THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-CR-SC-0280 OF 2022

UGANDA……PROSECUTION

VERSUS

AKUGIZIBWE DAVID……ACCUSED

BEFORE: HON. MR. JUSTICE DAVID S.L. MAKUMBI

JUDGMENT

BACKGROUND

The Accused in this matter Akugizibwe David also known as Kabako stands indicted of the offence of Murder c/s 188 and 189 of the Penal Code Act.

The facts in brief are that on or around 6th November 2021 the Accused and others still at large caused the death of Atuhaire Fahad with malice aforethought at Rwimi Town Council, Bunyangabu District. The Prosecution alleges that on the day in question the Accused accosted the deceased at a bar and lodge known as Avenue Gardens having summoned him there on suspicion of having stolen music equipment. Upon arrival at Avenue Garden and seeing the deceased, the Accused allegedly took a baton from a security guard on the premises and hit the deceased on the head. The Accused then called the police and hired a vehicle to take the deceased to hospital. The deceased complained of headache while in police custody and stated that Kabako had killed him.

The deceased grew progressively weaker until the morning of 7th November when he was rushed to a clinic and eventually to Fort Portal Regional Referral Hospital where he was pronounced dead. The Accused then allegedly went into hiding after receiving news that the deceased had passed on and was later arrested in March 2022.

EVALUATION OF EVIDENCE:

For an accused to be found guilty of the offence of Murder, the prosecution must prove the following ingredients:

1) That the death of a human being occurred;
2) That the death was caused unlawfully;
3) That the death was caused with malice aforethought; and
4) That the accused participated in the crime.

According to the time-honoured case of **Woolmington v DPP (1935) AC 462**, the Burden of Proof in criminal trials is always on the Prosecution. In that regard the Prosecution always has the duty to prove each of the ingredients of the offence and generally speaking the burden never shifts onto the accused except where there is a statutory provision to the contrary.

The Standard of Proof in criminal trials is proof beyond reasonable doubt and is met when all the essential ingredients of the offence are proved beyond reasonable doubt. The locus classicus in this regard is the case of **Miller v Minister of Pensions (1947) 2 All ER 372** wherein Lord Denning stated at Pages 373-374 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."

55 The legal standard in the determination of whether or not the burden and standard of proof has been properly met will be done in accordance with the Supreme Court decision in **Abdu Ngobi v Uganda – Criminal Appeal No. 10 of 1991** where it was held that,

"Evidence of the prosecution should be examined and weighed against the
60 *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."*

65 Death may be proved by the 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.

The post-mortem report marked PE2 and dated 9th November 2021 shows that the cause of death was because of multiple injuries sustained by the deceased. The report
70 indicates that the deceased suffered external injuries to wit; swollen eye (red in color), abrasion on the top right eye, abrasion of the left shoulder, abrasion of the left side of the trunk, abrasion of the left hip and abrasion of the left wrist joint. The report also details internal injuries to wit; generalized haemotoma, more marks around the right palleatal aspect, depression, skull puncture of the right palleatal bone, contusion of the
75 left lung. The cause of death was stated to be blunt force trauma with open head injury. The Post Mortem report was admitted in evidence as part of the agreed facts.

PW1, (Hafusah Batambuze), the mother to the deceased testified that she saw the body of the deceased when it was brought home on a police vehicle on the 7th of November 2021. She went on to testify that the body was initially rejected on account of failure to provide a post-mortem report confirming the cause of death and that burial took place in Kyeihumba on 8th November 2021 after the cause of death had been ascertained. The death of the victim was further corroborated by PW2 and PW3 who testified that he had died at the hospital.

Despite the Defence having received the post-mortem report as part of the agreed facts at the beginning of the trial, during submissions the Defence contested the report on the grounds that whereas the post-mortem report indicated that the medical examination was done on 9th November 2021, PW1 and PW2 testified to the deceased having been buried on 8th November 2021. To that extent, the Defence contended this inconsistency meant that there was never any post mortem conducted and that cause of death had not been established beyond reasonable doubt.

In light of the above, I must point out that on the 4th of December 2024, both the Prosecution and the Defence as well as the Accused endorsed a Memorandum of Agreed Facts in accordance with Section 66 of the Trial on Indictments. The Memorandum was prepared in full hearing of the Accused in accordance with the requirements of Section 66(2) of the Trial on Indictments Act and it is available on the court record.

