

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA; FORT PORTAL CIRCUIT**  
**CRIMINAL SESSION CASE No.0046 OF 2007; HELD AT KASESE**

**UGANDA** .....

**PROSECUTOR**

*VERSUS*

**KITAMBALA JACKSON** .....

**ACCUSED**

**BEFORE: - THE HONOURABLE MR. JUSTICE CHIGAMOY OWINY – DOLLO.**

**JUDGMENT**

Kitambala Jackson, the accused herein, was indicted for the offence of murder in contravention of sections 188 and 189 of the Penal Code Act. It was alleged in the particulars of the offence that on the 1<sup>st</sup> day of January 2007, at Kabughabuga village, in Kasese District, the accused murdered one Mutongwa John Kaison. The Court read out the statement of the offence, and explained the particulars of the said indictment to the accused. His response was that he had understood it; but he denied the offence, and the Court entered a plea of “Not Guilty” against him; followed by this trial.

The offence of murder has four ingredients. These are: –

- (i) Death of a human being.
- (ii) Unlawful causation of that death.
- (iii) The said unlawful causation having been done with malice aforethought.
- (iv) The participation of the accused in causing the said death.

Before an accused can be found guilty and convicted of the offence, the prosecution has to strictly prove, beyond reasonable doubt, each of the four ingredients; and because it is a capital offence, quite a high premium has been placed on the standard required for such proof, on the authority of

***Andrea Obonyo & Others vs. R. [1962] E.A. 542, and Henry H. Ilanga v. M. Manyoka [1961] E.A. 705 (C.A.).***

The accused had been indicted together with two others who were however convicted, upon their own plea of guilt, of the offence of manslaughter c/s 187 and 190 of the Penal Code Act; leaving the accused to face the charge of murder alone. In his final submissions, defence counsel conceded that the prosecution had proved the first three ingredients beyond reasonable doubt; leaving only the last ingredient – participation of the accused – for proof.

To discharge that burden the prosecution relied on evidence from the following witnesses: Dr Mainuka – PW1, Bwambale Yasoni – PW2, Kule Michael – PW3, Baluku Pinyuru – PW4, Baluku Alex – PW5, D/Inspector Nuwe Henry – PW6, Musumba Batholomeo – PW7, and D/Cpl Odema Richard – PW8. PW2's testimony was that at around 9.00 p.m. on the eve of the New Year, the accused, the other two convicts, and the deceased, all of whom were his village mates, had passed by his compound; and one of them was holding a glass.

PW3 also testified that the accused, the deceased, and the two convicts were among people who were celebrating the New Year eve at his bar. After sometime these four people left his bar; but later, around midnight, the two convicts came back to the bar and one of them picked a quarrel with one of the people at the bar and tried to slash that person. PW4 testified that he too was at the bar with the accused who was in the company of the two convicts and the deceased; all of whom he knew very well. The four were drinking from the same glass. The four left the bar but later, around midnight, the convicts came back and one of them talked of the death of some one. When PW4 tried to inquire, he was violently pushed by one of the convicts.

PW5 also testified to having been at the bar where the accused, the convicts and the deceased had been drinking from. The four left the bar; but later the two convicts came back, and when he warned one of them to be careful not to step on the radio speaker cable the convict threatened to cut him 'like the other one'. In a confession statement one of the convicts gave to PW6, and admitted in evidence, he stated that the two of them and the accused had planned to kill the deceased for revealing that one of them was a cattle thief. They lured the deceased and made him drunk in two bars that night; thus corroborating the prosecution evidence of their having been at the bar.

They left the bar, and as they moved the accused who had a bayonet knife and a stick hit the deceased on the neck with the stick and the deceased fell down. They carried him to a cotton plantation from where the accused hacked the deceased on the neck with the bayonet knife, and the other convict who had a panga cut the deceased on the cheek and on the mouth with the panga. He went back to the bar with the other convict and he informed people of a likelihood of murder of a person having taken place. This was corroborated by prosecution evidence.

The accused for his part denied that he was with the two convicts and the deceased that night. He raised the defence of alibi that he was at his home. He of course was under no duty to prove this alibi. There is however no doubt that the accused and the two convicts were with the deceased that fateful night. The weight of evidence against his alibi is too strong for it to stand. It is a fabrication. It would be strange for the two convicts to plead guilty to manslaughter of the deceased; and one of them in his confession statement, corroborate the evidence of several witnesses who knew all of them had seen him with the deceased and the two convicts.

The post mortem report by PW1, admitted in evidence as an agreed fact, showed that the deceased had one wound across the left cheek, two wounds on the left neck, and one wound across the left mastoid part (behind the ear where the neck joins the head). These findings on the nature and location of the injuries on the deceased corroborated the confession statement. The confession evidence clearly points out that the accused was the lead participant and initiator of the fatal assault on the deceased.

Although the accused and his colleagues had taken some amount of drinks, this did not vitiate their mind as regards their earlier plan to murder the deceased. His colleagues were lucky to have pleaded guilty to the lesser cognate offence of manslaughter; otherwise they were all culpable of the wanton murder of Mutongwa John Kaison under the doctrine of common intention provided for under section 20 of the Penal Code Act. I therefore, and in agreement with the opinion of the gentlemen assessors, convict him of the offence of murder as charged.

**Chigamoy Owiny – Dollo**

**JUDGE**

**25 – 11 – 2009**