

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CRIMINAL SESSION CASE NO. 040 OF 2011

5

UGANDA.....PROECUTOR

VERSUS

10

KATALYEBA FRANCIS..... ACCUSED

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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JUDGMENT

The accused was the husband of the deceased Nakagolo Sarah. On 9/12/2010 at Bukaleba village in Mayuge district, according to the accused, he and his wife had domestic disagreement which culminated into a fight. The accused claims he picked the nearest object - a knife with which he stabbed his wife in the lower ribs near the heart and she died instantly.

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He then reported himself to the police and claimed he had stabbed the unfortunate Sarah Nakagolo in self defence and that she had provoked him with insulting language which amounted to a challenge to his manhood.

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He was subsequently indicted for the murder of his wife c/ss 188 and 189 P.C.A.

Whatever the cause the wife died of a stab wound as confirmed by the post mortem report PEx.1 by Dr. Bogere who performed the autopsy.

- 5 In accordance with the decision in **Woolmington Vrs. DPP (1935)**, the prosecution has the duty to prove the ingredients of the offence beyond reasonable doubt.

The ingredients in a charge of murder are:

- 10 (a) The death of a human being.
(b) The death was caused unlawfully.
(c) Death was caused with malice aforethought.
(d) Participation of accused.

- 15 The first ingredient has been proved by the Post Mortem Report of Dr. Bogere which states that the deceased died as a result of a stab wound to the left side of the chest which affected the vessels near the heart and the heart itself and the cause of death was internal bleeding.

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PW1, PW2 and PW3 all saw the body at the scene and confirmed the stab wound on the left side of the chest.

- 25 In any case the accused handed himself over to the police and admitted having caused the death of the deceased.

In respect of ingredient No.2 - whether the death was caused unlawfully.

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In the case of **Gusambizi s/o Wesonga Vrs. Republic (1948)15 EACA 65**, it was held that all homicide unless authorized by law is always unlawful.

In the instant case, the same evidence as under ingredient No.1 establishes that the death was caused unlawfully, as it was not authorized by the law.

5 The knife PEx.7 recovered at the scene was established as the instrument used in causing the death. The knife in appearance was crude and for all intents and purposes did not appear to be meant for domestic use.

10 On participation by the accused, there is no doubt as per the evidence of PW1 to whom the accused handed himself over to at Bukaleba Police post. According to the evidence of the accused himself and the unchallenged charge and caution statement -PEx.6 the accused admitted having stabbed the
15 deceased. This is corroborated by the evidence of PW4 who recorded the charge and caution statement.

The contentious ingredient is that of malice aforethought. Malice aforethought is defined as a state of mind or a mental
20 element which is not easily proved by direct evidence.

Malice aforethought is established from the evidence of circumstances that tend to show the intention to cause death of any person or the knowledge that the act or omission by
25 the accused will probably cause the death of a person. The above position is laid out in Section 191 of the Penal Code Act.

The said malice may be inferred from the following
30 considerations:

- The weapon used, was it lethal?

In the instant case, the knife PEx.7 was recovered from the scene for all intents and purposes it was a lethal weapon, locally made but well suited to inflict the injury

that caused the death of the deceased. The evidence of PW1, PW2 and PW3 all indicate that whatever weapon was used, it caused the death of the deceased.

5 The Post Mortem Report – Pex.2 indicates that the stab wound affected the heart and caused internal bleeding leading to the death of the deceased.

10 - The part of the body targeted, was it vulnerable? How about the nature of the injuries. In this case, the left ribs near the heart was the point of entry of the knife. The eye witnesses PW1-3 and the Post Mortem Report all point to the fact that the injury was in a very vulnerable part of the body.

15 - The conduct of the accused before and after the act is also material in determining whether there was malice. Refer to **Mugao & Another Vrs. Republic (1972) EA 545.**

20 In the case before court, the accused
(a) Handed himself over to the police. He also in his defence claims he acted in self defence when the deceased attacked him and
25 (b) That he was provoked by the abusive language of the deceased.

30 However, he also states in his defence and in the charge and cautions statement – PEx.6 that he came home earlier, and went to bed.