Concerning the implications of the Memorandum of Agreed facts Section 66(3) of the Trial on Indictments Act provides that,

> *"Any fact or document admitted or agreed (whether the fact or document is mentioned in the summary of evidence or not) in a memorandum under this section shall be deemed to have been duly proved; but if, during the*

course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this section be formally proved."

105 Based on the provision above, I find it disingenuous of the Defence to have agreed to the admission of the post mortem report only to turn around later and attempt to raise inconsistencies in the report. The Defence had every right to reject the report outright during the preliminary phase of the trial but by endorsing the Memorandum of Agreed Facts they waived the right of the Accused in that regard. If the Defence wished for the
110 inconsistency in dates to be addressed then they should have disputed the report right from the start and it would then have to be formally proved by the Prosecution.

Notwithstanding the above, the law on inconsistencies as determined by the Supreme Court in the case of **Sarapio Tinkamalirwe v Uganda – Criminal Appeal No 27 of 1989** is that,

115 *"It is not every inconsistency that will result in a witness testimony being rejected. It is only a grave inconsistency, unless satisfactorily explained, which will usually, but not necessarily result in the evidence of a witness being rejected. Minor inconsistencies will not usually have the effect unless the Court thinks that they point to deliberate untruthfulness."*

120 When I consider the position of the Supreme Court above as well as the legal implications of Section 66(3) of the Trial on Indictments Act I find that it is not open to the Defence to argue at this point that there are inconsistencies in Prosecution Exhibit 2. This is because the court has no opportunity to test through formal proof as to whether the inconsistency constitutes grave inconsistency or deliberate untruthfulness in the
125 event that it is a minor inconsistency.

However even without necessarily relying on the Post Mortem report there was ample evidence received from PW1 and PW2 who both knew the deceased and had witnessed his burial. There is therefore no doubt that the deceased Atuhaire Fahad did in fact die.

As concerns unlawful death, it is trite law that any homicide is presumed to have been caused unlawfully unless it was accidental, or it was authorized by law (See **R v Gesunga s/o Wesonga [1948] 15 EACA 65**). In this regard there was the evidence in the form of the Post Mortem Report **PE 2** by which report it was determined that the cause of death of Atuhaire Fahad was blunt force trauma with open head injury. The report further detailed the injury to the head as a depressed skull fracture of the right parietal bone with blood in the brain.

Additionally, PW1, Hafusah Batamhuze, the mother to the deceased testified that she received a phone-call and was told that her son had been beaten and died after being taken to the police station. She went on to testify that after receiving the call, she called her Aunt Amina Katushabe and they proceeded to police to establish whether the information was true. PW1 testified that she confirmed the death of her son at the police station. During cross examination she stated that the deceased was beaten at a bar that belongs to the accused person. She went on to testify that while at the police station she had learnt that the accused had beaten the deceased and then taken him to police. She then testified that she was not aware whether the accused intended to kill her son but also that the accused had disappeared after the incident and did not attend the burial of her son.

The testimony of PW1 was further supported by the testimony of PW5 Kanyunyuzi Rose who was an eye witness. PW5 stated that at the time of the incident, she worked at Avenue Gardens, Rwimi as a cashier and the accused was her boss. She stated that while at the said guest house, she witnessed the accused enter the bar and then exit to tell

the askari to close the gate. PW5 witnessed the accused return with the askari's baton and approach the accused and hit him once upon which she and the other workers run away from the bar area. She gestured towards the back of her head to show where she saw the accused hit the deceased. PW5 testified that after being hit the deceased moved outside the bar to the verandah where the police found him and detained him.

PW3 No. 28478, Sgt. Muhereza Sharif, a police officer who investigated the case testified that on 6th November 2021 he was directed by the OC/CID, D/Sgt Kayondo to accompany him to Avenue Gardens Bar and Lodge. He identified the proprietor of the bar as the accused person who was on trial. He went on to testify that he had been instructed to pick a suspect who had been detained and reported to the OC/CID. He testified that upon arrival at the venue the gate was opened and a person who was identified as the victim Farouk was removed from a vehicle and was sweating profusely with white saliva flowing from his mouth. PW3 testified that when they asked the deceased what had happened he said Kabako had beaten him. PW3 testified that he observed that the deceased had a swollen head and swollen ribs before he was taken to hospital.

