

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0320-2022

UGANDAPROSECUTOR

5 **VERSUS**

MUSABE ADOLF KARATUNGA.....ACCUSED

BEFORE HON. DAVID S.L. MAKUMBI

10 **JUDGMENT**

BACKGROUND:

The indictment in this case is that of Murder c/s 188 and 189 of the Penal Code Act.

15 The particulars in this case are that on 5th August 2022 at Kigarama Cell, Kiko Town Council in Kabarole district Musabe Adolf Karatunga unlawfully killed Kabasomi Hellen with malice aforethought.

20 The Prosecution case is that on 5th August 2022, the deceased Kabasomi Hellen left her home at about 9.30PM and never returned. Her family members and neighbours tried to search for her without success. The following morning at about 3AM the Accused in this matter called his employer one Patrick Mwesige and told him that he had killed the deceased as she had caused the death of his child by witchcraft.

25 Patrick Mwesige subsequently contacted the police who apprehended the Accused at his home at about 4AM. The police recovered a phone belonging to the deceased at the Accused's home and found the body of the deceased near the Accused's home. The deceased was subjected to a post mortem examination and it was determined that she

had died by strangulation. A medical examination of the Accused was done upon his arrest and he was determined to be in good health. The Accused was charged with murder upon arrest.

THE BURDEN AND STANDARD OF PROOF

30 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.

35 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,

40 *“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*
45 *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.”*

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
50 that,

55 *“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.”*

EVIDENCE:

With regard to the evidence in this matter Section 188 of the Penal Code Act provides that,

60 *“Any person who of malice aforethought causes the death of another person by an unlawful act or omission commits murder.”*

The Prosecution must therefore prove the following beyond reasonable doubt:

- 1) Death of a human being;
- 2) Death was caused unlawfully;
- 65 3) Death was caused with malice aforethought; and
- 4) The Accused person is responsible for the death.

a) Death of a Human Being:

70 According to the case of **Kimweri v Republic (1968) EA 452**, death may be proved by the production of a post mortem report or evidence of one or more witnesses who knew the deceased and attended the burial or saw the dead body.

The Prosecution tendered in evidence of a Post Mortem Report contained in Police Form 48 as part of the agreed facts which was received and marked as Prosecution Exhibit 2 (PE 2). The report detailed the examination of a body

identified by her husband PW1 Lawrence Baguma as that of Kabasomi Hellen.

75 The report established the cause of death as strangulation.

PW1 testified to knowing the victim as his wife and that he had been with the police and identified the body of his wife when it was discovered on the land of a neighbour called Kabahweza. He further testified that his wife was buried in Kagarama.

80 The Defence did not contest this ingredient.

b) Death caused Unlawfully:

A homicide is always unlawful except when accidental or authorized by law (**See R v Gusambuzi s/o Wesonga [1948] EACA 15**).

85 PW1 testified that on the night of 5th August 2022 the deceased had been at home with him and their children till around 9PM when she received a phone-call and moved out of the house and did not return. PW1 further testified that efforts to trace the deceased had been futile till around 7AM the next day when the police informed him about the discovery of a body in the bush about 300 metres from his home. PW1 subsequently identified the body as that of his wife.

90 The Post Mortem Report marked as PE 2 described the tongue of the deceased as hanging out with haemorrhage around the mouth, abrasions on the right eye and around the neck and cheek. The body also had signs of heavily enlarged neck vessels and the cause of death was determined as strangulation.

95 The disappearance of the deceased from her home and the subsequent discovery of her body dumped in a nearby garden (See Prosecution Exhibits 4A and 4B)

along with the results of the post mortem report PE 2 all confirmed that the deceased had been unlawfully deprived of her life.

The Defence did not contest this ingredient.

c) Malice Aforethought:

100 Section 191 of the Penal Code act provides that malice aforethought is established from circumstances of intention to cause death of any person or of the knowledge that the act or omission causing death will cause death of some person.

