

THE REPUBLIC OF UGANDA

HIGH COURT

CRIMINAL SESSION CASE NO. 0030 OF 2006

HIGH COURT (AWERI OPIO, J.)

UGANDA;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,;PROSECUTOR

VERSES

DR. AGGREY KIYINGI AND 2 OTHERS;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,;ACCUSED

Criminal Law—Murder—Murder contrary to Section 188 and 189 of Penal Code Act

Evidence—Murder—Past threats on deceased—Past threats on deceased by his or her assailant can be good evidence to conviction

Evidence—Murder—Circumstantial Evidence—It is necessary before drawing inference of accused guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy inference

The accused and two others were indicted for murder contrary to Section 188 and 189 of the Penal Code Act. It was alleged that the accused on or about July 11, 2005, at Buziga Makindye Division in Kampala District, murdered one Robinah Erinah Kiyingi. The deceased was a wife to A1 at the time of the unceremonious death.

A1 and the deceased wedded in 1977 and had several children. The couple had lived in Kenya and Australia where A1 was based as a heart specialist. During their marriage, they acquired a lot of property in Australia and Uganda. However, over time, A1 and the deceased developed protracted irreconcilable misunderstandings and differences in marriage and business affairs which tore their relationship as under.

The marriage became characterized by fault findings, quarrels, fights, neglect, abuses and eventual desertion meted out on the deceased by her husband. Consequently, the deceased left Australia and pulled out of their businesses to form her own private legal practice in Kampala. At one point, A1 is said to have started plotting for the death of the deceased and reportedly expressed this plot overtly by talking to various people to help him kill the

deceased. Some of the people and plans he sought to involve became known to the deceased. The deceased reported one such incident to the police and her relatives whereupon she expressed fears that A1 was after her life.

HELD:

1. The law is that past threats on the deceased by his or her assailant can be good evidence to conviction. However, there must be sufficient proximity between the threats and the occurrence of the death in order to form a transaction. The threats in the instant case were too remote for they occurred 2 years ago.
2. It is necessary before drawing the inference of the accused guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. The evidence on record merely leaves the accused as a high suspect in the death of his wife

Accused persons acquitted and set free.

Dated at Kampala this 12th day of November 2006

Aweri Opio, J

Legislation considered:

The Penal Code Act, Cap 106, Sections 188, 189

Cases cited:

Bogere Charles Vs Uganda, Supreme Court Criminal Appeal No.1t) of 1998

Gusambizi S/O Wesonga Vs R (1948) EACA 65

Janet Mureeba and 2 Others Vs Uganda, Supreme Court Criminal Appeal No. 13 of 2003

Miller Vs Minister of Pensions [1947] 2 ALL ER 372, 373

Okello Okidi Vs Uganda, Supreme Court Criminal Appeal No.3 of 1995 (unreported)

Paulo Omale Vs Uganda, Criminal Appeal No.6 of 1977 (Court of Appeal)

Re Vs Tubere (1945) 12 EACA 63

R Vs Kipkering Arap Koske and Another (1949) 16 EACA 135

R Vs Smith (1992) 2 SCR 915

Sekitoleko Vs Uganda [1967] EA 531

Simon Musoke Vs R [1958] EA 715

Waibi Vs Uganda, Criminal Appeal No.23 of 1977

Woolmington Vs DPP [1935] AC 462