

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT-PORTAL**  
**HCT-01-CR-SC-0337-2021**

**UGANDA=====PROSECUTOR**

5

**VERSUS**

**BIRUNGI GODWIN=====ACCUSED**

**BEFORE HON. JUSTICE VINCENT WAGONA**

**JUDGMENT**

10

**INTRODUCTION:**

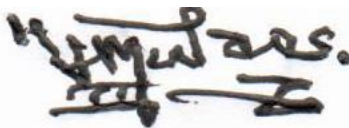
The accused is indicted for murder c/s 188 & 189 of the Penal Code Act. It is alleged that Birungi Godwin and others still at large on the 10<sup>th</sup> day of March 2021 at Kazingo Village in Kabarole Districy with malice aforethought caused the death of Okwiri Joseph.

15

**SUMMARY OF THE FACTS:**

The accused then aged 23 years is the son of the deceased who got killed at the age of 63 years. The deceased initially shared his house with his children who included the accused. The deceased and the accused and another son had not been on good terms for about 2 years before the deceased got killed. The life of the deceased was characterized by threats from the accused to kill him. The accused eventually forced the deceased out of the main house into a small house within the same compound to live there alone. The souce of the conflict was that the accused

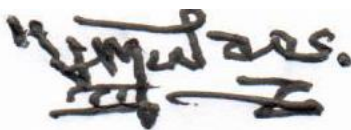
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wanted land from the deceased or for the deceased to sell his land and give him money. The deceased on at least 3 occasions reported the conduct of the accused towards him to the police and also held several family meetings attended by his daughter PW1 and her husband PW2 to try and resolve their differences. In the week that the deceased was killed, the accused had stolen bananas from the deceased's banana plantation, for which the deceased beat him up. The accused responded by threatening the deceased that the deceased would die before the end of that week. On the morning of 10<sup>th</sup> day of March 2021 the deceased was found dead near his small house in a pool of blood with multiple cut wounds all over his head. None of the children who lived in the homestead with the deceased was present. When the accused arrived that morning, it was observed that he was nursing injuries on 2 fingers of his hand. The moaners wanted to lynch him alleging that he was the one that had killed the deceased. The accused approached his sister PW1 in the presence of her husband PW2 and told her that he had killed the deceased and pleaded with her to appeal to the moaners not to kill him. The police intervened to save the life of the accused and arrested and took him to the police, which subsequently resulted in these proceedings. The accused in his defence gave sworn evidence and denied committing the offence.

## 20 **THE BURDEN AND STANDARD OF PROOF**

The burden of proof is always on the Prosecution. The Prosecution has the duty to prove each of the ingredients of the offence and generally this burden never shifts onto the accused, except where there is a specific statutory provision to the contrary. (see **Woolmington vs D.P.P. [1935] A.C. 462**, and **Okethi Okale &**



**Ors. vs Republic [1965] E.A. 555**). This is not one of those cases where the burden of proof shifts to the accused to prove his innocence.

The standard of proof is proof beyond reasonable doubt. All the essential ingredients of the offence are to be proved beyond reasonable doubt. This standard does not mean proof beyond a shadow of doubt. The standard is achieved if having considered all the evidence, there is no possibility that the accused is innocent. In **Miller vs Minister of Pensions [1947] 2 All E.R. 372** at page 373 to page 374, Lord Denning stated that:— *"The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with a sentence: 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt; but nothing short of that will suffice."*

## **EVALUATION OF EVIDENCE**

Evidence is evaluated as a whole. The Court considers evidence of both the Prosecution and the Defence relating to each of the ingredients before coming to a conclusion. The Court should not consider the Prosecution evidence in isolation of the evidence presented on behalf of the accused. In **Abdu Ngobi vs Uganda, S.C.Cr. Appeal No. 10 of 1991**, the Supreme Court expressed itself as follows, with regard to treatment of evidence: *"Evidence of the Prosecution should be examined and weighed against the evidence of the Defence so that a final*

*decision is not taken until all the evidence has been considered. The proper approach is to consider the strength and weaknesses of each side, weigh the evidence as a whole, apply the burden of proof as always resting upon the Prosecution, and decide whether the Defence has raised a reasonable doubt. If the Defence has successfully done so, the accused must be acquitted; but if the Defence has not raised a doubt that the Prosecution case is true and accurate, then the witnesses can be found to have correctly identified the appellant as the person who was at the scene of the incidents as charged.”*

**10 ELEMENTS OF THE OFFENCE:**

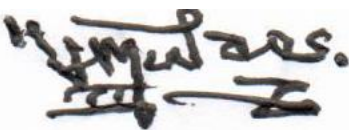
On a charge of murder, the Prosecution has to prove each of the following essential ingredients beyond reasonable doubt:

1. That the death of a human being occurred.
- 15 2. That the death was caused unlawfully.
3. That the death was caused with malice aforethought.
4. The accused participated in the commission of the crime.

**20 REPRESENTATION:**

The Prosecution was represented by James Khaukha a Senior State Attorney in the Office of the Director of Public Prosecutions. The Defence was represented by Counsel Francis Kasigazi on State Brief.

