cross Examination maintained that PW7 did not remain in his chambers during the taking of A2's Statement.

The accused (A2) in his sworn defense denied the charge of murder stating that on the 09/04/2019 he was sick with Malaria and stayed home with his mother. That on the 10/04/2019 his mother went to Suma trading Centre and returned at 4:00Pm and informed him that people were saying that Jack Serugume had been murdered and that he wanted to go and help the family but his mother stopped him saying that he was too young and could not manage the work there and she instead went there. It is the evidence of the accused that the next morning Byamugisha (PW6) came and told him that he heard people saying that he was one of the suspects of murder and offered to give him money so that he flees to Congo where his sister is married but that he refused because he knew nothing and he (the accused) suggested that they should go to the Chairperson from whom he would receive an explanation. It is the evidence of the accused that together they moved to the trading Centre where they met Nzeimana (PW2) who handed him over to the police. It is the testimony of A2 that he was taken to Kisoro Police Station where he was assaulted by CID Badongo (PW7) and that as a result of the beatings he decided to admit the charges and the PW7 told him that he would appear before this

“boss Vueni” who can kill him and that for this reason when he appeared he admitted the charge in his Statement . It is also the testimony of A2 that A1 was only known to him at Kisoro Police Station. A2 also denied being taken to where the head of Serugume Jack was recovered from. A 2 under Cross Examination revealed that he had no problem with Byamugisha (PW6) or grudge with the chairperson (PW2) and that PW6 told him on the day he had testified in Court that he had been threatened and that he could not remember PW2 testifying that he and confessed to the murder of Serugume Jack.

The Defense counsel when this Court put it to him whether a trial within a trial should be conducted in admitting the statement in Exh.P6 taken before PW8 testified before this court replied that that they had no objection to the admission of this Statement and would only Cross Examine on a single issue. As a result, Exh.P6 was admitted without a trial with in a trial being conducted. It turns out however that the Defense is seriously challenging the propriety in which Exh.P5 was taken. The Cross Examination of PW7 revealed that he was present in the chamber of the Judicial Officer when the statement of A2 was being taken by his own admission while PW8 in his testimony stated clearly that he asked PW7 to depart and that he did so. The accused in his defense also raised allegations of being assaulted

seriously and threatened before he was taken to the Judicial Officer to make his Statement. The allegations of the accused A2 that he was assaulted have not been properly investigated by this Court in a trial within a trial and hindsight would appear to suggest that it should have been conducted even if the defense was not objecting to the admission of Exh.P6.

The admission of PW 7 that he was present in the chamber of PW8 when the Statement was being taken down goes against the guidelines for recording of extra judicial Statements as laid down in **Festo Andora Asenua & Anor Vs Uganda SC.CR.App No.1/1998**. I will for the foregoing reason therefore not rely on the contents surrounding Exh.P6 in determining this case against A2.

Now turning to the rest of the prosecution evidence as laid out against A2, the same is purely circumstantial evidence and this is so because there is no direct eye witness among the witnesses presented by the prosecution.

The above fact notwithstanding the court in **Teper vs R (1952) AC 489** defined circumstantial evidence and the weight to be attached to it as follows:

“..... evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy mathematics. It would be no derogation of evidence to say that it is circumstantial”

The court of Appeal in **Mugambe Francis vs Uganda CACA No. 60 /2011** observed that in a case involving circumstantial evidence the facts must be closely knitted and must bring conviction to the mind of the judge.

The evidence presented by the prosecution that there was a red mobile phone Itel Make next to the trunk of the deceased in the morning of the 10/04/2019 is corroborated in the evidence of witnesses who were eye witnesses of this at the scene of Murder in PW2, PW3, PW4, PW5, PW6 and Pw7. This Court is also in receipt of a photograph in EXH.P 3 that shows a mobile Phone red in color next to the trunk. Therefore, i accept this evidence as being a true account.

PW5 testified that he was the owner of the red mobile phone and that he sold it to A2 on the 09/04/2019 and this fact is corroborated by PW4 the bar owner who was present at the sale of the same. I believe this evidence to be true because there was no hesitation on the part of PW5 at the scene in admitting to the authorities and the police that he owned the phone previously and he had sold it to A2 the evening

before. PW₄ also instantly confirmed the same as being a witness to the sell. There appears to have been no hesitation on their part and I therefore do not accept the defense of A₂ that he knew nothing about the phone recovered from the scene. I believe PW₅ that he sold his phone on the 09/04/2019 at shs. 5000/= to A₂. The only minor contradiction in the evidence of PW₄ and PW₅ is on the issue of the date when the phone was sold. While PW₄ places it on the 08/04/2019 PW₅ states that it was on the 09/10/2019. I find this contradiction to be minor and not fatal to their testimony. The central issue here is whether the phone passed on from PW₅ to A₂ and this Court is sufficiently satisfied that it did.

The Prosecution in this case for some undisclosed reasons did not produce the mobile phone that was recovered from the scene next to the trunk of the deceased. The question is whether this is fatal to the prosecution case.

The Supreme Court in **Mumbere Julius vs Uganda SCCA No. 15/2014** in regard to tendering in of exhibits that have been recovered in the course of investigations by the police held that the overriding principle is whether the non- production of an exhibit was fatal to the prosecution case.

