

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA; FORT PORTAL CIRCUIT**  
**CRIMINAL SESSION CASE No.0042 OF 2007; HELD AT KASESE**

**UGANDA** .....  
**PROSECUTOR**

*VERSUS*

**SATURDAY AMOS** .....  
**ACCUSED**

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

**JUDGMENT**

The accused herein, Saturday Amos, has been indicted for the offence of murder in contravention of sections 188 and 189 of the Penal Code Act. The particulars of the offence alleged that on the 10<sup>th</sup> day of September 2006, at Kyandale village, in Kasese District, the accused murdered one Biira Loy. The statement of the offence, and particulars of the said indictment were read out and explained to the accused by Court, and his response was that he had understood it; but he denied the offence, and a plea of “Not Guilty” was entered against him. The Court then proceeded to try him as indicted.

Four ingredients constitute the offence of murder. These are namely:-

- (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.

The prosecution has to discharge the burden that lies on it to strictly prove, beyond reasonable doubt, each of the aforesaid ingredients, before Court can find the accused guilty as charged; and convict him. 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.)***, a high premium commensurate with its gravity as a capital offence, is placed on the standard required for proof of murder.

During final submissions, defence counsel conceded that the prosecution had adduced sufficient evidence that proved the first three ingredients beyond reasonable doubt. I am in agreement. To discharge the burden of proof of the participation of the accused, the prosecution had adduced and relied on evidence from the following witnesses: No. 25320 D/Cpl Musungu Celestine – PW3, No. 038 Prison Warder Masereka Emmanuel – PW4, Iga Joseph – PW5, Njima Fanahasi – PW6, and Baluku Richard – PW7.

PW4's testimony was that he was on night duty in the office when the accused, whom he had never known before, walked into his office alone with a blood stained panga in his hand, sat down and told him that:

*“I have killed my grandmother because she bewitched my son. She even talked bad about my pig and it died. I even told her son that I would kill his mother for bewitching us. I told Iga the son of the deceased earlier in the day, then when it came to 4.00 p.m. I sharpened my panga. Then, at 8.00 p.m., I went and cut her neck and she fell down. I went and told my mother and wife that I had killed a person; they should run away because I am also going to die. I went back to confirm if she had died. I cut the legs. This is the panga.”*

The accused told him that Iga – PW5, (a special police constable working at the Local Administration Police detach next to the prisons premises), was his grandfather, and he wanted him called so that he could ask him to look after his properties and ensure that they were not destroyed. PW4 disarmed the accused, detained him in the cells for safe custody, and then called PW5 and informed him.

PW5 testified that the deceased was his sister, and the accused his grandson. He stated that earlier in the day the accused had reported to him that he had a land dispute with the deceased; and that the deceased was a witch bewitching his properties. He restrained the accused, and assured him that all those matters would be looked into in a family meeting he, PW5, was to convene the following day. When that evening PW4 told him that someone related to him had reported himself in for killing a witch, he checked in the cells and found the accused who told him that he had already cleared the problem, and that PW5 should look after his people and properties.

Together with PW7 and some village elders, PW5 went and verified the death of the deceased. When it was put to him in cross examination that the accused had told him that he had only innocently reported a killing in the area to the authorities, PW5 who stated that his relationship with the accused had been very friendly denied this. PW6 testified that one day around 2.00 p.m. he met the deceased whom, because she was mother to his friend, he called mother coming from the home of PW7 the L.C.1 chairman. She told him that she had gone to report to PW7, whom she did not find at home, because the accused had threatened to kill her when she had complained of his chicken destroying her beans. The deceased was killed that night.

PW7 testified that it was PW5 who notified him that the accused had reported himself to police confessing to having killed the deceased; and so he went with PW5 and others and verified the killing. After this, PW6 told him that the deceased had sought to report the threat by the accused to him, but found that he had gone to church. All the prosecution witnesses testified that they were surprised at the incident; and that except for the belated complaint by the deceased and the accused against each other, they could not believe that the accused could kill the deceased as there had been no known grudge between the two.