**25 THE EVIDENCE IN THIS CASE**

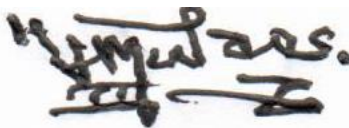
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The Prosecution called the following witnesses: PW1 Kamakune Jane a daughter of the deceased; PW2 Lutaaya Jimmy the husband of PW1; PW3 Dr. Katalemwa Jonathan who carried out the postmortem examination of the deceased; PW4 No. 55996 D/C Uwimana Henry; PW5 No. 59392 D/Cpl. Ssempijja Kenneth. The  
5 accused gave evidence on oath.

### **1. Whether death of a human being occurred**

The first element that the Prosecution had to prove is that the death of a human  
10 being occurred. Death may be proved by production of a postmortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body.

**PW1 Kamakune Jane** a daughter of the deceased testified that her father the  
15 deceased was killed on 10/3/2021. After being informed of his death, she went to his home at Kazingo and found him dead. The dead body was outside next to his house. **PW2 Lutaaya Jimmy** the husband of PW1 testified that he drove to the home of the deceased after learning of his death and found the dead body in front of the house. **PW3 Dr. Katalemwa Jonathan** who carried out the postmortem  
20 examination of the deceased testified that the dead body of the deceased was identified to him by Baguma Joseph as that of Okwir Joseph. **PW4 No. 55996 D/C Uwimana Henry** visited the scene and found the body of the deceased lying in the compound in a pool of blood. **PW5 No. 59392 D/Cpl. Ssempijja Kenneth** visited the scene and took scene of crime photos including the dead body of the deceased  
25 (**Prosecution Exhibit PE3**) and later took more photos when the dead body was in



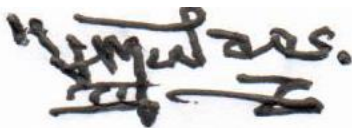
the mortuary (**Prosecution Exhibit PE4**) and also drew a sketch plan of the scene (**Prosecution Exhibit PE5**).

I am satisfied based on the above evidence that that the prosecution has proved this  
5 element of the offence beyond reasonable doubt.

## 2. Whether the death was caused unlawfully

The Prosecution had to prove further that the death of the deceased was unlawfully  
10 caused. Unless accidental or authorized by law, homicide is always unlawful. (See **Gusambizi s/o Wesonge Versus Rep. [1948] 15 EACA 65**).

**PW1 Kamakune Jane** a daughter of the deceased testified that the dead body of the deceased was found outside next to his house with multiple cuts on the head  
15 and face. **PW2 Lutaaya Jimmy** testified that he found the dead body in front of the house with his head severally cut with a panga. **PW3 Dr. Katalemwa Jonathan** who carried out the postmortem examination of the deceased and tendered the postmortem report (**Prosecution Exhibit PE2**) testified that the body had multiple cut wounds on the head and a ruptured skull. **PW4 No. 55996 D/C Uwimana**  
20 **Henry** testified that he found the body of the deceased lying in the compound in a pool of blood with multiple cuts all over the body. **PW5 No. 59392 D/Cpl. Ssempijja Kenneth** testified that he took photos showing the injuries on the dead body of the deceased.



I am satisfied based on the evidence of the injuries found on the body of the deceased and circumstances under which the body was found outside the hose in a pool of blood, that the death of the deceased was caused unlawfully.

5       **3. Whether the death was caused with malice aforethought**

The next ingredient for consideration is whether there was malice aforethought. In Criminal Law, malice aforethought is deemed to be established from evidence of circumstances of the intention to cause the death of any person or of the knowledge  
10 that the act or omission causing death will probably cause the death of some person.

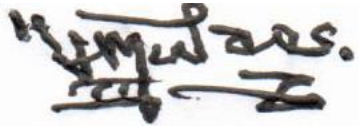
In particular, Section 191 of the Penal Code Act provides that:

15       *Malice aforethought shall be deemed to be established by evidence providing 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*

20       (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.*

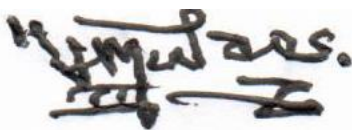
In order to determine whether there was an intention to cause death or that the person knew that his act will probably cause death, the Court can consider the  
25       weapon used, the part of the body targeted, the degree of injury and the conduct of

7       

the accused before and after the act. (See **R. Versus Tubere s/o Ochieng [1945] EACA 63**). If a vulnerable part of the body is targeted, then the intention to cause death is inferred.

5 **PW1 Kamakune Jane** testified that the body of the deceased had multiple cuts on the head and face. **PW2 Lutaaya Jimmy** testified that the deceased's head was severally cut with a panga. **PW3 Dr. Katalemwa Jonathan** who carried out the postmortem examination of the deceased and tendered the postmortem report (**Prosecution Exhibit PE2**) testified that the body had multiple cut wounds and  
10 fractures. The brain matter was exposed. There were blood clots in the brain. The right nose was severely cut and fractured. There was a deep penetrating cut wound on the right cheek. The mandible of the upper jaw was fractured exposing the teeth. There was a deep penetrating cut wound on the posterior aspect of the neck, which is the back part of the neck, measuring 10x3cm, exposing the deep neck muscles.  
15 There was a deep penetrating wound of the right forearm measuring approximately 10x5cm exposing major muscles of the arm and the blood vessels of the arm. There was a deep penetrating cut wound on the dorsal aspects of the right hand (palm), involving injury to the major blood vessels. On opening up the body, the rest was normal. The cause of death was severe traumatic brain injury with  
20 massive hemorrhage (bleeding) secondary to sharp force trauma. **PW4 No. 55996 D/C Uwimana Henry** testified that he found the body of the deceased lying in the compound in a pool of blood with multiple cuts all over the body. **PW5 No. 59392 D/Cpl. Ssempijja Kenneth** testified that he took photos showing the injuries on the dead body of the deceased.