With regard to the unlawfulness of the death of the deceased, the Defence principally argued that the Post Mortem report was unreliable to the extent that it reflected a date after the burial of the deceased. I have already rejected this line of argument as the Defence had every opportunity to impugn the report but instead willfully conceded and accepted it as an agreed fact.

It is also pertinent to note that despite the Defence raising a different version of events, all the Defence witnesses were consistent about the deceased having been beaten prior to his death. They only differed with the Prosecution in as much as they all testified that the Accused was not involved in the beating.

In the case of **Paulo s/o Mabula v R (1953) 20 EACA 207** it was held that in a capital case the State should tender any medical evidence as to death that may be available and where the accused alleges the fatal wound to have been inflicted accidentally it may well be vital to the interests of justice for any medical evidence to be before the trial judge, in as much as expert testimony may either establish or refute such a defence.

PW3 stated in cross-examination that the deceased had signs of injury to the head and ribs when the police picked him up.

PW5 stated both during examination in chief and cross-examination that she had personally witnessed the accused hit the deceased at least once to the back of the head with a baton. The Defence contested her evidence on the grounds that it was inconsistent with the medical evidence as it did not explain how the deceased came to suffer the injuries described in the report. The Defence specifically contended that whereas PW5 stated that she saw the Accused hit the deceased once to the lower back of the head, the report detailed injuries to unknown parts of the head as well as other external injuries to wit; swollen right eye and red in colour, abrasion on top of the right eye, abrasion above the left shoulder, abrasion to the left of the trunk, abrasion on the left hip, abrasion on the joint, abrasion on the upper part of the gluteal region just above the gluteal line.

The Defence argued that the injuries in the Post Mortem report revealed injuries probably caused by police and to that extent it was a strong indicator of the break in the chain of causation of the death of the deceased. However, this argument in as much as it is brought out in respect of rebutting unlawful death is a misplaced argument and I shall address it as part of the question of participation of the accused.

Regardless of the causation argument the fact still remains that the from the available evidence, Prosecution has proved beyond reasonable doubt that the deceased died in

unlawful circumstances as there is a medical report bringing out injuries consistent with testimony of both prosecution and defence witnesses that the deceased was severely beaten shortly before he died.

It is also a requirement to prove beyond reasonable doubt that the deceased Atuhaire Fahad was killed with malice aforethought. Malice aforethought is defined by Section 191 of the *Penal Code Act* as either an intention to cause the 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 death or knew that the manner and degree of assault would probably cause death.

In the case of **R v Tubere s/o Ochieng (1945) 12 EACA 63** the defunct East African Court of Appeal held with regard to its duty in proving malice aforethought that the Court had to consider the weapon used and the part of the body injured.

The aforementioned considerations have subsequently been expanded in other decisions such as **Uganda v. Fabian Senzah (1975) HCB 136** (affirmed in **Lutwama and Others v Uganda - Supreme Court Criminal Appeal No. 38 of 1989**) to include the conduct of the accused before, during and after the attack.

The one weapon consistently mentioned by both the prosecution witnesses and defence witnesses was the baton. The Defence raised an argument that a baton was not by its very nature a deadly weapon. However, in the case of **Absolom Omolo Owiny v Uganda – Criminal Appeal No 32 of 2003**, the Court of Appeal agreed and adopted the view of the trial judge who held that,

> "*In the case a baton was used to repeatedly assault the deceased. A deadly weapon under Section 273(2) of the Penal Code Act includes any weapon which is likely to cause death if offensively used. The baton like stick with*

which the assailant of the deceased assaulted the deceased fits this description in that if used offensively to indiscriminately attack somebody it can cause death."

Based on the case above, I have no doubt that in this matter the baton counted as a deadly weapon.

Furthermore, the nature of injuries brought out in the Post Mortem report along with the testimonies (albeit differing in terms of responsibility) of the Prosecution witnesses (PW3, PW4 and PW5) and all the Defence witnesses all point toward the inescapable fact that the deceased succumbed to injuries caused by severe beating. This beating targeted a vulnerable part of the body being the head and to that extent whoever administered or participated in the beating either knew or did not care that the beating would lead to the possible death of the victim.

There is therefore no reasonable doubt that the deceased was killed with malice aforethought.

As concerns the participation of the Accused, the Prosecution primarily relied on the evidence of PW5 Kanyunyuzi Rose who was the sole eyewitness of the incident and the evidence of the police investigators PW3 and PW4.