The wife came back later and when he questioned her, she became abusive and a fight ensued. It was dark. In

self defence he picked the nearest object which happened to be a knife and stabbed her.

5 The question is, is it not too much of a coincidence that the knife happened to be conveniently nearby, especially when the evidence points to the fact that he had been laying in waiting for the wife's return like a predator?

10 How about the position of the body? A photograph was produced for identification but not formerly exhibited. However, there is no dispute that it is a photograph of the body of the deceased.

15 As submitted by the State the position of the body is that of someone who was probably asleep and was stabbed while she was in deep slumber. There are no signs of struggle or splattered blood or that the body was arranged as claimed by the accused before he reported to the police.

20 The accused on the other hand raised the defence of provocation. Provocation is defined in Section 193 of the Penal Code Act.

25 To constitute provocation the wrongful act or insult aimed at the accused must be of such a nature as to be capable of depriving an ordinary person of his power of self control and to induce him to commit the assault to the person who offered the act or insult.

30 The wrongful act or insult may be done directly to the person who commits the assault or in his presence to any of the persons who stand to him in relation to Section 193 (1) (b) (i) and (ii) P.C.A.

For the defence of provocation to succeed, the assault must be done in the heat of passion before the accused had had time to cool down. Refer to **Sowedi Osire Vrs. Uganda S.C.A. 28/89.**

It was held therein that:

(a) The death must be caused in the heat of passion before there is time for the passion to cool down.

(b) The provocation must be sudden.

The standard for judging of the act or insult on which the plea is advanced is capable of causing provocation in the legal sense is that of an ordinary person.

In the instant case, as already discussed above, the evidence points to meticulous preparation by the accused, points to an assault on a person sleeping peacefully, and points to an attack on a vulnerable part of the body with a lethal weapon with 100% expected result of death.

I refuse to believe that the accused was provoked to kill his life.

Indeed the assessors came to the same conclusion after considering the evidence before them.

I refuse to believe the submission of the defence that the accused was a victim of circumstances.

I find that the ingredient of malice aforethought has been proved beyond reasonable doubt.

All in all, I am satisfied that the prosecution has discharged the burden of proving beyond reasonable doubt that the accused murdered his wife.

- 5 I find the accused guilty of the offence of murder c/ss 188 and 189 of the penal Code Act.

I convict him accordingly.

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Godfrey Namundi
Judge
23/10/2013

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23/10/2013:

Accused in court

Kitimbo for State

5 Kabonesa for defence

Court: Judgment read and explained to accused.

10 **Godfrey Namundi**
Judge

15 Kitimbo:

The convict is a first offender.

The charge is serious and has a maximum sentence of death. Consider the circumstances in the way the offence was committed. A deterrent sentence is called for. The deceased was murdered because the convict suspected her to be promiscuous. We pray for the maximum sentence.

Kabonesa:

25 The convict is a person of advanced age of 69 years.

Deterrence will remove him from his 8 children. He has been on remand for 2 years and 10 months. He is remorseful for the crime that he committed. He reported himself at the police and admits the offence.

He could have run away but chose to do the right thing. He did not waste court's time.

The question of whether it was murder or manslaughter is a technicality. He is asthmatic and has battled with it.

A lenient sentence is called for. Pray for Community Service.

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Court: Sentence on 25/10/2013.

Godfrey Namundi

10 **Judge**

SENTENCE:

15 This offence carries a maximum sentence of death.

I had considered both the aggravating and mitigating factors in the case.

20 I have considered the circumstances in which the offence was committed. This was a premediated and planned killing much as the defence counsel claims the decision to convict the accused for murder is a technicality. However, the effect is that the deceases Sarah Nakagolo lost her life in very crude
25 and uncalled or circumstances.

The convict had the option of separating with her instead of deciding that if he lost then everybody must lose. The only mitigating factor in favour of this convict is his advanced age
30 (69) and the time he has spent on remand.

In the circumstances I sentence him to serve 14 years imprisonment.

Godfrey Namundi
Judge
25/10/2013

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Accused in court
Prosecutor - Kitimbo

10 Court: Sentence read and right of Appeal explained.

Godfrey Namundi
Judge
25/10/2013

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