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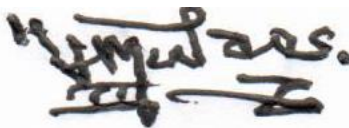


The injuries inflicted on the deceased were grave and inflicted on vulneral parts of the body. The deceased was left dead in a pool of blood. I am satisfied that the Prosecution has proved beyond reasonable doubt that the persons who caused the death of the deceased did it with malice aforethought; that is, with intention to  
5 cause death; or with knowledge that their acts would probably cause death.

#### 4. Whether the accused participated in the crime

This ingredient is satisfied by adducing evidence, direct or circumstantial, placing  
10 the accused at the scene of crime as the perpetrator of the offence.

**PW1 Kamakune Jane** a daughter of the deceased testified that the accused is his young brother with whom they shared a father. The deceased originally lived in the main house but there was also a smaller house in the same compound. The two  
15 houses were 15 meters apart. For the past 2 years the accused had been ‘*fighting*’ the deceased and sent him out of the main house and the deceased moved to the small house where he lived alone. The accused was fighting the deceased over land. The accused wanted the deceased to sell his land and give him money to spend. The deceased reported cases to Fort-portal police station that his children  
20 wanted to kill him over his land and had chased him out of the main house with threats of cutting him with a panga. PW1 was aware of the threats and had attended a meeting at home with her husband and others, called by the deceased over the matter in 2020. In that meeting the deceased stated that if he was found dead, it will have been killed by the accused. During that meeting, the accused attacked the  
25 deceased inside the house and held him by the neck and the deceased pushed him

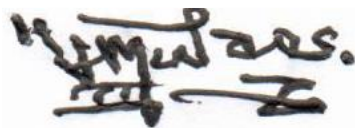


away. The deceased the following day reported this incident to the police. PW1 and others later attended a reconciliation meeting at Fort-portal police station where the accused asked the deceased for forgiveness.

5 **PW1** testified that on 8/3/2021 which was a Monday, the accused stole bananas from the deceased's banana plantation at home in Kazingo and the deceased beat him up over the theft. The accused then threatened the deceased saying: ***"You have beaten me today, but you will not end this week before you die"***. Then the deceased was killed on Wednesday 10/3/2021. The threats and fights by the  
10 accused against the deceased had gone on for 2 years. The deceased would call PW1 and her husband and a few family members at home to meet over the matters. One time the accused threatened the deceased with a panga and it was what prompted the deceased to shift to the small house. The deceased had reported cases to police over these matters 3 times, in 2019, beginning of 2020, and in September  
15 2020.

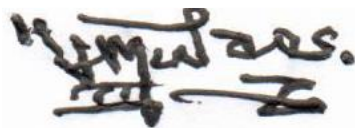
**PW1** testified that although her brothers including the accused lived in the same compound with the deceased, when she came home in the morning after getting news of the death of the deceased, none of them was present. Only the neighbours  
20 and other people were present. The accused was not present. The accused came later that morning at about 11.00am when the deceased's body had already been removed and taken to the mortuary at Buhinga Hospital. The accused had fresh wounds on his 2 fingers that were bleeding and wrapped in banana fibers. The accused was crying saying ***"who has killed my father"***.

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**PW1** testified that when the moaners saw the accused with bleeding fingers, some started pelting him with stones. Then the accused went to her and held her and whispered to her saying: *“I am sorry. I am the one who has killed Dad. Tell those people not to kill me”*. The police intervened and fired bullets and took the accused  
5 away.

In cross examination PW1 stated that her mother had never separated from the deceased and was living in her father’s home. Each wife of the deceased had her own home and land. The deceased had 2 wives. The deceased had lived with the  
10 mother in the main house before the deceased shifted to the small house. It was the accused who chased the deceased out of the main house. By this time the mother of the accused had left 3 years ago. Her father was a strong person who was able to push away the accused when the accused attacked him inside the house. On  
15 10/3/2021 the accused did not spend the night at home. The deceased hosted 3 meetings that PW1 attended. The 3 meetings were attended by the same people. The deceased chose those he invited for the meetings. It was after the 3<sup>rd</sup> meeting that the accused apologized to the deceased. In clarification sought by court, PW1 said that the deceased called the meetings because he wanted the accused to repent from wanting to kill him. The land that the accused wanted was the deceased’s  
20 land. The deceased had not yet distributed land to anybody. When the deceased was sent out of the main house, it remained occupied by her siblings who included the accused. In clarification sought by the assessors, PW1 stated that the deceased always called upon her to attend meetings he called because she was based in Fort-portal and so she was near, while the others were far in Kampala. The deceased  
25 had also brought the matters to the attention of the LCs.



