



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI  
CRIMINAL CASE NO. 123 OF 2011**

**UGANDA ::: PROSECUTOR**

**VERSUS**

**TWEBAZE YASIN & ANOTHER ::: ACCUSED**

**JUDGMENT**

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

The two accused persons Twebaze Yasin and Julius Kubalikenda are jointly indicted on the charge of murder contrary to section 188 & 189 of the Penal Code Act. The particulars of the charge are that the two accused persons in the month of February 2011 murdered one John Sewakamba.

The ingredients of the offence are the following;

1. Death of a human being
2. Unlawful causation of the death
3. Malice aforethought
4. Participation of the accused.

The law in Uganda is that for prosecution to secure conviction, the above four ingredients of the offence must be proved to the standards laid down in the law beyond reasonable doubt.

To discharge the burden cast upon it by the law, prosecution led evidence from the following nine witnesses:-

1. PW1 – Dr. Bitamazire a medical officer, Hoima Referral Hospital.
2. PW2 – Senior Phsyatricial Clinical Officer, Hoima Referral Hospital.
3. PW3 – Mazoro Abubaker
4. PW4 - Isaac Barijje
5. PW5 - Hilary Byabagambi
6. PW6 - Detective Constable Edison Binkwire
7. PW7 - John Tibenderana
8. PW8 - Kyomya Sabiiti
9. PW9 - Detective Constable Charles Apaga

### **Ingredients to be proved**

Death of a human being; this was proved by a medical examination performed by Dr. Dennis Bitamazire recorded on PF48C, the postmortem report. The report was admitted in evidence uncontested. It was received in Court in record under section 66 of TIA as proven prosecution evidence. It led me to the presumption that the facts contained therein were proved beyond reasonable doubt. The deceased's body was also identified by his colleagues in business PW3 – Mazoro Abubaker and PW4 - Isaac Barijje. This ingredient is therefore proved beyond reasonable doubt.

Unlawfulness of the death; under our law, the death of all human beings in our jurisdiction are presumed to be unlawful unless excusable by circumstances clearly laid down in the law, namely, accidental death, death occasioned in defence of self property, death occasioned by immediate provocation and death occasioned in the execution of a lawful sentence by a competent court. On the evidence on record, the death of John Sewakambo

does not fall under any of the above excusable situations. I therefore find and hold that the death of John Sewakambo was caused by unlawful act.

Malice aforethought; malice aforethought has been defined as an intention of taking of a human life because intention is a mental element. It is in practice difficult to prove malice aforethought by direct evidence except where the accused person explicitly admits it. Generally therefore, malice aforethought is inferred from the circumstances surrounding to the offence. Such circumstances include but not limited to;

1. weapon used in the commission of the offence
2. part of the body targeted
3. manner in which the weapon is used
4. the conduct of the accused before and after the commission of the offence

In the case before me, there is overwhelming evidence of the weapon used. A panga was found at the crime scene and exhibited and there was a knife that was found stuck in the deceased's chest. The neck was cut off. The part of the body targeted were the neck and the chest both vital parts of the body for the sustenance of life of human being. Further the accused went to cover their acts all well documented in evidence on court record, I have no hesitation in holding that malice aforethought is proved beyond reasonable doubt.

Participation of the accused person; this court takes note of the fact that there was no direct witness to the act of killing John Sewankambo. There is however, overwhelming circumstantial evidence on record on the conduct of the accused persons. A1 Yasin Twebaze even had the audacity to try to bribe the police to drop the case against him. Not content with that he went up to Kabarole to seek the dark forces of satan to prevent the police from carrying out their investigation. The witchdoctor himself testified in court

surprisingly. A1 told police that his accomplice in the murder was A2, Julius Kubalikenda who was the team leader in the quest for a witchdoctor. The circumstantial evidence of participation of the two accused in the commission of this offence is overwhelming in my judgment. I therefore hold that this ingredient has been proved beyond reasonable doubt. All four ingredients having been proved beyond reasonable doubt, I find the accused persons Yasin Twebaze and Julius Kubalikenda guilty as charged and I accordingly convict both of them.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

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

**ALLOCUTUS**

**State:** We do not have any past criminal record of the convicts before you. Murder is a serious offence punishable by death under section 189 of the Penal Code Act. John Sewankambo was a father of three children and a wife. The eldest was 13 years and the youngest 4 years. These three sons do not have their father and are being taken care of by their struggling mother. The deceased was a friend and a colleague to A1 – Twebaze Yasin who lured him into going to his home to purchase maize but ended up brutally taking away his life. Sewankambo John met the end of his life in a brutal manner. This should be condemned by Court. Such people need to be kept away from the society. We pray for a deterring sentence for both convicts to reflect on their actions and for others to learn from them. We so pray.

**Defence:** A1 Twebaze Yasin is aged 29 years old. He is still a youth and capable of reforming. He is a first offender. He has been on remand since 19<sup>th</sup> April

2011, now a period of 1 year and 4 months. He has family obligations with two wives and 4 children. He regrets his actions. He undertakes to lead a law abiding life not to repeat what happened. He prays for mercy in determining his sentence.

A2 Kubalitenda Julius is aged 35 years old. He is a first offender. He has been on remand also since 19<sup>th</sup> April 2011. He too is polygamously married to two wives with 11 children. He has two special health conditions. First, he is living positively in prison and he was admitted on ARVs. He has advance ambrical cord hernia. These two conditions have affected his health. His 2<sup>nd</sup> wife died in July 2013 living their 4 children with his mother Anasitazia Byaruhanga who is very old and weak. He is remorseful and regrets this incidence. He prays for your clemency in determining his sentence. We so pray.

**Court:** Sentence will be at 11:00 O'clock.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

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

## **SENTENCE**

John Sewakambo died a cruel and painful death at the hands of Twebaze Yasin and his accomplices A2. He left 4 young children and their probably young mother. Arbitrators of such serious crime must never be allowed to walk freely in our community. I therefore sentence A1 Twebaze Yasin to 30 years imprisonment.

As for you A2, Julius Kubalikenda, because of your terminal illness and the death of the mother of your children, this court shall exercise compassion upon you and give you an opportunity to spend the time left for you on this earth with your children. I therefore sentence you to the minimum sentence provided for in the new sentencing guidelines namely, 6 years of imprisonment.

**SIGNED**

**JUSTICE RALPH W. OCHAN**

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