105 In order to determine whether there was intention to cause death or that the person knew that their act would probably cause death, one can consider the weapon used, the part of body targeted, degree of injury and conduct of person before and after the act.

110 The Post Mortem Report PE2 described injuries around the neck with the deceased's tongue hanging out and that the cause of death was suffocation from strangulation. The neck being a particularly vulnerable part of the body was in the view of the prosecution a sign that there was clear intent and therefore malice aforethought in killing the deceased.

The Defence did not contest this ingredient.

d) Participation of Accused:

115 With regard to the participation of the Accused in the offence the Prosecution led evidence from five witnesses and also placed reliance on some aspects of the Accused's own testimony.

On the part of the Defence the Accused testified on oath in his own defence.

120 PW1 Baguma Lawrence testified that he had personal knowledge of the Accused
as someone who used to supply his deceased wife with firewood. According to
PW1 on 5th August 2022 his deceased wife Kabasomi Hellen had stepped outside
the home at about 9PM while her family was having supper and had not
returned. All attempts to try to locate her had been fruitless until the police had
125 come to his home the following day at 7AM and led him to a location about 300
metres away from his home where the body of the deceased was discovered.

PW1 went on to testify that the police informed him that the Accused had
disclosed that he had killed PW1's wife. He further testified that he was not
aware of any grudge between the Accused and his wife but that a neighbour
called Akugizibwe bore a grudge against her as he blamed her for bewitching one
130 of his children who had died. According to PW1 Akugizibwe had disappeared for
two months after the death of PW1's wife but had been arrested when he
resurfaced but was granted bail. PW1 also disclosed that the Accused used to
work with Akugizibwe at PW2 Patrick Mwesige's home.

135 Upon cross-examination, PW1 stated that the Accused had reached out from
Katojo Prison through his employer PW2 and requested to meet PW1. PW1 then
went to the prison and the Accused told him that he was not the one who killed
but that he had been used. The Accused then mentioned John Akugizibwe,
Twesigye Johnson Snr, Asaba Tadeo and one "Math". According to PW1 the
Accused told him that he had been coerced by those persons with a knife at his
140 neck into calling PW2 and confessing.

PW1 continued to testify during cross-examination that the Accused had disclosed that he had been given 5 Million Shillings to bail him out but he had refused it.

145 PW2 Mwesige Patrick testified that the Accused had been his worker since 2014 and had been resident at his property when he called him on the night in question around 3AM to say that he had killed the wife of Baguma Lawrence by strangulation. According to PW2 the Accused told him that he had lost a child a week earlier and had killed person responsible. The Accused had told PW2 that he had strangled the wife of Baguma because she had killed his child. PW2
150 further testified that the Accused had told him that he had lured the deceased to his house by way of witchcraft.

PW2 then informed the police at Kiko who arrested the accused.

PW2 went on to testify that the Accused had called him from Katojo Prison after his arrest saying he wanted to change his statement because he had confessed to
155 acting alone. PW2 passed on this information to police but it was not acted upon. PW2 then met PW1 and informed him about that development and also gave him the Accused's father's number.

PW2 further disclosed that John Akugizibwe had contacted him wishing to sell him his land but he had declined to buy it as he did not want to be considered as
160 financing a murder suspect.

Upon cross-examination, PW2 stated that when he had spoken to the Accused on the morning of 5th August 2022 he had sounded hesitant and scared on phone but he could not tell who he was with. Furthermore, the Accused had never disclosed anything about someone bewitching his child prior to the phonecall.

165 PW3 Corporal Innocent Muyanja testified that he was the Officer in Charge at
Kiko Police at the time of the murder and that he had been informed by the
OC/CID that PW2 had called to report that the Accused had killed Kabasomi
Hellen. PW3 had then proceeded to PW2's premises with two other police
officers and local authorities where they found the Accused who admitted to
170 killing someone and was subsequently arrested. The Accused showed them the
general location of the body and was then removed from the scene for his safety.

PW3 testified that he recovered the deceased's phone with a sim card from
Musabe's house at PW2's premises. The location of the house was indicated in a
sketch plan tendered in evidence as Prosecution Exhibit 3.