**PW2 Lutaaya Jimmy** the husband of PW1 testified that the deceased was his father in law. When they went to the home of the deceased on that morning following his death, when the police arrived and moved around and inquired about the children of the deceased, they were not available. The police carried away the  
5 dead body. The funeral was shifted to the home of the deceased's first wife. The accused arrived at around 9.00-10.00am saying '*who has killed Mzee*'. He had tied a cloth on his hand. The people started saying that the accused had killed the deceased and that he should be killed. The accused ran towards PW1 and PW2 moved close to them. People were saying – "*lets kill him – lets kill him*".  
10 The accused kept appealing to PW1 that the people should not kill him. Then the accused disclosed that he was the one who had killed Mzee but that he did not know the reason why he had killed Mzee. PW1 pulled off the cloth that the accused had tied on his hand. The hand had a wound. The police came and shot in the air and took away the accused.

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**PW2** testified that whenever the 2 sons of the deceased – the accused and Baguma – would disturb the deceased, the deceased would call him and PW2 would go to the deceased's home to discuss the matters. The 2 sons wanted the deceased to give them land. The deceased told PW2 that his 2 sons wanted to kill him over his land.  
20 The deceased told PW2 that he would not give them his land because he had bought it out of his sweat and his 2 sons did not want to work. That he had worked for his land and it was not an inheritance. That he could only give them his land over his dead body.

25 **PW2** testified that these problems between the deceased and his sons started in 2019 and he and his wife PW1 attended meetings at the home of the deceased in

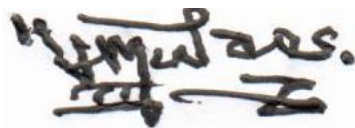
attempts to resolve the problems. The deceased always wanted to take matters to police but PW2 preferred to talk to the sons. The deceased had warned PW2 that PW2's approach of amicable settlements would cause his (deceased's) death. In December 2020 while at the home of the deceased, PW2 sat with the accused and advised him to work for himself since he was still young. The accused proposed to PW2 that the deceased should give him 3,000,000/= as capital to do business. PW2 gave this feedback to the deceased but he refused. PW2 informed the accused that the deceased had refused.

10 **PW2** testified that after 2 weeks, the deceased rang him and reported to him that the accused had again attacked him while armed with a panga and that he wanted to take matters to the police. PW2 went and met the deceased at the police where the deceased had reported the matter. PW2 advised the deceased to engage in an amicable settlement which the deceased was opposed to but reluctantly accepted. 15 The deceased complained that his sons had even forced him out of the main house. At the meeting at police, Baguma promised that he would talk to the accused and they would disturb the deceased no more. There was some peace. Later the deceased complained to PW2 that the accused's attacks on him had resumed.

20 In cross examination PW2 stated that the accused and his brother Baguma wanted part of the land where the deceased's home was. The deceased chose to continue living with the accused and his other children hoping they would reform. He did not recall the actual date when he sat with the accused when the accused asked for the 3,000,000/= because it is a long time ago. The deceased always involved PW1 25 in the matters because she was his eldest daughter. PW2 attended 3 meetings with the deceased. In all the meetings the deceased complained about his 2 sons – the

accused and Baguma. The main house of the deceased now looks bushy and abandoned while the small house is occupied by Baguma. In clarification sought by court, PW2 said that the accused and Baguma lived in the home of their father the deceased. In clarification sought by the assessors, PW2 said that the deceased  
5 had never told him of any disagreements with any of his wives.

**PW4 No. 55996 D/C Uwimana Henry** testified that he arrived at the scene at around 22.30hrs in the night. He interviewed witnesses and established that the deceased had been in wrangles with his son the accused over land and other  
10 domestic related issues and that on 8/3/2021 the deceased had caught the accused in his banana plantation having stolen 11 bunches of *matoke*. That the accused threatened to harm the deceased for obstructing him from going to sell the bananas. PW4 traced for the accused but he was not at the scene. They then took the dead body of the deceased to Fort-portal Regional Referral Hospital for postmortem  
15 examination. On 11/3/2021 the accused was arrested and brought to the police station. The accused had been found with an injury on the hand suspected to have been sustained during a scuffle with the deceased. PW4 saw the injury. PW4 recorded a plain statement of the accused who admitted to have stolen the bananas with a view to sell and use the proceeds to care for his younger siblings whom  
20 his father had neglected after divorcing their mother. In cross examination PW4 stated that PW1 informed him of the wrangles between the deceased and the accused; while Tusiime Richard a worker of the deceased informed him of the accused's theft of bananas which the accused confirmed in his plain statement. The accused told him that the injury on his hand had been sustained when he was  
25 digging a trench.



## **EVIDENCE OF THE ACCUSED:**

The accused in his defence gave sworn evidence and denied committing the offence. He asserted that he had always had a good relationship with his father, was his loved son, and they had never had any confrontation. He has never had any misunderstandings with his father over land. They had never had any family meetings or police cases to resolve any differences. He never stole any bananas from the deceased. He had no grudges with PW1 and PW2 and they were friends. He has never told PW1 that he killed the deceased. He did not know why the deceased moved to live in the small house. He was at home on the night when the deceased was killed and he and his siblings and their mother were the first responders to the deceased's alarms and found him dead. He was arrested the following morning from the funeral place and sustained injuries on his fingers when he was being forced into a vehicle. Prior to this case, he had never been to police or prison.