In the instant case no fewer than six eye witnesses presented by the Prosecution testified to being witness to the fact that a red phone Itel Phone Make was next to the trunk. PW5 testified to being the initial owner before selling the Same A2 and the sale was witnessed by PW4. This Court is also in receipt of an exhibit slip. In Exh. P5 prepared by PW7 that indicates the serial No. of the Itel Phone as being 35579908421022130. I am therefore of the considered opinion that it has not been fatal to the Prosecution case that the Phone recovered at the scene was not tendered to Court as part of the prosecution exhibits.

It is further the evidence of PW4 that on the evening of the 09/04/2019 at 6:00 Pm A1 and A2 came into his bar with A2 holding a sharpened panga on one side and that he received the panga from them and returned it to them as they were leaving at 8:00pm. According to Exh. P1 the post mortem report, the deceased's head was likely to have been cut by a sharpened object. It is Trite law that a panga is a lethal weapon and according PW3 while at Suma Trading Centre in the absence of the police A2 had admitted to killing the deceased with A 1 and that A2 had held the deceased down as A1 cut off the head this confession according to PW3 was repeated by A2 while at Nyabishenya Police Post. I find this evidence to be corroborated by the Medical finding in Exh.P2 the report of the Medical Examination conducted on A1 on 12/04/2019 that

indicates that his right pointing finger was bitten and a laceration measuring 2x2 cm. I am persuaded that this finger was bitten by the deceased Serugume Jack as A2 held his head down for A1 to cut it off.

I therefore accept the evidence of PW₄ that A2 in the presence of A1 left his bar on the night of the 09/04/2019 with a sharp panga that this Court finds was used in the assault and beheading of the deceased and that A2 participated directly in the same. I am fortified in my belief that A2 directly participated in the Murder of Serugume Jack by the evidence of PW₃ that A2 together with A1 led the police from Nyabishenya police post in the presence of PW₃ to the cassava garden where they had hidden the head of the deceased. There is no evidence on record that anyone else stumbled upon this head and reported the same to the authorities. The time frame between when PW₆ found A2 at his home on the 11/04/2019 at around 6:00Am and then led him to Suma Town Centre where he was handed over to the Chairperson (PW₃) at about 9:00am and when the police at Nabishenya recovered the head at around 10:00Am irresistibly points to the participation of A2 and A1 in its recovery. I do not accept the defense of the accused that he does not know how the head of the deceased was recovered and that he did not participate in the same.

The Court in **Rex vs Tubere S/o Ochen (1945) 12 EAEA 6** held that:

“the conduct of an accused person before or after the offence in question might sometimes give an insight into whether he or she participated in the crime.”

The conduct of A2 who went into hiding from the date of the commission of the offense in the night of 09/04/2019 until the 11/04/2019 when appeared in the banana Plantation of Pw 6 shivering from the cold in the morning at 6:00Am points at a guilty conscience.

I reject the attempts of the accused to taint the evidence of PW6 that PW6 told him told him that he only testified against him because he had been threatened. The accused did not bother to elaborate on the nature of the threats he was referring to. This Court did not detect any signs of fear or intimidation in the body language of Pw6 who gave his evidence in a consistent and forthright manner. He appeared to be an honest and truthful witness even stating that they did not need to tie A2 but that he walked with them to Suma Trading Centre where they handed him over to the Chairperson (PW3).

I therefore believe that the assertions of the accused are his own falsifications coined by him to discredit the Prosecution evidence in PW6 and reject it.

I have from the record accepted the Prosecution evidence that A2 held down the deceased as A1 cut off his head. A2 therefore did not carry out the beheading personally perse. This fact notwithstanding **Section 20 of the Penal Code Act** provides for the doctrine of common intention as follows:

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

The accused A 2 was an active participant in the murder of Serugume Jack and held him down as his accomplice A1 sliced off his head. The common intention of the two no doubt was to kill their victim and A2 might as well have been the one who swung the panga in the beheading because he is equally guilty.

The accused in this case raised the defense of Alibi that by law he is not required to prove and the onus is on the Prosecution to discredit this defence and to place the accused at the scene of the crime.

(See Kyalimpa Edward vs Uganda SCCA No. 10/1995).

It is my finding that the prosecution has discredited this defense and placed the accused at the scene of the crime.

The Supreme Court in **Mbazirasiragi & Anor vs Uganda SC.CR .App No.7/2004** cited with approval the decision of **Teper vs R (Supra)** in which the Court held 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 weaken or destroy the inference”

It is the Court’s finding that the evidence presented by the prosecution against A2 has been closely knitted, it has been cogent and very consistent. This Court has found absolutely no co-existing circumstances which would either weaken or destroy the inference of the accused’s guilt.

After considering the evidence adduced by the Prosecution and the Defense together and in full agreement with the assessors it is this Court’s finding that the Prosecution has proved its case beyond reasonable doubt and I accordingly find the accused (A2) guilty of the offence of Murder contrary to **section 188 and 189** of the **Penal Code Act** and convict him of the same.

.....
SAMUEL EMOKOR

JUDGE

02/05/2023