



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
CRIMINAL CASE NO. 0095 OF 2010**

**UGANDA ::: PROSECUTOR**

**VERSUS**

**SEKANDI BERITO ::: ACCUSED**

**JUDGMENT**

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

Sekandi Berito is indicted on the charge of murder. The state alleges that on 27<sup>th</sup> day of June 2010 at Nyabunyira village in Hoima district that accused murdered on Batarigaya James.

Murder is an offence that comprises the following ingredients;

1. death of a human being
2. unlawfulness of the death
3. malice aforethought
4. participation of the accused

The burden of prove always remains on the prosecution. In an attempt to prove the four ingredient of murder, prosecution called evidence from four witnesses;

PW1 – Dr. Bitamazire

PW2 – Sgt. Lukas a Health Officer from Hoima Police station

PW3 – SPC Oringi Godfrey

PW4- Mr. Augustine Kasangaki from Hoima

### **Prove of Ingredients**

The 1<sup>st</sup> ingredient; the only ingredient of the offence that the defence contested was malice aforethought. Counsel Kasangaki submitted that prosecution had failed to prove to the standard laid down in the law that there was malice aforethought present in the cause of the death of the victim James Batarigaya. He submitted that in the charge and caution statement which was admitted in evidence, it is stated that the accused boxed the deceased once on his head. The deceased fell down and died. Counsel Kasangaki further submitted that this statement was further collaborated by the evidence of the accused himself when he told Court that in anger he boxed the deceased once on the head and the deceased fell down and died. The accused further told court that he did not intend to kill the deceased and that the incidence happened immediately after he had caught the deceased setting fire to his tobacco stores. He acted angrily in the spur of the moment. This counsel Kasangaki submits affords the accused defence of provocation. He relied for this proposition on the authority of *Uganda versus Kyomuhendo David & another, High Court Criminal Session Case No. 75 of 2001* where the test of provocation was laid down. The test to be applied is the effect of provocation on the reasonable man. Two tests

1. Was there sufficient time to allow a reasonable man to cool down,
2. what was the instrument used

Applying the test of Kyomuhendo's case and the evidence on record, I find there was sufficient time to allow the cool of the accused. Secondly, the weapon used was a sharp weapon that pierced the upper limb and thigh of the victim. There was also evidence of strangulation established both in the postmortem report. In the circumstances the defence

of provocation fails. At the same time in the test laid down in the case of Tubere son of Ochen malice aforethought has been established beyond reasonable doubt. All four ingredients having been proved beyond reasonable doubt, I find the accused guilty and accordingly convict him.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

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

### **ALLOCUTUS**

**State:** We do not have any past criminal record of the convict before you. We also not the fact that the convict has been on remand since 30<sup>th</sup> July 2010, he is convicted with a very serious offence attracting a death penalty under section 189 of the Penal Code Act. The deceased James Batarigaya died at the age of 35 years. He was still very young and useful to the society. The deceased had been a work to the convict before you and as such the convict would have accorded the deceased a decent burial than dumping his body in a pit latrine. A right to life is inherit and should not be taken away by anyone apart from God. We pray for a deterring sentence that will make the convict to repent and others not to engage in such acts and also not to take the law into their hands. I so pray.

**Defence:** The convict is a first offender. He has been on remand for a period of 3 years and 1 month since 20<sup>th</sup> July 2010. He is married to two wives and has 22 children. He was feeding his family from that large scale tobacco farming which unfortunately the deceased touched. He regrets what happened. He prays for leniency.

**Court:** I sentence will be tomorrow on the 10<sup>th</sup> September 2013 at 9:00 O'clock.

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

I agree entirely with the prosecution that your intention was to conceal the murder from the world by dumping the deceased into a pit latrine. I sentence you to 7 years imprisonment.

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