

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

CRIMINAL SESSION CASE NO. 268/91

UGANDA PROSECUTOR.

VERSUS:

A1 - 18081 P.C. JUMA LAYIKA ACCUSED:

BEFORE THE HONOURABLE MR. JUSTICE S.G. ENGWAU.

Sentence and reasons for it.

The accused No. 18081, P.C. Juma Layika was attached to Mobile Police Unit at Lwakhakha. On 16.11.89, he was deployed on patrol duty around River Lwakhakha in Bumululu village nearing the boarder with Kenya.

At about 8 p.m., the accused took cover in a banana plantation. 5
The deceased emerging from Kenya side towards Uganda not through an established Immigration Entry Point at the international boarders, was ordered to stop by the accused which he did. The accused then ordered the deceased to advance towards him slowly which he did again.

On reaching the accused, the deceased got hold of the accused in 10
a bid to snatch the gun and in the struggle which ensued both fell down. The deceased unsuccessfully pulled the accused towards the river while holding him by the neck. The accused stuck to his gun and in the course of the struggle a bullet got released and the deceased was shot at the chest. 15

The accused reported the incident to the local authorities of the area instantly but it was not until the next day that the body was found. The accused then reported the matter to his boss, the in-charge Lwakhakha Police Post. Postmortem report made on 19.11.89 reveals 20
that the deceased died as a result of both internal and external haemorrhage resulting from gunshot wound on the chest. However, the accused was charged with the duty of protecting the lives of citizens of this country and yet he took the life of the deceased.

Though he is treated as first offender, the offence with which he is indicted is serious. It carries life imprisonment as the maximum sentence. The deceased at the time was not armed and therefore the 25
use of gun against him was uncalled for. In the circumstances, Counsel for prosecution asked for a stiff sentence as was the case in John Bisset Stenhouse V. Uganda (1971) UCB 316 where the appellant in a charge of Manslaughter was convicted and sentenced to 7 years' imprisonment for shooting a student dead when there was no 30
immediate danger to him.

In NRA PTE Robert Byaruhanga Vs. Uganda, Criminal Appeal No. 2/86, where the appellant had fixed his gun at the door where he was drinking with civilians, he was sentenced to 10 years' imprisonment for manslaughter for causing the death of one civilian .

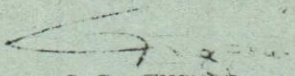
In mitigation, Counsel for defence submitted that although the accused was charged with the duty of protecting lives of citizens in this country, but on the day in question he was charged with the duty of protecting the borders of our country. The deceased crossed the borders at an illegal place. As if that was not enough, the deceased attacked the accused first by grabbing him, pulling him towards the river and by wanting to snatch a gun from him. In the course of the struggle the bullet got out of the gun and the deceased was fatally injured. The conduct of the deceased in the circumstances left a lot to be desired. May be as a smuggler, he could have killed the accused with the very gun if he had managed to snatch it or alternatively, he could have been a danger to the Nation if he had taken the gun and the accused would have been severely punished for its loss.

The accused is first offender who has readily pleaded guilty to the offence charged and has not wasted court's time. He is a young and first offender of 23 years old. He has been in remand custody since 27.11.89. He was sent to protect the borders by the State. In the premises, he deserves a lenient sentence. His case can be distinguished from Stenhouse case and that of Byaruhanga (supra) on the facts already stated above.

In view of the above submissions, I have considered the fact that the accused is a first offender of 28 years of age. He has pleaded guilty readily without wasting court's time. He has been in remand custody since 27.11.89 a period of about 2 years 7½ months. Facts of his case are different from those of Stenhouse's case. In that case, the conduct of the accused was of a man of the most truculent nature who would fight to kill at any slight attack on him. He had no absolute sense of proportion and no respect whatsoever for human life. However, in Byaruhanga's case, the accused left a loaded gun pointing at the civilians with whom he was drinking knowing of the danger in advance.

In the instant case, the accused was on duty protecting the borders of Uganda and Kenya. The conduct of the deceased in assaulting and wanting to grab the gun and also of wanting to throw the accused into the River was manifestly evil and dangerous.

For the above reasons, the accused to some extent deserves a lenient sentence though the offence is serious and carries maximum sentence of life imprisonment. Accordingly, the accused is sentenced to 1½ years' imprisonment.


S.G. ENGWAU

JUDGE

13.8.92.