## **CONSIDERATION AND EVALUATION OF THE EVIDENCE:**

### **1. Evidence of a Confession:**

The prosecution relies among others on a confession of the accused made to PW1 in the presence of PW2. In *Kedi Martin versus Uganda, SCCA No. 11 of 2001*, the Supreme Court stated as follows:

*“The basic law governing the admissibility of a confession made by a person accused of a criminal offence, as evidence in his or her trial, is*

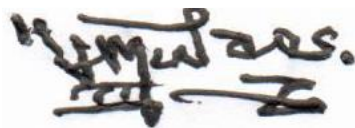
5 contained in sections 24, 25 and 29A of the Evidence Act. Needless to say  
at the out set that the said law comes into play when an accused person  
retracts or repudiates a confession attributed to him or her. Section 24  
renders inadmissible, any confession made by a person in custody of a  
police officer, unless it is made in the immediate presence of a magistrate  
or of a police officer of or above the rank of Assistant Inspector. It does  
not apply to a confession made by a person who is not in custody, or who  
is in the custody of anyone other than a police officer. See Babvebuza  
Swaibu vs Uganda, Cr. App. No. 47 of 2000, (S.C.) (unreported) which we  
10 decided in the same session. Section 25. however, applies to all confessions  
by accused persons wherever and whenever made, and renders  
inadmissible, any confession which is not shown to have been made  
voluntarily”.

15 In the South African High Court case of *The State versus Phumlane Fortunate*  
*Ngwenye*, Case No. CC 73/15, it was held that:

“A confession made to a private person would therefore be perfectly  
admissible provided that the other requirements of section 217(91)(a) of  
the CPA have been met, namely, that it has been freely and voluntarily  
made, by the accused person in his sound and sober senses and without  
20 having been unduly influenced thereto.

Secondly, a confession made to any person besides the persons excluded  
in section 217(1)(a) of the CPA need not be reduced into writing before it  
would be admissible into evidence”.

25





Therefore a confession made to a private person when the accused is not in police custody or the custody of a person in authority is admissible and need not be written as long as it is made voluntarily by the accused. In this case **PW1** testified that when the moaners saw the accused with bleeding fingers, some started pelting him with stones. Then the accused went to her and held her and whispered to her saying: ***“I am sorry. I am the one who has killed Dad. Tell those people not to kill me”***. **PW2** testified that the people started saying that the accused had killed the deceased and that he should be killed. The accused ran towards PW1 and PW2 moved close to them. People were saying – ***“lets kill him – lets kill him”***. The accused kept appealing to PW1 that the people should not kill him. Then the accused disclosed that he was the one who had killed Mzee but that he did not know the reason why he had killed Mzee.

When the accused made the above confession he was not in the custody of the police, LCs or anyone. He was not under arrest. There is nothing to suggest, having regard to the state of mind of the accused person, the way he approached PW1, and considering all the surrounding circumstances, that the confession was caused by any violence, force, threat, inducement or promise calculated in the opinion of the court to cause an untrue confession to be made. He had been absent from the scene until that moment when he arrived. There was no requirement that he should be warned that he was not bound to make the confession, and that evidence of it might be given against him.

**2. Evidence of Prior Threats:**

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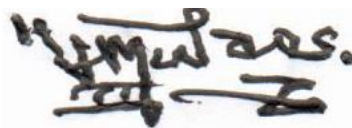
The prosecution also relies on the evidence of prior threats made by the accused against the deceased. Evidence of prior threats is relevant. In **Kifamunte Henry versus Uganda**, SCCA No. 10/1997, the Supreme Court held that: *“The trial Court believed the evidence of P.W.2, PW.4 and P.W.5 regarding the previous threat by the appellant to kill the deceased, despite denials by the appellant that he had made such threats. The learned trial Judge had the advantage of seeing those witnesses testify. We have no reason to doubt his findings that they were truthful witnesses. Evidence of previous threats is relevant and, as was pointed out by the Court of Appeal for East Africa in Okecha s/o Olilia v R (1940) Vol. 7 E.A.C.A. 74, as such evidence shows an expression of intention, it goes beyond mere motives and tends to connect the accused person with the killing. Also see Waibi and Another v. Uganda (1968) E.A. 228.”*

In **Chemonges Fred versus Uganda**, CACA No. 138/1999, the Court of Appeal of Uganda held that: *“We find that the learned trial judge properly appraised the evidence regarding the prior threat to kill Kuka. The appellant had travelled eight kilometers from his home to the Cheminy market where Kuka had a shop. The threat was uttered on 6.1.96, almost a month prior to the attempted murder. We consider this period proximate enough to make the threat relevant as the learned judge so rightly held relying on Waibi and Another v Uganda (1968) EA 278.”*

In **Henry Francis Rubingo versus Uganda**, CACA No 18/1977, the Court of Appeal of Uganda held that: *“We have given this matter anxious thought and have reached the conclusion that if the chief was a truthful witness and this evidence of a previous threat was brought out during his cross—examination it*

could not but be true. Just as such evidence of a previous threat to kill the deceased may corroborate a confession on the authority of Waihi And Another v. Uganda (1968) E.A. 278, we strongly feel that it can equally provide other evidence necessary for accepting the evidence of a sole identifying witness provided the standard set out in Waihi (supra) is satisfied. We do not know the circumstances in which the threat was made but it was apparently serious enough for the deceased to report his son to the chief. The chief also did not take it lightly and warned the appellant. It was made some two months previously and was due to the deceased's refusal to give the appellant land. Those who have had to deal with land matters will realise that such a desire to acquire land or disputes concerning land are seldom if ever at all forgotten. The interval of time between the utterance and the killing of about two months in the circumstances is not long enough in our opinion to make the utterance irrelevant. This is another factor by way of other evidence to provide support for the identification made by P.W.4."(Emphasis added).

