

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CRIMINAL SESSION CASE NO. 1362 OF 2000

UGANDA.....PROSECUTOR

VERSUS

MATOVU VINCENT.....ACCUSED

BEFORE: The Hon. Mr. Justice E.S. Lugayizi

JUDGMENT

The accused was indicted for murder contrary to section 183 and 184 of the Penal Code Act. the particulars of the indictment read as follows,

“Matovu Vincent, on the 3rd day of August 2000 at Kiryamuli Gombe in Mpigi District murdered Blasio Kiwanuka.”

The accused denied the indictment and was therefore tried. During the hearing of the case the prosecution called six witnesses in support of its case against the accused. Those witnesses were Juko Eriya (pw1); Christopher Ndaula (PW2); Fred Banaddawa (PW3); Dr. Othieno Emmanuel (Pw4); Dr. Kalyemenya (PW5); and No. 25560 Detective Constable Magala (PW6).

In his defence the accused called one witness; and that was himself (DW1).

The prosecution case was briefly as follows. On 3rd August 2000 between 6.00 and 7.00 p.m. at Kiryamuli village the deceased Blasio Kiwanuka visited Juko’s shop and bought some local snacks called **“sumbusa.”** He ate them as he watched television. At this point, the accused entered the shop. He got hold of the deceased and threw him down, head first, on the concrete floor of the shop. The deceased immediately died. Juko raised an alarm and later on the accused was arrested and charged with the murder of the deceased.

In his defence the accused denied having committed the offence in question. He explained that he did not know who killed the deceased, but that he also found him dead at Juko’s shop.

In order for the prosecution to succeed in a case of murder it has to prove, beyond reasonable doubt, four major ingredients of that offence, that is to say,

- (a) That the deceased is dead;
- (b) The deceased's death was unlawful;
- (c) That the deceased's death was actuated by malice aforethought;
- (d) That the accused is the person who committed that offence. **(See sections 183 and 186 of the Penal Code Act; and Uganda v Kassim Obura and another (1987) HCB 9.)**

Court will, below, discuss the above ingredients in light of the evidence on record and the law with a view to deciding whether the prosecution discharged its burden in this case.

With regard to the first ingredient, that is to say, that the accused is dead, the prosecution relied on a string of evidence to prove that aspect. Juko (PW1) testified that he actually saw the deceased at the very moment of death and afterwards, Ndaula (PW2) also testified that he saw the deceased's body at Juko's shop soon after his death. Banaddawa (PW3 and LC chairman of the area) testified that he was one of the people who took the body of the deceased to Mulago mortuary. No. 25560 Detective Constable Magala (PW5) also testified that he led the police team that collected the body of the deceased from Juko's shop and took it to Mulago Mortuary. Dr. Othieno (PW4) testified that on 4th August 2000 he carried out a post-mortem examination on the body of the deceased and afterwards made a report, that is to say, Exhibit P1.

The accused did not challenge or contradict the above evidence. In fact, in his defence he confirmed the fact that he saw with his own eyes the body of the deceased in Juko's shop on the day he died.

With the above in mind, Court is satisfied that the prosecution succeeded in proving, beyond reasonable doubt, that the accused is dead.

With regard to the second ingredient, that is to say, that the deceased's death was unlawful the law is that every homicide is presumed unlawful unless it is accidental or excusable. **(See Rex v Tubere s/o Ochen 12 EACA 63.)** A homicide is excusable if it is committed in execution of a lawful sentence or in self defence or defence of property. In the instant case, Juko who witnessed the events that culminated in the deceased's death testified as follow. On the day in

question the deceased was peacefully eating his sumbusa and watching television at Juko's shop when some one came. Without any exchange of words between the two that person got hold of the deceased threw him head first, on the concrete floor and kicked him. The deceased died instantly.

The above evidence was not shaken in cross-examination. Therefore, Court takes it that it represents the manner in which the deceased died. It is apparent that the deceased did not meet his death as a result of an accident. He was simply attacked; and the person who attacked him did not do so in executing of a lawful sentence or in defence of self or property. In the circumstances, Court is satisfied that the prosecution succeeded in proving beyond doubt, that the deceased's death unlawful.