PW5 testified that she witnessed the Accused hit the deceased at least once to the back of his head with a lot of force. By her testimony the force of the blow was such that the deceased appeared to initially lose consciousness. The Defence contested this evidence on the grounds that the Accused had not hit the deceased but that instead he had been beaten by the police as the deceased was resisting arrest. The Defence further contended that PW5's evidence was contradictory to the medical evidence to the extent that PW5 had only seen the Accused hit the deceased once on a part of the head that

was not described in the Post Mortem report. Furthermore, the Defence also contended that the according to the report the deceased had injuries beyond the head which were inconsistent with PW5's testimony.

Concerning PW5's testimony, she testified during examination in chief that she witnessed the Accused enter the bar and hit the deceased once and at that point she and other persons present scattered and moved away probably startled by what they had just witnessed. She then later testified during cross-examination that she saw the Accused hit the deceased and so did others who were present. By this account therefore, PW5 had witnessed the Accused hit the deceased at least once on the head but had also seen others beat the deceased. It was therefore not correct for the Defence to assert that the Prosecution had not adduced evidence as to how the deceased came to receive the injuries that he did.

PW5 may have testified as a sole direct witness but she was consistent about what she saw even during cross-examination. By her testimony, the Accused may not have been the only person involved in the beating but he was certainly the one who landed the first blow and by that same blow set in motion a cascade of events that led to the injuries to which the deceased eventually succumbed. The Accused therefore becomes culpable on the basis of common intention. Section 20 of the Penal Code Act provides that,

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

PW3 Sgt Muhereza Sharif testified that he and his colleague had proceeded to the scene of the murder to pick up a suspect who had been arrested. He testified that they had gone to the scene around 6.30PM on the fateful day. He testified that they had found the deceased in a bad state and that when they asked him what had happened he had told them that the Accused Kabako had beaten him. PW3 testified that while on the way to the police station the deceased had named the Accused as having beaten him and had mentioned the Accused again as he was being taken for medical examination. PW3 also testified that by the time they arrived the deceased had already been beaten and he did not put up any resistance.

PW4 D/AIP Wakabale Andrew, testified that he was assigned to investigate the death of the victim and that from his investigations he had established that the bar-maids corroborated what the officers who arrested the victim had stated about the circumstances leading to the death of the victim. He further testified that the accused had turned himself in at the police station on 5th March 2022 a few months after the death of the victim. He further drew a sketch plan of the crime scene by which he visually reconstructed the scene of crime.

The Accused on the other hand contended that the deceased had died from injuries that the deceased sustained during arrest by the police officers. The Accused who testified as DW1 stated that the police officers who came to arrest the deceased asked him to enter the vehicle and he refused and when they tried to handcuff him, he started fighting them. He claimed that the officers had hit the deceased with a baton and a rifle butt. The accused further relied on the respective testimonies of DW2 (Kamuhanda Grace) and DW3 (Bright Joseph).

The Accused and the other defence witnesses all testified that the police officers had beaten the deceased. However as much as the Defence witnesses all claimed that the

police had beaten the deceased, there were some contradictions in their respective narratives.

According to DW1, one of his workers named Rachel had contacted him at about 2PM on the day in question to inform him that the deceased had disclosed to her that the stolen equipment was in Kitumba, Nyakivumba where had sold it for 80,000 Shillings. DW1 had then left his shop to head to the bar where he arrived at 2PM and found the deceased who had refused to talk and that when the police tried to put him in the car he had resisted. DW1 plainly contradicted himself when he initially stated that the deceased had disclosed the whereabouts of the stolen equipment to one of his workers and then only to state a few sentences later that the Accused had refused to talk. Furthermore by his account he found the deceased resisting being placed in the car but this was later contradicted by DW2's testimony.

DW2 Kamuhanda Grace testified that she was a resident at the lodge on the day in question and had observed the police bring the deceased outside where they proceeded to beat him from 1.30PM to 2PM. By her account when the Accused arrived the deceased had already been placed in the car and that the deceased had been beaten prior to being placed in the car. This testimony plainly contradicted the testimony of DW1 who claimed to have arrived before the deceased got put in the car and had witnessed him being beaten and forced into the car. If DW2 is to be believed then DW1 arrived after the police had beaten the deceased and could not have witnessed the beating.