175 Upon cross-examination, PW3 stated that while the phone had been recovered
the call history had not been checked. He also stated that the Accused had been
found with his own phone and that he had been in a normal state of mind when
he was arrested.

180 PW4 D/AIP Kule Ibrahim testified that he investigated the scene of the murder
and took photographs of the deceased (Prosecution Exhibits 4A and 4B) and also
prepared a sketch plan of the scene (Prosecution Exhibit 3). He interviewed the
Accused in Rutooro and described him as normal and composed and upon
realizing that he was admitting to killing the deceased he conveyed him to D/AIP
Makasi to record a charge and caution statement.

185 He further stated that he had examined the Accused's room and noted a
disorganized bed and sheets on the floor and that the scene appeared like a
scuffle had taken place there.

190 PW5 D/IP Makasi Siraji recorded the Charge and Caution statement of the accused which statement was tendered in court after a trial within a trial as Prosecution Exhibit 5. In the said statement, the Accused confessed to killing the deceased by strangulation and dumping the body at a neighbour's farm. During the trial within a trial PW4 testified reiterating that the Accused had been in good health when he indicated that he wanted to confess and he had then taken the Accused to PW5 for purposes of the Charge and Caution Statement.

195 PW5 confirmed that the statement was recorded in a room where he was alone with the Accused and without any firearms. He also confirmed that the Accused appeared normal and composed. Prior to the trial within a trial PW5 had testified on oath that he had taken the Accused through the procedure of making a Charge and Caution Statement and that subsequently the statement was
200 recorded in both English and Rutooro and endorsed by the Accused.

During the Trial within a Trial the Accused testified that he had given the statement under duress having been beaten by the people who first arrested him. He stated,

205 *"Before reaching police I had been beaten and they told me to admit the offence. The people who first arrested me beat me and told me to call my boss and tell him I had killed Kabasomi."*

The Accused went on to state that he had recorded his statement out of fear and on cross-examination he said that he was not OK and had injuries. He stated on re-examination that he had injuries on his finger and chest when he was arrested.
210 He also stated on cross-examination that he had studied up to Primary Four and could record his name and write a few things. He admitted though on cross-examination that he was not forced to sign the statement.

I ruled that the Charge and Caution Statement was admissible for reasons I will outline later.

215 PW5 continued to testify in the main trial that the Accused had confessed to acting alone and described the manner in which he had killed the Accused alone saying he had some training from a security company. He maintained that the Accused had insisted that the reason he had killed the deceased was because she had bewitched his child.

220 When the Accused was put to his own defence he testified that he had been home at around 7.30PM recovering from malaria and that he had heard his neighbours searching for the deceased later in the evening. He then stated that at about 1AM the following morning, he got out of his house to go to the latrine and was accosted by three men who forced him to lie down and tied him with a
225 rope as one of them stepped on his head. He stated that they then told him to call his boss and tell him that he had killed the wife of the catechist or they would kill him. The Accused continued to testify that when he asked the people who had detained him what the reason was for killing the deceased, they had told him to say that she was the person who killed his child and he had killed her when she
230 came to his home.

He went on to state,

*"I had not lost any child. Previously a friend of mine lost a child. Since my boss told me to never leave his mother alone I used it as an excuse. My friend's children call me father and my children call my friend father. I was with John Akugizibwe when
235 I called my boss to tell him I lost a child. I did not want to reveal my secret to John that the child was not my actual child."*

240 He went on to state that three men were holding him and telling him to say things that were being relayed to them by a fourth person standing a short distance away who he believed to be John Akugizibwe. He also stated that he believed it was John because those were words he had told his boss in John's hearing.

245 The Accused went on to state that he had not yet seen the body when he made the call and that after the call he was carried to a pond where he was dropped and his trousers got wet. After removing him from the pond his abductors had threatened to kill him if he did say what he had been told to say. He also stated that his assailants were masked and he did not see their faces and that two of them carried him back to his house where he changed into dry clothes and he was told to wait. He then stated that after about five minutes another man wearing a police jacket came and told him to tell police the same thing he had told his boss and that if he did not cooperate then they would kill his children.

