



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
CRIMINAL CASE NO. 0056 OF 2011**

**UGANDA ::: PROSECUTOR**

**VERSUS**

**MPANJU SAM ::: ACCUSED**

**JUDGMENT**

**BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE**

Mpanju Sam the accused standards indicted of the charge of murder contrary to section 188 & 189 of the Penal Code Act. Prosecution alleges that in the night of 25<sup>th</sup> March 2010 at Kyakakiozi village in Hoima District you murdered one Andama Wilberforce.

Murder is an offence which comprises the following ingredients;

1. Death of a human being
2. Unlawfulness of the death
3. Death accompanied by malice aforethought
4. Participation of the accused in the causation of the death

It is well established too in our law that for prosecution to secure conviction, all the above ingredients must be proved to the high standard laid down in the law. The most recent articulation of this law was found in the case cited and which has been applied in our region consistently over the years but prove must be beyond reasonable doubt. To

discharge the burden cast upon it by the law, prosecution adduced evidence from the following witnesses;

1. PW1 - Dr. Dennis Bitamazire
2. PW2 - A Clinical Officer, Police Medical Services Hoima
3. PW3 – LCI Chairperson Isingoma Flora
4. PW4 – Asera James

### **Prove of the Ingredients**

Death of human being, to prove this ingredient, prosecution relied on the evidence of PW1, Dr. Dennis Bitamazire. He carried out a postmortem examination on the body of Andama Wilberforce which had been identified to him by one Museveni Kaliisa. Dr. Bitamazire established that the cause of the death was due to suffocation due to neck strangulation. This ingredient I therefore find has been proved to the standard laid down in the law.

Unlawfulness of the death, the 2<sup>nd</sup> ingredient, all homicides in Uganda are presumed by law to be unlawful except where such deaths are excusable by law itself. Such excuses consist of the following;

1. Death caused accidentally
2. Death occasioned in defence of life or property
3. Death which is carried out in the execution of a lawful sentence
4. Death that is occasioned as a result of extreme and immediate provocation.

The evidence of all the four prosecution witnesses convince me that the death of Andama Wilberforce does not fall in any of the categories of excusable homicides. I therefore find

that the death was caused by an unlawful act. I further find and hold that this ingredient has also been successfully proved by prosecution.

The 3<sup>rd</sup> ingredient is malice aforethought; briefly malice aforethought can be defined as intentional taking of human beings life. This intention may be inferred to the circumstances surrounding the offence and such circumstances were well articulated in a very old case of ***Regina versus Tubere son of Ochen, 1945 Vol. 12 of East African Court of Appeal Records.***

In the case before me the evidence adduced through PW1, Dr. Dennis Bitamazire established that the victim was strangled to death. Malice aforethought can be inferred from death caused through strangulation. I therefore find that there was malice aforethought in the causation of the death of Andama Wilberforce.

Participation of the accused person; PW4 Asera James told Court that he show the accused fighting the now deceased victim. He tried to separate the two but he left. The next morning the deceased's body was found in the accused's compound. The accused's mobile phone was also recovered at the crime scene. PW3 told Court that together with the police they found evidence of struggle in the accused's bar. Also a voter's card belonging to the accused was recovered at the crime scene. On the evidence on record I am convinced beyond reasonable doubt that the accused was the sole participant in the murder of Andama Wilberforce.

All four ingredients having been proved beyond reasonable doubt, I find you guilty as charged and accordingly convict you.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

**10<sup>TH</sup> SEPTEMBER 2013**

**ALLOCUTUS**

**State:** We do not have any past criminal record of the convict before you. Murder is a very serious offence punishable by death under section 189 of the Penal Code Act. The deceased Andama was a friend to the convict and at the same time a customer at his bar. The convict used excessive force and it was unreasonable for the convict to assault him for not paying him. The convict took the law into his hand which this court should condemn. We pray for a deterring sentence that will make the convict not to repeat such act and for others to learn from him. We so pray.

**Defence:** Counsel Lubega Willy holding brief for Moli Albert. The convict is a first offender. He ought to be given a chance to reform. He has family responsibility of a wife and children who depend entirely on him. He has been on remand since 5<sup>th</sup> February 2011, now a period of 3 years. Also the offence was committed in a bar where the deceased failed to pay for drinks he had consumed, leading to a fight. At the time of his arrest he was 44 years. He is now 48 years. He prays for a lenient sentence.

**Court:** Sentence will be at 4:00 Pm today.

**SIGNED**  
**JUSTICE RALPH W. OCHAN**  
**10<sup>TH</sup> SEPTEMBER 2013**  
**SENTENCE**

I agree with Counsel Lubega that the circumstances under which this offence was committed, namely, in a bar that sold potent waragi, may have affected the conduct of all the participants in the drinking space. In the circumstances I sentence the convict to minimum sentence prescribed in the sentencing guidelines of 6 years.

**SIGNED**  
**JUSTICE RALPH W. OCHAN**  
**10<sup>TH</sup> SEPTEMBER 2013**