DW3 Bright Joseph also testified that the police had arrived at the scene at around 1.30PM and that the deceased had fought them while resisting arrest. By his version, the Accused was around during the beating and got in the car after the deceased had been placed in the car. However, he also stated that he had witnessed the Accused ask

the deceased where the stolen equipment was and the deceased had told the Accused that the stolen machines were in Kitumba, Nyakivumba. This was in direct contradiction to DW1's testimony that when he arrived the deceased had refused to disclose to him where the stolen machines were.

As concerns the participation of the Accused what is required is credible direct or circumstantial evidence not only placing the Accused at the scene of the crime but also clear evidence of actual participation in the offence. In looking at the evidence the court must simultaneously evaluate the prosecution and defence cases and determine whether the prosecution has proved beyond reasonable doubt that the Accused participated in the murder (see **Ngobi v Uganda** supra).

In the present case, prosecution heavily relied on the testimony of PW5 (Kabanyunyuzi Rose) as already outlined above. She was the only person who testified to having directly witnessed the accused hit the deceased on the head. She then went on to state that there were others present during the attack on the deceased. The Defence challenged her evidence on the ground that it was not the Accused who caused the death of the deceased but rather the police. However, I am not convinced that the police were to blame in this matter. This is because PW3 who took the deceased from the scene testified that he and his colleague arrived at the scene at 6.30PM after the beating. He did not deviate from this story even on cross-examination. The Defence attempted to place the police at the scene of the crime even earlier than that as a means of countering PW5's testimony which had placed the Accused at the scene as early as 1PM. However, the contradictions apparent in the testimonies of DW1, DW2 and DW3 as brought out above betray an element of untruthfulness on the part of the Defence witnesses. Furthermore, they are also major contradictions in as much as they relate to important details about the events of the actual murder.

The contradictions evident in the testimonies of the Defence witnesses are therefore in my view sufficiently grave as for me not to believe the evidence of the Defence witnesses (see **Sarapio Tinkamalirwe v Uganda** supra). The testimonies of PW3 and PW5 were in my view sufficiently consistent as to establish that the Accused along with others still at large and not the police were responsible for the death of Atuhaire Fahad.

It is also pertinent to note that PW3 testified that the deceased had stated on two separate occasions that the Accused Kabako was the one who was responsible for his injuries. This is evidence of a dying declaration within the meaning of Section 30(a) of the Evidence Act.

In the case of **Mibulo Edward v Uganda – Criminal Appeal No. 17 of 1995**, the Supreme Court agreed with the Trial Judge's position on the law regarding dying declarations which position was to the effect that,

> "*The law regarding dying declaration was restated by the Supreme Court recently in the case of Tindigwihura Mbahe v. Uganda Cr. App. NO. 9 of 1987. Briefly the law is that evidence of dying declaration must be received with caution because the test of cross examination may be wholly wanting; and particulars of violence may have occurred under circumstances of confusion and surprise, the deceased may have stated his inference from facts concerning which he may have omitted important particulars for not having his attention called to them. Particular caution must be exercised when an attack takes place in the darkness when identification of the assailant is usually more difficult than in daylight. The fact that the deceased told different persons that the appellant was the assailant is no guarantee of accuracy. It is not a rule of law that in order to support conviction, there must be corroboration of a dying declaration as there*

may be circumstances which go to show that the deceased could not have been mistaken. But it is generally speaking very unsafe to base conviction solely on the dying declaration of a deceased person made in the absence of the accused and not subjected to cross examination unless there is satisfactory corroboration"

In this case I take due note of the fact that both prosecution and defence witnesses testified that the deceased was assaulted between 1PM and 6PM depending on was testifying. There was no doubt that the assault was in broad daylight. Furthermore, there is no doubt that both the Accused and the deceased were known to each other as the Accused himself does not dispute having interacted with the deceased on the day in question. The consistency in the testimony of PW3 left no doubt that prior to his death the deceased clearly identified the Accused as the primary assailant in the deceased's murder. This declaration is also consistent with the testimony of PW5 who witnessed the beating.

