



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0029 OF 2011**

UGANDA:..... PROSECUTION

VERSUS

OKOT JUSTINE & 7 OTHERS :..... ACCUSED

JUDGMENT

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

Konge John and others still at large are indicted on the charge of murder contrary to section 188 &189 of the Penal Code Act. Particulars of the offence are that Konge John and others still at large on the 08th February 2010 at Agenga “B” village, Mutunda Sub-county, Kiryandongo District murdered one Oreyim Bosco. The accused the denied the charge hence this full trial.

Murder is an offence comprising the following essential ingredient:-

1. Death of the human being
2. Unlawful causation of the death in issue
3. Malice aforethought
4. Participation of the accused person in the commission of the offence

The burden of prove as always lays on the prosecution. In seeking to prove these ingredients prosecution called the evidence of five witnesses;

PW1 - Dr. Senyonyi of Masindi Hospital

PW2 - Dr. Peter Kitayimbwa Police Surgeon Hoima Police Station

PW3 - Mr. George Ochana

PW4 - Mr. Kassim Owor

PW5 - Detective Constable Canlit Ronnie

To prove the 1st ingredient Prosecution relied on the evidence of Peter Kitayimbwa containing the postmortem report. In that report Dr. Kitayimbwa established the cause of death to be intracranial pressure due to intracranial hemorrhage cause by blunt as well as sharp tissue injury or assault a few days ago. The evidence of Dr. Kiteyimbwa was collaborated by the evidence of PW3 Ochana George who testified that the victim succumbed to these injuries and died at Mulago Hospital and died on the 17th February 2010. On the basis of this evidence I find that prosecution has proved beyond reasonable doubt the 1st ingredient of the offence namely the death of a human being.

Unlawfulness of death, the 2nd ingredient. The Law in Uganda with respect to this ingredient is well laid down in the old case of Gusambizi son of Wesonga (1948) which is to the effect that all facts of the death of human being is proved to be unlawful unless such acts is excusable under four circumstances of; accidental death, death occasioned in the execution of a lawful sentence of a competent court, death occasion in defence of self and protection of property and death occasion by extreme provocation.

In the case before me the evidence of all witnesses point to the evidence that does not fall under the category of excusable homicides. In the circumstances I find the death of Oryem

Bosco was caused by unlawful act. I therefore hold that the 2nd ingredient has been proved beyond reasonable doubt.

Malice aforethought 3rd ingredient; Malice aforethought is defined in section 191 of the Penal Code Act as follows; Malice aforethought shall be deemed established by evidence providing either of the following circumstances,

1. An intention to cause death of a person
2. Knowledge that the act causing death will probably cause the death of some person.

From the above definition, malice aforethought is a mental element that is difficult to prove by direct evidence. In the 1945 case of Tubere son of Ochen, Court stated that no hard and fast rule can be laid down on how a Court should reach a conclusion on how malice aforethought existed. Nonetheless, the Court listed down a few inclusive factors from which a Court can draw such inference. These are the weapon used and the manner it was applied and the part of the body of the victim that was targeted. The Court made this useful observation. It will be obvious that ordinarily an inference of malice aforethought will follow more readily from the use of say a spear or knife than the use of a stick that is not to say the Court takes a lineate view whether a stick is used. Every case is to be judged on its own facts. In the case before us the prosecution relied on the evidence of the Police surgeon Dr. Peter Kitayimbwa who described the weapon used to inflict the injuries to the deceased both be blunt as well as sharp instruments. Parts of the body injured were the head, stomach where the gal bladder was found to have been ruptured. The skull was found to have been fractured. A large hole 3cm wide on the right side of the head. On the basis of this evidence alone I have no evidence in finding that malice aforethought is inferable in this case. I therefore hold that this ingredient has also been proved beyond reasonable doubt.

Participation of the accused; To prove participation of the accused in the commission of the offence, prosecution relied on the evidence of PW4 Kassim Owor. This witness was at the crime scene and was categorical that he saw the accused clubbing the deceased on the head with the club. Prior to that the accused had hit him Kassim Owor on the back with the flat face of the panga before joining the group that was beating Oreym. PW3 Ochana George also testified seeing the accused among those who were assaulting the deceased. The accused at first denied participation of the offence but later under cross examination conceded that he was present when Oreym was being made to sign a document renouncing his claims to the suit land. On the evidence on the record I am convinced beyond reasonable doubt that the accused was properly placed at the crime scene as an active participant in the commission of the offence. All four ingredients having been proved, this Court finds the accused guilty as charged and accordingly convicts him.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

ALLOCUTUS

Anna: We do not have any past criminal record of the convict before you. There are various mechanisms and institutions put in place that deal with resolution of any kind of dispute. In this particular instance a land dispute between the convict and his other colleagues chose to use violence to resolve their dispute

by tricking the deceased to move towards their direction and instead turned out to be brutal and violent to him. Oryem Bosco's life was lost and was still productive to his family and community. Murder should be condemned by this Court especially murders that arise out of land dispute. This Court needs to send out strong signals to all those with disputes not to resort to violence as a way of resolving their disputes. They should come to proper institutions designated. As such we pray for a deterring sentence that will send out strong signals for others to learn from the convict not to engage themselves into such acts of violence and taking the law into their hands. We so pray.

Tugume: The convict is a first offender. He has been on remand since 26th February 2010, now three years and six months. He is a father of five children polygamously married to two wives. His family was solely dependent on him before this incidence. He is aged forty five (45). He regrets what happened and he is remorseful. What happened to Oryem Bosco was that he was a victim of mob action unfortunately to which Konge John was a party. It is our prayer that Court exercises leniency when passing sentence to the convict according to his participation. We so pray.

Court: I will sentence him proportion to his participation. Sentence will be at 9:00 am tomorrow morning the 10th of September 2013.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

SENTENCE

It is shameful and despicable that people who are, for lack of better term, Internally Displaced People would engage in a conflict over land that is essentially not their land and kill each other over it. The land over which this murder was committed belongs to Bunyoro Kingdom. The occupants are all Internally Displaced Persons. They have absolutely no legally tenure to this land. That they should kill for it is absolutely intolerable. The convict is sentenced to 10 years imprisonment. Police should continue the search for the other suspects with a view to prosecuting them.

SIGNED

JUSTICE RALPH W. OCHAN

10TH SEPTEMBER 2013