



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0162 OF 2012**

UGANDA ::: PROSECUTOR

VERSUS

BUSINGE KUGONZA & 2 OTHERS ::: ACCUSED

JUDGMENT

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

The accused Kwiikiriza Leonard was charged together with Businge Kugonza on two counts of Murder and Aggravated Robbery. Businge Kugonza pleaded guilty to both counts. He was 18 years old, therefore juvenile. His file was referred to the Juvenile Court for appropriate sentence. Leonard Kwiikiriza was subsequently tried alone on both counts. He pleaded not guilty and a full trial was therefore mounted. The brief facts to the charge are that the accused together with the juvenile Businge Kugonza on the 19th April 2013 at Kyabakwonga village, in Kibaale District, the two murdered one Birungi Akileo and in the process robbed him of a mobile phone.

The ingredients of the offence of murder are the following;

1. The death of a human being
2. The unlawfulness of the death
3. Death being accompanied by malice aforethought

4. Participation of the accused

It is a strict requirement of our law that for a conviction to be had, the prosecution must prove all the above ingredients beyond reasonable doubts.

To discharge that burden prosecution adduced evidence from the three witnesses;

1. PW1 - Businge Kugonza
2. PW2 – Kugonza Vincent
3. PW3 – Detective Corporal Apaga Charles

Proof of the ingredients;

Death of a human being; the death of Akileo Birungi was confirmed in the postmortem examination report prepared by Dr. David Kaggawa at Kagadi Hospital. This report corroborates the eye witness account of Businge Kugonza the juvenile who pleaded guilty to participation in the commission of both the murder and aggravated robbery of Akileo Birungi. The above evidence on record therefore proves beyond reasonable doubt the death of Akileo Birungi.

Unlawfulness of the death as the 2nd ingredient; Under the laws of Uganda the death of all human beings are presumed prima facie, to be unlawful except when excusable by law. There are only four excusable circumstances;

1. Death occasioned in defence of self or property,
2. In the case of accidental death,
3. Death accessioned under extreme provocation,

4. Death occasioned in the execution of a lawful sentence,

In your case none of the above excuses are tenable. In the circumstances I find that the death of Akileo Birungi was occasioned by an unlawful act.

Malice aforethought; Again in our country, the law governing malice aforethought is long and well established. Malice aforethought is intentional causing of death. It is a mental element which is difficult to prove by direct evidence except where the accused person openly confesses to having that intention before committing the homicide. Malice aforethought is thus, in practice inferred from the circumstances surrounding the offence. Such circumstances may include,

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

In the present case before me, the evidence clearly convinces me beyond reasonable doubt that there was malice aforethought embedded in the action that led to the death of Akileo Birungi. A hall was made in his wall and the accused persons accessed the room through that hall and hurt Akileo to death with a panga in his bed. There was evidence in planning for this and the meeting of minds by the two to carry out this act. I therefore find that malice aforethought has proved in this case.

Participation of the accused. The accused was placed at the crime scene as a lead participant in the commission of the offence. This was done by Businge Kugonza, a juvenile who participated with him and pleaded guilty in this Court. On the evidence of

this eyewitness participant, I find that this ingredient has also been proved beyond reasonable doubt.

In the circumstances, all the four ingredients of the offence of murder having been proved beyond reasonable doubt, I find the accused guilty and accordingly convict him.

SIGNED

JUSTICE RALPH W. OCHAN

10TH SEPTEMBER 2013

ALLOCUTUS

State: We do not have any past criminal record of the convict before you. However, he is convicted of a serious offence which attracts death penalty under section 189 of the Penal Code Act. A life was lost at an early age of 27 years. At that age Akileo Birungi was still useful to the society and family. The deceased left an 8 month old baby who will now live and grow without a father. The deceased had not in any way wronged the convict. The convict was not in any way remorseful throughout the trial. We pray for a deterring sentence that will teach others out there not to engage in such act. We so pray.

Defence: The convict is a first offender. He has been on remand for 1 year and four months since 10th May 2012. He is aged 26 years still in his formative years. He has family obligations with a wife and two children of tender years. He is remorseful. We pray for leniency in sentencing him.

Court: Sentence will be at 9:00 O'clock tomorrow.

SIGNED
JUSTICE RALPH W. OCHAN
10TH SEPTEMBER 2013

SENTENCE

Akileo Birungi died a most brutal death for absolutely no reason. The crime was motivated by nothing sort of pure evil on the part of the convict. He even involved a juvenile to participate in his evil plan. I sentence him to 20 years imprisonment.

SIGNED
JUSTICE RALPH W. OCHAN
11TH SEPTEMBER 2013