It is also pertinent to note that one of the investigating officers PW4 testified that upon the death of the victim, the Accused disappeared and his whereabouts were unknown until he finally turned himself in to police in March 2022. This sort of behaviour is clearly not consistent with the actions of an innocent person. Concerning the disappearance of the accused the Supreme Court held in **Remigious Kiwanuka v. Uganda; S. C. Crim. Appeal No. 41 of 1995** that:

"The disappearance of an accused person from the area of a crime soon after the incident may provide corroboration to other evidence that he has committed the offence. This is because such sudden disappearance from the area is incompatible with innocent conduct of such a person."

The Accused testified that he was not responsible for the death of the deceased and that his disappearance was not on account of his guilt but rather fear as he had heard that he was a murder suspect and he had never been arrested before. To me an innocent person would not go into hiding for almost five months. Such a person would be eager to come forward at the earliest opportunity to share the truth of the matter and clear their name. It is also pertinent in this regard that PW2, a relative to the deceased testified that the family had been approached on two occasions by persons who she believed were emissaries sent by the Accused seeking to compensate the family for the death of Atuhaire Fahad.

I therefore find that the Prosecution has proved beyond reasonable doubt that the Accused participated in the murder of Atuhaire Fahad.

CONVICTION:

In light of the foregoing evidence, the Assessors were unable to agree on whether the Accused was guilty or not with one Assessor opining that he was guilty while the other opined that he was not guilty.

The Assessor who opined that he was not guilty based her position on the view that the Prosecution had failed to prove the participation of the Accused beyond reasonable doubt. She based herself the fact that whereas PW5 had stated that the Accused found the deceased at the bar and had then hit him and then called for a vehicle to take him to police, PW3 had testified that when they arrived to take the deceased into custody he was found in a car. The Assessor was of the view that because PW3 made no mention of finding the deceased at the bar and also because PW5 had not mentioned the deceased being locked in a vehicle there was some form of contradiction. With due respect to the Honourable Assessor I failed to see the contradiction as PW5 testified about events that

had taken place before PW3 arrived. In that regard their testimonies related events that were following each other and not concurrent events.

The Honourable Assessor also opined that PW5's testimony contradicted the medical report with regard to the injuries. However, as I already pointed out PW5 testified on cross-examination that there were others involved in beating the deceased. So I found no contradiction in that regard.

The Honourable Assessor indicated that the evidence of the dying declaration was not corroborated but as I have already explained this declaration was consistent with the evidence of PW5 who witnessed the Accused hit the deceased.

The Honourable Assessor also doubted the testimony of PW3 but gave no clear reasons for her doubts.

The Honourable Assessor concluded by stating that the Defence witnesses appeared truthful and consistent. However, as I have already demonstrated there were material inconsistencies in the testimonies of the Defence witnesses which strongly suggested the likelihood of untruths.

It is with regard to the evidence in this matter that I agree with at least one of the Assessors and find the Accused Akuguzibwe David aka Kabako guilty of the offence of Murder and I accordingly convict him.

SENTENCE:

I have considered the submissions of the Prosecution and the Defence with regard to the sentence.

The convict in this matter is a first time offender. I also take into account the fact that by the witness testimony he was part of a larger group of actors involved in the beating of the deceased and that his involvement in this matter rests mostly on the principle of common intent under Section 20 of the Penal Code Act. There was no direct eye-witness evidence that he landed the fatal blow as the injury described in the post mortem report related to a part of the head that was different from what the eye-witness described. I am also mindful that the convict was likely in a state of anger from having discovered that the deceased had been stealing his electronic equipment.

I also do take into account that there was a measure of laxity on the part of the police in not immediately taking the deceased for medical treatment soon after arrest. This is especially because by the testimony of one of the arresting officers, they found the deceased already in a bad way and barely able to support himself.

In addition to the above, I do also take into account that the convict was involved in an incident that led to the deceased losing his life which life cannot be restored or ever adequately compensated. The circumstances of the deceased's death also amounted to vigilante or mob justice which practice is not to be taken lightly. In this matter, the correct course of action ought to have been to call the police right from the outset and not for the convict to take matters into his own hands. There is therefore a need for a deterrent message in this regard. It is also pertinent note that the convict was essentially fully in control of what transpired with regard to the beating of the deceased. He therefore had primary responsibility in that regard.

I therefore sentence the convict to serve a term of imprisonment of 18 years less time spent on remand of 2 years, 3 months and 2 days, which comes to 15 years, 8 months and 28 days of imprisonment.

So ordered.

Right of Appeal explained.

David S.L. Makumbi
Judge
18/06/24