In this case **PW1** testified that she was aware of the threats by the accused made against the deceased and she had attended a meeting at home with her husband and others, called by the deceased over the matter in 2020. During that meeting, the accused attacked the deceased inside the house and held him by the neck and the deceased pushed him away. The deceased the following day reported this incident to the police. **PW1** and others later attended a reconciliation meeting at Fort-portal police station where the accused asked the deceased for forgiveness. **PW1** testified that on 8/3/2021 which was a Monday, the accused stole bananas from the deceased's banana plantation at home in Kazingo and the deceased beat him up



over the theft. The accused then threatened the deceased saying: ***“You have beaten me today, but you will not end this week before you die”***. Then the deceased was killed on Wednesday 10/3/2021. The threats and fights by the accused against the deceased had gone on for 2 years. The deceased would call PW1 and her husband and a few family members at home to meet over the matters. One time the accused threatened the deceased with a panga and it was what prompted the deceased to shift to the small house. That deceased had reported cases to police over these matters 3 times, in 2019, beginning of 2020, and in September 2020. **PW2** testified that the deceased told PW2 that his 2 sons wanted to kill him over his land and that the accused had attacked him while armed with a panga. The deceased complained that his sons had even forced him out of the main house. **PW4** testified that he interviewed witnesses and established that on 8/3/2021 the deceased had caught the accused in his banana plantation having stolen 11 bunches of *matoke*. That the accused threatened to harm the deceased for obstructing him from going to sell the bananas. PW4 recorded a plain statement of the accused who admitted to have stolen the bananas with a view to sell and use the proceeds to care for his younger siblings whom his father had neglected after divorcing their mother. In cross examination PW4 stated that Tusiime Richard a worker of the deceased informed him of the accused’s theft of bananas which the accused confirmed in his plain statement.

**3. Evidence of statements made by the deceased prior to his death**

The prosecution led evidence of statements that the deceased used to make, which are relevant to his death.

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Section 30 (a) of the Evidence Act provides for cases in which statements of relevant facts by a person who is dead are relevant - *“when the statement is made by a person as to the cause of his or her death, or as to any of the circumstances of the transaction which resulted in his or her death, in cases in which the cause of that person’s death comes into question and the statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his or her death comes into question”*.

In this case PW1 testified that she was aware of the threats by the accused against the deceased and had attended a meeting at home with her husband and others, called by the deceased over the matter in 2020. In that meeting the deceased stated that if he was found dead, it will have been killed by the accused.

**PW2** testified that the deceased told him that his 2 sons wanted to kill him over his land. The deceased told PW2 that he would not give them his land because he had bought it out of his sweat and his 2 sons did not want to work. That he had worked for his land and it was not an inheritance. That he could only give them his land over his dead body. The deceased always wanted to take matters to police but PW2 preferred to talk to the sons. The deceased had warned PW2 that PW2’s approach of amicable settlements would cause his (deceased’s) death.

25 **4. Evidence of the Conduct of the Accused after the Offence:**

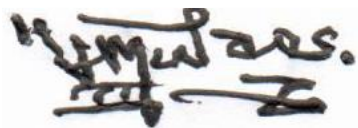
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The conduct of an accused person before and after the commission of an offence is relevant. (See: *Twehamye Abdul Versus Uganda Criminal Appeal 49 of (1999) (2000) UGCA 7; Bogere Charles Vs Uganda Crim. Appeal No. 10/98 S.C; R. Versus Tubere s/o Ochieng [1945] EACA 63*).

**PW1** testified that although her brothers including the accused lived in the same compound with the deceased, when she came home in the morning after getting news of the death of the deceased, none of them was present. Only the neighbours and other people were present. The accused was not present. The accused came later that morning at about 11.00am when the deceased's body had already been removed and taken to the mortuary at Buhinga Hospital. **PW2** testified that when they went to the home of the deceased on that morning following his death, when the police arrived and moved around and inquired about the children of the deceased, they were not available. **PW4** testified that he arrived at the scene at around 22.30hrs in the night. He interviewed witnesses. PW4 traced for the accused but he was not at the scene.

#### 5. Evidence of Motive:

The prosecution brought evidence to demonstrate that the accused had a motive to kill his father the deceased.



Section 7 (1) of the Evidence Act provides for the relevance of facts showing motive and states thus: *Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*

5 In *Uganda versus Barimwezi Simon & 2 Ors., Masaka C.S.C. No. 070/ 2014*, the Hon. Justice Dr. Flavian Zeija, J (as he was), stated as follow: *“The existence of a motive makes it more likely that the accused would commit a crime. In this case, there was a simmering conflict relating to terminal benefits and the administration of the estate of A1’s father. However, in order for motive to be*  
10 *relevant, it must be backed by other circumstantial evidence that links the accused to a crime. In this case, the evidence available was the evidence of a threat allegedly made by A1 to the deceased arising from failure by the deceased to hand over terminal benefits to A1”.*

15 **PW1** testified that the accused was fighting the deceased over land. The accused wanted the deceased to sell his land and give him money to spend. The deceased reported cases to Fort-portal police station that his children wanted to kill him over his land. The land that the accused wanted was the deceased’s land. The deceased had not yet distributed land to anybody. The deceased called meetings because he  
20 wanted the accused to repent from wanting to kill him. **PW2** testified that whenever the 2 sons of the deceased – the accused and Baguma – would disturb the deceased, the deceased would call him and PW2 would go to the deceased’s home to discuss the matters. The 2 sons wanted the deceased to give them land. The deceased told PW2 that his 2 sons wanted to kill him over his land. The  
25 deceased told PW2 that he would not give them his land because he had bought it out of his sweat and his 2 sons did not want to work. That he had worked for his

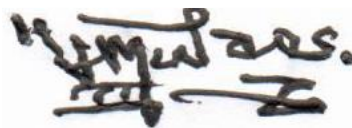
land and it was not an inheritance. That he could only give them his land over his dead body.