255 The Accused then stated that the police arrived about ten minutes later and arrested him. He then went on to state that while at Katojo prison he had described to PW1 the people he was with and that PW1 had told him the names of the people as he knew them by description. He also stated that he knew about the grudges between Akugizibwe and the deceased because Akugizibwe's wife would borrow the Accused's phone to call a pastor complaining about how the deceased had bewitched their child.

During cross-examination, the Accused testified that he had lied to his boss about losing a child and that his boss had sent him 200,000 Shillings for burial expenses.

260 During the same cross-examination, he stated that he spent about three hours during which he was being instructed on what to say to his boss but later he said

that he had spent about 40 minutes outside being given instructions on what to say to his boss. He also stated that he had been beaten while in the custody of police at Kiko.

265 During re-examination, the Accused stated that in addition to being tied up and stepped on he had been beaten by his captors.

EVALUATION OF THE EVIDENCE:

In light of the prosecution evidence above, what is immediately and undoubtedly clear is that the deceased was killed and it was the Accused who informed the police about
270 where the body was eventually located. The Accused himself does not dispute his prior knowledge of where the body was found. There is therefore no doubt that he was at the scene of the murder before his arrest.

There is also no doubt that the circumstances of the deceased's death were a result of malice aforethought as the manner of killing was medically determined to be
275 strangulation. Death by strangulation is not a quick process and it takes some time for a victim to succumb to the prolonged deprivation of oxygen. This therefore means that whoever strangled the deceased fully intended to kill the deceased and to that extent the killer had malice aforethought. This is consistent with Section 191 of the Penal Code Act where it is provided that malice aforethought is the intention to cause death or
280 knowledge that the act or omission will cause death.

In the case of **Mumbere v Uganda - Supreme Court Criminal Appeal No 15 of 2014**, the Supreme Court held that,

"The elements of malice aforethought are well set out under Section 191 of the Penal Code Act as follows:

285 *'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*

290 *(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.'*

We also wish to note that this Court in **Nandudu Grace & Another v.
Uganda, Criminal Appeal No.4 of 2009** reiterated the ratio in the earlier
295 decision of this Court in **Francis Coke v. Uganda [1992-93] HCB 43** that the
existence of malice aforethought is not a question of opinion but one of
fact to be determined from the available evidence.

We also hasten to add that in determining whether the prosecution has
proved malice aforethought, the Court has to examine the circumstances
300 surrounding each case. These circumstances include: (i) the nature of the
wounds inflicted; (ii) the part of the body injured; (iii) the type of weapon
used; (iv) the conduct of the accused person immediately before and after
the injuries causing death were inflicted; and, (v) the manner in which the
weapon was used-whether repeatedly or not."

305 There is also no doubt that the Accused's arrest was because of the fact that he called
PW2 his employer to inform him that he had killed the deceased. This was also
consistent with the contents of the Accused's Charge and Caution statement entered
into evidence as Prosecution Exhibits 5A and 5B.

What remains contentious is the question of whether despite the Accused actually killed
310 the deceased. This is because despite the prosecution evidence, the Accused has
testified to the effect that he did not murder the deceased but that he was an innocent
victim elaborately set up to take the blame for the death of Kabasomi Hellen. It is in light
of this defence that I now proceed to evaluate the evidence to ascertain whether the
Prosecution evidence stands in light of the Accused's defence.

315 The Accused essentially denies all initial admissions to the murder and insists that they
were all a result of coercion and torture by either the police or his captors.