With regard to the third ingredient, that is to say, that the deceased's death was actuated by malice aforethought, Court has this to say. Malice aforethought is defined under our law as the intention to kill or knowledge that the act or omission causing death will probe death of some person. **(See section 186 of the Penal Code Act and Uganda v Waswa Stephen and Waswa Sadic High Court Criminal Session Case No. 20 of 1994.)** Usually, the requisite intention or knowledge is not an altogether easy thing to establish. However, case law has set guidelines, which help in establishing whether or not, certain acts may have been committed with such intention or knowledge. For example, where a deadly weapon, such as a spear, a knife, a panga, a gun, a big stick, a metal bar, is used on a vulnerable part of the victim's body the necessary intention or knowledge is much more readily inferred than otherwise. **(See Rex v Tubere s/o Ochen (1945) 12 EACA 62 and Uganda v C.B. Ntusi and another High Court Criminal Session case No. 111 of 1976 page 64.)**

In the instant case, Juko testified that at the material time the accused got hold of the deceased, threw him down on the concrete floor of the shop, head first, and kicked him. He died instantly, Dr. Othieno who carried out a post-mortem examination on the body of the deceased a day after his death was of the opinion that the cause of his death was intra cranial hemorrhage with brain damage due to ruptured cerebral artery. He ruled out the fact that a knock of the deceased's head on the concrete floor could have been external evidence on the deceased's head to confirm this. In Dr. Othieno's opinion the internal head injuries the deceased sustained were consistent with the fact that a strong force was applied on his head. Such force could have been a blow from

someone's fist. Court thinks it is not out of place to say that a heavy kick on the head could have also inflicted such injuries. Indeed, Juko saw the person at whose hands the deceased died kick the deceased before he died. However, Juko did not say that the said person in any way hit the deceased with a deadly weapon. For that reason, it is difficult to impute malice aforethought upon that person. In the circumstances, Court is of the opinion that the prosecution did not succeed in proving, beyond reasonable doubt, that the person who caused the death of the deceased was actuated with malice aforethought.

With regard to the fourth ingredient, that is to say, that the accused is the person who committed the offence in question, the prosecution solely relied on the evidence of Juko to prove this aspect of its case. Juko testified that on the day in question between 6.00 p.m. and 7.00 p.m. the deceased went to his shop and bought some sumbusa. As he was eating them and watching television the accused came in and without saying a word got hold of the deceased, threw him down, head first, on the concrete floor and kicked him. The deceased died instantly.

The accused person's defence was a denial that he committed the offence in question. The accused pointed out that he did not know how the deceased met his death. He explained that when he visited Juko's shop at the material time, he found that the deceased had already died. In essence, the accused person's defence is a denial of the offence and an alibi.

The law regarding an alibi is that where an accused person sets it up, he does not assume the burden of proving it. The burden of disproving the alibi remains on the prosecution; and the prosecution discharges that burden by leading cogent evidence that places the accused at the scene of crime at the time of the offence. **(See Sekitoleko v Uganda (1967) E.A 531.)** The question to answer now is whether the prosecution led such cogent evidence? Court thinks that it did. Juko's evidence of identification of the deceased's killer as the accused was not shaken in cross-examination. Therefore, Court thinks that evidence represents the truth. That aside, Court is satisfied that Juko could not have been mistaken about the identity of the culprit, for he knew that person as his landlord. Lastly, the offence in question was committed just before nightfall. That means Juko had no difficulty in identifying the culprit.

All in all, Court is of the opinion that the prosecution succeeded in disproving the accused person's alibi and placing him at the scene of crime at the material time. In the circumstances,

Court is satisfied that the prosecution succeeded in proving, beyond reasonable doubt, that the accused was the person who committed the offence in question. Indeed, the accused person's defence is a collection of lies, which Court hereby rejects.

In conclusion, the foregoing boils down to this. Court will not find the accused guilty of the offence of murder because the prosecution failed to prove, beyond reasonable doubt, that he was actuated by malice aforethought in causing the death of the deceased. In agreement with the assessors Court, therefore, hereby acquits the accused of the offence of murder, but finds him guilty of the minor cognate offence of manslaughter contrary to section 182 of the Penal Code Act; and convicts him accordingly. It is so ordered.

E.S. Lugayizi (J)

12/11/2002

Read before: At 3:02 p.m.

Accused

Mrs Mutabingwa for the State.

Mr. Ntende for accused

The two assessors.

Mr. Sewanyana c/clerk

E.S. Lugayizi (J)

12/11/2002