**6. Evidence of the accused:**

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Against the above evidence the accused asserted that he had always had a good relationship with his father, was his loved son, and they had never had any confrontation. He has never had any misunderstandings with his father over land. They had never had any family meetings or police cases to resolve any differences.  
10 He never stole any bananas from the deceased. He has never told PW1 that he killed the deceased. He did not know why the deceased moved to live in the small house.

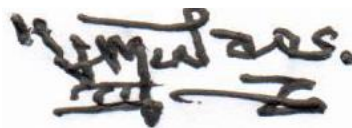
I have evaluated all the evidence as a whole. Although at the time of his defence  
15 the accused denied having made the confession or having ever had any confrontation and threats with the deceased, PW1 and PW2 were never cross examined to suggest that the accused never made the confession or never had any confrontations with the deceased or never made the prior threats to the deceased. It was held in *Kabengevs Uganda UCA Cr App. No. 19 of 1977 (Unreported)*, and  
20 *James Sowoabm & Anor vs Uganda (SC) Cr App No. 5 of 1990 (Unreported)* by the then Uganda Court of Appeal and the Supreme Court respectively, that:  
***“Whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross – examination it must follow that he believed that the testimony given could not be disputed at all therefore, an***





*omission or neglect to challenge the evidence-in-chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible.” (See also Eladam Enterprises Ltd vs. SGS (U) Ltd & Ors. Civil App. No. 05 of 205, reported in [2007] HCB Vol 1 and Sakaar on Evidence Vol. 2, 14th Edition, 1993 by Sudipto Sarkar & V.R Manohar Pg. 2006 -2007).* Further more, the accused did not controvert the evidence of statements made by the deceased prior to his death that were relevant to his death and PW1 and PW2 were not cross examined thereon. PW1 and PW2 were not successfully cross examined or discredited on their evidence of motive and conduct of the accused after the commission of the offence. The confession made to PW1 by the accused that he had killed the deceased was made voluntarily by the accused and it is a true confession. The efforts of the accused to distance himself from the confession at the time of his defence was an afterthought. I believe the evidence of the prosecution of the existence of wrangles and confrontations by the accused against the deceased arising from the accused’s desire to obtain land or money from the deceased and that consequently, the accused often threatened the deceased. The prosecution witnesses were credible, truthful, consistent, and remained as such in cross examination, and could not have been motivated by any grudge as the accused acknowledged that none existed between him and PW1 and PW2 and that they were friends.

The evidence adduced by the prosecution in terms of the confession of the accused, prior threats, statements made by the accused prior to his death, conduct of the accused after the offence, evidence of motive, when taken together, proves the participation of the accused in the murder of the deceased. I believed the

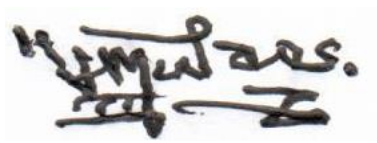


prosecution witnesses and having done so, I accept their evidence and reject the defence story.

**CONCLUSION:**

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I find that the prosecution has proved the case of murder against the accused beyond reasonable doubt. In agreement with the joint opinion of the Lady and Gentleman Assessors, I find the Accused Guilty of Murder as Indicted, and convict him accordingly.



10

Vincent Wagona

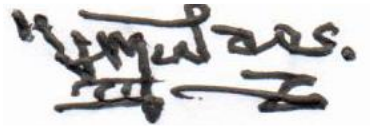
**High Court Judge**

**FORT-PORTAL**

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**DATE: 12/01/2024**

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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT-PORTAL**  
**HCT-01-CR-SC-0337-2021**

**UGANDA=====PROSECUTOR**

5

**VERSUS**

**BIRUNGI GODWIN=====ACCUSED**

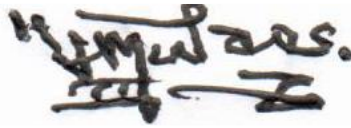
**BEFORE HON. JUSTICE VINCENT WAGONA**

10

**SENTENCE AND REASONS FOR SENTENCE**

In sentencing the convict, a number of factors have been considered. Under the Penal code act, the maximum punishment for murder is death. I am also guided by the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. Under Paragraph 20, the relevant aggravating factors are — (a) the degree of injury or harm; (b) the part of the victim’s body where harm or injury was occasioned; (c) sustained or repeated injury or harm to the victim; (d) the degree of meticulous pre-meditation or planning; (e) use and nature of the weapon; (f) whether the offender deliberately caused loss of life in the course of the commission of another grave offence; (g) whether the offender deliberately targeted and caused death of a vulnerable victim; (h) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime; (i) whether the offence was motivated by, or demonstrated hostility based on the victim’s age, gender, disability or other discriminating characteristic; (j) whether the offence was committed against a vulnerable person or member of a community like a pregnant woman, child or person of advanced age; (k) whether

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the offence was committed in the presence of another person like a child or spouse of the victim; (l) whether there was gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse; (m) whether there was any attempt to conceal or dispose of evidence; (n) whether there was an abuse of power or a position of trust; (o) whether there were previous incidents of violence or threats to the victim; (p) the impact of the crime on the victim's family, relatives or the community; or (q) any other factor as the court may consider relevant.