From a chronological point of view, the first apparent admission to the offence arose
when the Accused called his employer on the morning of 6th August 2022 to inform him
about the murder. According to the testimony of PW2, his phone had been off that night
320 till his wife woke him at about 3AM or 4AM in the morning because she wanted to know
the time. He then noted that the Accused had tried to call him and at that point he
called the Accused back as he was concerned that the Accused had been sick and yet he
was taking care of PW2's mother. PW2 testified, *"I called him back and asked him what
the problem was. I asked him three times but he was not saying what the problem was.
325 He said that he had lost a child a week ago and that he had killed the person responsible.
He told me that the wife of the catechist is the one who killed his child so he killed her.
He said that he strangled the wife of Baguma."*

When the Accused testified in his defence about speaking to his boss, he said that he
had called his boss in the presence of his abductors. By his account, he was the one that
330 called his boss and not the other way round. This was clearly an inconsistency in the
version of events narrated by PW2 and the Accused as to how the phone-call came
about. In considering this inconsistency, I bear in mind that PW2 had no reason to lie
about this detail. It is therefore curious that the Accused would omit to mention that he

had initially tried to call PW2 and failed to get him and that subsequently PW2 was the
335 one who called him back.

The timeline testified to by PW2 is also material because he stated that he got up
around 3AM or 4AM to turn on his phone and that was when he then tried to call the
Accused back after realizing that he had tried to call. For his part the Accused testified in
his defence that he was waylaid at 1AM and during cross-examination, he stated that he
340 was held for about three hours before making the call. By that initial statement, the
phone-call would then have taken place at about 4AM which would have tied in with
PW2's timeline. However, during cross-examination he stated that he had spent a total
of 40 minutes outside his home when was instructed to call his boss. By his testimony,
he made the phone-call at around 1.40AM which would not have been possible as his
345 boss' phone was off at the time.

The Accused admitted that he had taken the blame for the murder when he called PW2
but claimed that he had been coerced to do so. In explaining the phone-call, the
Accused testified in his own defence that he had been abducted at about 1AM and then
forced to make the phone call. The problem with this position is that during the Trial
350 within a Trial the Accused testified that, *"Before reaching police I had been beaten and
they told me to admit the offence. The people who first arrested me beat me and told me
to call my boss and tell him I killed Kabasomi."*

At the Trial within a Trial the Accused painted a picture that the primary reason for his
admission to the offence was torture by the police. He extended this to even the phone-
355 call that he made to his employer. At the Trial within a Trial he made no reference at all
to the abduction that he testified about in great detail when he was put to his defence.
The Accused's testimony about the prior coercion leading to his admission to both his
employer was therefore materially inconsistent in this regard. During the same Trial

within a Trial the Accused also testified that the Gombolola Internal Security Officer
360 (GISO) assaulted him and recorded him admitting to the offence. This detail was not
brought out again when the Accused was put to his defence.

The Accused also testified about injuries to his finger and chest but this was not evident
from his Medical Examination contained in Police Form 24A which form was admitted in
evidence as an agreed fact under Section 66 of the Trial on Indictments Act.

365 At the Trial within a Trial this court made the decision to admit the Charge and Caution
statement into evidence. This was because while the Accused had contended that he
was coerced into making it, the Prosecution was able to prove that the standards set by
the Supreme Court for extra-judicial statements had been met (**See Festo Androa
Asenua v Uganda - SC Criminal Appeal No 1 of 1998**). In the Asenua case the Supreme
370 Court further held that,

*“A trial court should accept any confession which has been retracted
or repudiated or both retracted and repudiated with caution; and
must before founding a conviction on such a confession be fully
satisfied in all the circumstances of the case that the confession is
375 true. The same standard of proof is required in all cases and usually,
a court will only act on the confession if corroborated in some
material particular by independent evidence accepted by the court.
But corroboration is not necessary in law and the court may act on a
confession alone if it is fully satisfied after considering all the
380 material points and surrounding circumstances that the confession
cannot but be true.”*

The Accused also testified that he had not been coerced into signing the statement and
the attendant translation.

It was also clear that in as much as the statement from the Accused was made on 8th
385 August 2022, this was at least 48 hours after arrest. This was enough time for which it
can be reasonably assumed that the Accused could make a statement without fear of
coercion. It was also established from the Trial within a Trial that there was nothing in
the room where the statement was made as to give the Accused any anxiety. In my
view, there was no evidence apparent as to suggest that Sections 23 to 25 of the
390 Evidence Act relating to confessions had been violated.