In his sworn defence, the accused denied that he killed the deceased. He testified that his relationship with the deceased had been cordial, and he used to look after her whenever she was sick; and that the night the deceased was killed, he had responded to her alarm only to find that she was already dead with cut wounds on the neck and legs. He had then gone to report the incident to PW5, a brother to the deceased, who worked at the sub county; but he was instead arrested by an officer who told him that the way he had approached him he had to be detained as the officer looked for PW5. He denied that he went to report with a panga, or that he told the officer that the deceased had bewitched his children as he had never lost any.

The evidence against the accused is a combination of both direct evidence from his alleged admission to PW4 and PW5, and circumstantial evidence from his report to PW5 of his unhappiness with the deceased, and the reported death – threat which the deceased informed PW6 of. The alleged death – threat by the accused was admitted in evidence as relevant fact in accordance with the provisions of section 30 of the Evidence Act (Cap 6 Laws of Uganda Revised Edition 2000); the relevant part of which provides as follows:

**“30. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.**

*Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be produced without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases-*

- (a) *when the statement is made by a person as to the cause of his or her death, or as to any of the circumstances of the transaction which resulted in his or her death, in cases in which the cause of that person's death comes into question and the statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his or her death comes into question; ...”*

The principle above is to the effect that even where the person, who later dies, made the statement when he or she was not in a state expecting imminent death, that statement is relevant and is admissible. However, as has been stated in numerous decided cases, it is not safe to act upon such evidence without corroboration. In ***Kabateleine s/o Nchwamba (1946) 13 E.A.C.A. 164***, the deceased had reported to the assistant headman a threat by the appellant to burn her. She was later burnt in her hut. The Court admitted the statement under section 32 (1) of the Indian Evidence Act (whose provision was similar to the provision of section 30 of the Uganda Evidence Act, cited above).

It relied on the decision in ***Pakala Narayana Swami v. Emperor (1939) A.I.R. 47*** at p.50, where the Privy Council stated that:

*‘The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction’.*

PW4 who detained the accused was a stranger to him; I am therefore unable to see any reason for him to conjure up any mischief against the accused and concoct the utterances he alleged the

accused had made to him, inclusive of producing the panga, tendered in evidence, which he alleged he had disarmed the accused of. PW5 and the accused had enjoyed a good relationship; and it was to PW5 that he had confided his grudge and misgivings against the deceased; so it is inexplicable that PW5 would turn round and bear false witness against him. Both the direct admission by the accused to PW4, and the subtle one to PW5 were evidence that strengthened the evidence about the death – threat uttered to by the accused.

Despite the denial by the accused that he had ever lost any child, PW5 testified that the wife of the accused had a miscarriage. Both the deceased and the accused had reported an existing misunderstanding between them. It is quite apparent therefore that there was simmering within him a deep animosity against the deceased whom he perceived was practising witchcraft on him. He had the motive to harm her. There is as well very strong circumstantial evidence against him. However, owing to his admission, the evidence against him is not solely circumstantial.

Therefore it is not necessary for me to apply the rule that the inculpatory facts of this case are strictly incompatible with his innocence, and incapable of explanation upon any other reasonable hypothesis than that of guilt; and further, whether there were no co-existing circumstances that would negative the inference of guilt. This is in keeping with the exception to the rule governing the treatment of evidence which is wholly circumstantial, as laid down in the authority of **Barland Singh v. Reginam (1954) 21 E.A.C.A. 209**; where the Court of Appeal held at p. 211, that:

*“...circumstantial evidence, although not wholly inconsistent with innocence, may be of great value as corroboration of other evidence. It is only when it stands alone that it must be inconsistent with any other hypothesis other than guilt.”*

I therefore find that the prosecution has adduced both direct and circumstantial evidence which has proved beyond all reasonable doubt that the accused is the villain responsible for the murder of Biira Loy; and in full agreement with the opinion of the gentlemen assessors, I convict him of that charge.

**Chigamoy Owiny – Dollo**  
**JUDGE**