Under Paragraph 21, the court shall take into account the following mitigating factors— (a) lack of premeditation; (b) a subordinate or lesser role in a group or gang involved in the commission of the offence; (c) mental disorder or disability linked to the commission of the offence; (d) some element of self-defense; (e) plea of guilt; (f) the fact that the offender is a first offender with no previous conviction or no relevant or recent conviction; (g) the fact that there was a single or isolated act or omission occasioning fatal injury; (h) injury less serious in the context of the offence; (i) remorsefulness of the offender; (j) some element of provocation; (k) whether the offender pleaded guilty; (l) advanced or youthful age of the offender; (m) family responsibilities; (n) some element of intoxication; or (o) any other factor the court considers relevant.

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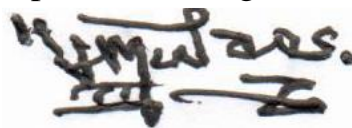
The sentencing guidelines have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial (see **Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010**).

25 In **Kato Kajubi vs. Uganda SCCA No. 2014** the Supreme Court upheld the sentence of life imprisonment having considered the gruesome way the victim was

murdered. In **Ssekawoya Blasio SC Criminal Appeal No. 24 of 2014**, the appellant was imprisoned for life for a premeditated murder of his three children. In **Turyahabwe Ezra and 14 others vs. Uganda SCCA No. 50 of 2015**, the Court of Appeal and the Supreme Court upheld a life imprisonment sentence against some of the Appellants who were convicted of murder. In **Sunday Gordon Vs Uganda CACA No. 0103 of 2006**, the Court of Appeal confirmed a sentence of life imprisonment for murder where the accused who was aged 35 years had been part of a mob that killed a defenseless elderly woman.

10 In this case I have considered the following aggravating factors.

- i) Murder is a grave capital offence whose maximum sentence is death.
- ii) The high degree of injury or harm, the vulnerable parts of the victim's body where harm or injury was occasioned, and the sustained or repeated injury or harm to the victim. PW3 Dr. Katalemwa Jonathan who carried out the postmortem examination of the deceased and tendered the postmortem report (Prosecution Exhibit PE2) testified that the body had multiple cut wounds and fractures. The brain matter was exposed. There were blood clots in the brain. The right nose was severely cut and fractured. There was a deep penetrating cut wound on the right chick. The mandible of the upper jaw was fractured exposing the teeth. There was a deep penetrating cut wound on the posterior aspect of the neck, which is the back part of the neck, measuring 10x3cm, exposing the deep neck muscles. There was a deep penetrating wound of the right forearm measuring approximately 10x5cm exposing major muscles of the arm and the blood vessels of the arm. There was a deep penetrating cut wound on the closal aspects of the right hand (palm), involving injury to

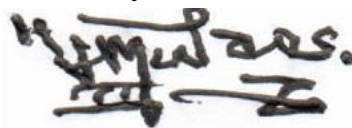


the major blood vessels. The cause of death was severe traumatic brain injury with massive hemorrhage (bleeding) secondary to sharp force trauma.

- 5           iii) Use and nature of the weapon. By the nature and location of injuries, a deadly weapon made or adapted for cutting and stabbing was indiscriminately used on vulnerable parts of the human body such as the head and neck.
- iv) The nature of injuries and weapon that must have been used attest to a high degree of meticulous pre-meditation or planning.
- 10          v) There was gratuitous degradation of the victim through multiple incidents of harm and the dead body was abandoned outside his house.
- vi) The convict deliberately targeted and caused death of an elderly person who was a vulnerable victim.
- vii) The offence was motivated by greed for material gain to have free assets and resources from the deceased. Killing a father is not the way to gain  
15           interests in father's or family estate.
- viii) There were previous incidents of violence or threats to the victim by the accused.
- ix) The accused killed his own father over his land that the deceased had  
20           acquired through his own sweat.
- x) There was an abuse of position of trust between father and son.
- xi) The impact of the crime on the victim's polygamous family which now appeared divided.

I also considered the following mitigating factors:

- 25          i) The convict was a first offender.
- ii) He had been on remand for 2 year, 10 months and 25 days.



- iii) The convict is aged 25 years old and has the ability to reform.
- iv) The allocutus of the accused who sought to be released.

The aggravating factors by far outweigh the mitigating factors.

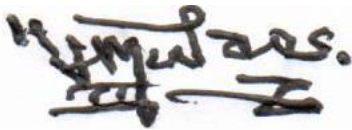
5 Under Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. The convict has been on remand for 2 years and 8 days.

10

I consider a sentence of life imprisonment meaning the convict's remaining natural life in prison to be appropriate. The convict is accordingly sentenced to **life imprisonment**.

15 The convict is advised that he has a right of appeal against both conviction and sentence, within a period of fourteen days.

**Dated at Fort portal this 12<sup>th</sup> day of January 2024.**



Vincent Wagona

20 **High Court Judge**  
**FORTPORTAL**