In the Charge and Caution statement, the Accused admitted to killing the deceased on
grounds that she was a witch. In his Defence he testified that while he had lost a child,
the child was not his biological child and that he had lied that the child was his in order
to get his employer allow him to attend burial. He even testified that his employer had
395 given him 200,000 Shillings to go for burial. However, from the testimony of PW2 he
appeared to have learnt about the deceased child only when the Accused mentioned it
as a reason for the killing. The question of the alleged deceased child is not just material
in the sense that his employer seemed not to be aware of the deceased child but it is
also material in terms of the fact that by his own testimony the Accused indicated that
400 he was given to telling lies as and when the occasion demanded.

While I exercise caution in as much as the Accused denied the statement on grounds of
coercion, I am still persuaded that in the entirety of the available evidence that it is a
truthful account confession and could not have been the result of any fear.

It is also material that the Accused stated in his defence that he had only described the
405 persons he had been with to PW1 and that PW1 had identified them from his
description. However, this differed from PW1 who testified that the Accused mentioned
four people by name as having been him with at the time of the murder as I already laid
out before. This inconsistency is important not only because of the difference between

the Accused's and PW1's testimony on that matter but also because during his defence
410 the Accused's testimony greatly varied as to whether or not he had actually seen his
abductors. He started by stating that he had been grabbed by three men of whom at
least one was masked. Even if this were true, it begs the question as to how he could
describe a masked person in enough detail for PW1 to deduce who he was. He then said
later in the same testimony in chief that at another point he did not see the faces of the
415 others as their faces were covered. He then later testified that when PW1 came to see
him in prison he had described his abductors to him whom he knew by face and PW1
was able to name them from description. These are wildly varying accounts of whether
or not the Accused saw the faces of his abductors and to that extent very likely to be
untruths.

420 As concerns the motivation for the murder, the Accused distanced himself from the
murder by testifying that he had been coerced into admitting the whole thing as a
scheme of John Akugizibwe who had overheard the Accused talk about losing a child
due to witchcraft. PW1 testified that indeed there had been issues of threats made to
his wife about witchcraft and that Akugizibwe who was known to have lost a child due
425 to sickle cell problems had made these threats. He further testified that Akugizibwe had
since left the area and his whereabouts were unknown. PW2 also testified that
Akugizibwe had tried to sell him his land soon after the murder. To me this was
indicative of suspicious conduct by Akugizibwe which ought to have been more
rigorously investigated by the police.

430 Nevertheless, the person on trial today is not Akugizibwe but Musabe Adolf and when I
consider the entirety of the evidence, I do not believe that the Accused was a mere
victim of an elaborate scheme by Akugizibwe. What the evidence tends to show is the
fact that the Accused and possibly others at large acted in concert to kill Kabasomi
Hellen. This position is borne out not just by the inconsistencies apparent above but also

435 by the fact that PW1 testified that the Accused had called him to the prison to deny his
involvement in the murder and was instead saying that Akugizibwe set him up. He
further testified that the Accused told him that Akugizibwe had promised him UGX
5,000,000 to bail him out. The Accused then stated on cross-examination that
Akugizibwe had been in touch with him and told him to be patient as he was still a youth
440 and he would help him get a reduced sentence of about three to five years. He further
denied having received 5 Million Shillings to kill the deceased but on re-examination he
stated that it was offered by Akugizibwe to get the sentence lessened.

The foregoing evidence establishes for a fact that the Accused knew where the
deceased's body was found and to that extent, he was definitely at the scene of the
445 crime before his arrest. In the absence of any defence this evidence alone would be
sufficient to convict him of murder but he raised a defence that he was being set up.
However, as I have observed from my evaluation, the defence is riddled with material
inconsistencies.

The legal position concerning inconsistencies as held by the Supreme Court in the case
450 of **Sarapio Tinkamalirwe v Uganda - SC Criminal Appeal No. 27 of 1989** is that,

*"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
455 usually have that effect unless the court thinks they point to
deliberate untruthfulness."*

The Accused widely varied in his defence on issues about who exactly had coerced him
to admit, the circumstances of the phone-call to PW2 and whether or not he actually

460 saw his abductors. His defence is so inconsistent in material respects that I find it not to be truthful and to that effect cannot rebut the prosecution case.

In the matter of **Chesakit Matayo v Uganda - Criminal Appeal No 95 of 2004**, the Court of Appeal held that,

“In evaluating evidence concerning this issue, the trial judge stated;

465 ***‘Lies are inconsistent with innocence. Proved lies can be used to corroborate prosecution evidence. See Juma Ramadhan Vs Republic Cr. App. No. 1 of 1973 (unreported). I am aware that an accused person cannot be convicted on the basis of the lies he tells court. I found that the numerous lies which the accused told court were inconsistent with his innocence. They corroborated the prosecution evidence that he was a participant in the death of the two deceased persons.’***

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We therefore find that the learned trial judge properly addressed this issue and we entirely agree with him.”

To the extent of the above, I do likewise find that the inconsistencies in the Accused's evidence are inconsistent with innocence and corroborate the prosecution evidence that he participated in the murder of Kabasomi Hellen.

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To me the only plausible scenario spelt out by the evidence is that the Accused and Akugizibwe, being previously fellow employees of PW2, hatched a scheme to murder the deceased. Soon after the murder, the Accused may have developed remorse and decided to tell his boss what had happened. Upon realizing that the Accused had talked, Akugizibwe became desperate as indicated by his attempt to sell off his land and his subsequent disappearance from the area.

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Furthermore, by the Accused's own testimony Akugizibwe had approached him in prison offering to help him get the sentence reduced if he accepted the offence. To me those are not the actions of someone setting up another as the Accused would have us
485 believe. These were more actions of a co-conspirator in a crime seeking to convince the Accused not to disclose their role. If Akugizibwe had indeed gone through all the trouble to conceal himself from the Accused at the crime scene then it would make no sense that he should later come out openly to try to convince the Accused to take responsibility unless both he and the Accused were both somehow tied to the crime. In
490 fact Akugizibwe's conduct both in going to the prison to meet the Accused and also his behaviour in disappearing from the village with his whole family and trying to sell off his land served as a measure of corroboration in this regard.

In light of the above, I am therefore convinced that the Accused did in fact wilfully participate in the unlawful death of Kabasomi Hellen.

495 **CONVICTION:**

In light of the evidence in this matter, I agree with the Assessors that it has been proved beyond reasonable doubt that the Accused Musabe Adolf Karatunga is guilty of the offence of murder and I accordingly convict him.

SENTENCE:

500 I have considered the submissions of the Prosecution concerning sentence in this matter as well as the Allocutus of the Defence. The nature of this crime was such that an innocent woman who was both a wife and mother lost her life in senseless circumstances involving backward superstitions about witchcraft. By all accounts, she had never directly harmed the accused and yet he still saw fit to take her life over mere
505 superstitions. There is need for a deterrent message in this regard for the community to

understand that killing a person because of superstitions or for any other unlawful reason is not a matter that is to be treated lightly.

510 However, I am also mindful that there seems to be a prevailing culture of ignorance and superstition over the issue of witchcraft. It would seem that in some sections of the society in which the convict lives it is taken very seriously. There is therefore need for wider sensitization of the community about such adverse cultural beliefs. I therefore take into account the possibility that the convict is under the influence of adverse cultural beliefs and hopefully he can be reformed. I do also take into account the fact that he initially called his employer to disclose what he had done. This is an indicator
515 that he probably has some remorse about the whole unfortunate saga.

With all the above in mind, I do therefore sentence the convict to a term of imprisonment of 28 years less time spent on remand of 1 year, 9 months and 15 days.

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David S.L. Makumbi
JUDGE
07/06/24