

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

**CRIMINAL SESSION CASE NO. 256 OF 2011**

5

**UGANDA.....PROSECUTOR**

**VERSUS**

10

**MUKWANA STEPHEN alias MUSA.....ACCUSED**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**JUDGMENT**

20 The Accused stands indicted for the offence of Murder contrary to Sections 188 and 189 of the Penal Code Act.

25 The case for the prosecution is that on 16/11/2010 at Hotel Triangle in Jinja Municipality, the Accused Mukwana Stephen (also known as Musa) with malice aforethought stabbed Brian Bogere with a knife thereby causing his death.

**Background:**

30 The deceased was at Hotel Triangle with his friends on the material day at around 7.00pm. As they were leaving the said Hotel, they saw the Accused pulling a girl -Patricia Nabirye. The deceased tried to intervene in an effort to rescue the girl.

35 The Accused pulled out a flick knife from his trouser pocket and drove it into the deceased's chest. He then fled from the scene. The Deceased was taken to Hospital where he died of acute bleeding and shock due to a lacerated heart.

The Accused denied the charges and hence this matter had to go through a full trial.

5 Under Section 66 T.I.A, the Post Mortem Report (PF.48B) and PF.24-(Medical examination of the Accused) were admitted as PExh.1 and 2 respectively. The prosecution called 4 witnesses to prove the charges.

10 It is the duty of the prosecution to prove each ingredient of the offence, and that burden lies on the prosecution and does not shift.

The Accused does not have to prove his innocence. (**See: Woolmington Vrs. DPP**).

15 To prove murder, the prosecution must prove the following ingredients:

1. The death of the deceased.
2. The said death was caused unlawfully.
- 20 3. That the accused caused the said death.
4. That the said death was caused with malice aforethought.

**Ingredient No.1:**

25 PW1, PW2 and PW3 all saw the body of the deceased. The medical evidence i.e. Post Mortem Report reveals that Brian Bogere died as a result of a stab wound and that his heart was pierced. Ingredient No.1 is accordingly proved beyond reasonable doubt.

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**Ingredient No.2:**

In the case of: **Gusambizi s/o Wesonga Vrs. Republic**, it was held that any homicide is unlawful unless it is accidental or authorized by law.

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In this case, PW2 and PW3 saw the assailant stab the deceased in the chest. When he was taken to Hospital the deceased died due to excessive bleeding.

The deceased was stabbed when he tried to intervene in a scuffle involving the assailant and one Patricia.

5 It is therefore clear that the death was caused unlawfully.

**Ingredient No.3 - Participation of the accused:**

10 The prosecution has relied on the evidence of PW2 and PW3 who were at the scene when the deceased was stabbed. The two witnesses stated that they first saw the Accused hanging around the poolside together with some other boys. This was at around 6.00pm in broad daylight.

15 At around 7.00pm when it was not yet completely dark, the deceased, the two witnesses and other colleagues left the Hotel to proceed home.

20 At the gate to the Hotel, they met the Accused struggling with a girl who had also been at the swimming pool. Brian - the deceased tried to intervene when the girl called out to him. The Accused pulled out a knife from his pocket and stabbed the deceased on the chest, twisted the knife and pulled it out.

25 The deceased fell down crying that he had been stabbed and that is when PW2 tried to go near and assist him.

The Accused attacked PW2 with the knife but missed the heart and cut the witness on the chest.

30 There was sufficient light at the gate as it was still light and the security light was also on.

It has been submitted for the Accused that the prosecution has failed to prove the participation of the Accused.

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First, that the Accused was not known to the prosecution witnesses before the incident and that the Accused was arrested many months after the incident.

No identification parade was conducted to rule out mistaken identity.

5 The case of: **Patrick Akol Vrs. Uganda Criminal Appeal 20/95** was cited in this respect.

That the witnesses were shown the Accused at the Police station and claimed he was the assailant.

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I have considered the submission and the evidence adduced. The assailant was seen by 2 people at the scene - PW2 and PW3. PW2 suffered a knife wound at the hands of the assailant.

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PW3 was all the time watching and when the assailant saw him staring at him, he chased PW3.

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They had first seen the Accused on broad day light at the poolside.

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The incident occurred at the gate of Hotel Triangle where there was a security light and it was not yet dark. I am satisfied that the Accused was properly identified, the conditions were favourable for identification and there is no possibility of mistaken identity.

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It was also revealed at the Police station that the assailant was a well known person on the streets and was known as **Musa**.

When he was eventually arrested, there was no possibility of mistaken identity.

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The defence raised the defence of alibi, that he was new in Jinja Town, having been brought to Jinja by his brother who has since died in February of 2011. I found PW2 and PW3 very truthful witnesses who gave their evidence in a calm

manner and were not shaken on cross-examination. They clearly observed the Accused and he was placed at the scene of the crime.

5 Ingredient No. 3 is accordingly proved beyond reasonable doubt.

**Ingredient No.4:**

10 Malice aforethought is a condition of the mind or conduct that shows that the assailants act or mission was intended to cause the death of a person.

The Courts will ascertain this by looking at the following factors:

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- The kind of weapon.
  - The injuries sustained.
  - The part of the body targeted.
  - The conduct of the assailant after the act (**See: Uganda Vrs. Kassim Obura and Uganda Vrs. John Ochieng**).
- 20

The evidence of PW2 and PW3 is that the Accused used a knife he pulled out of his pocket with which he stabbed the deceased in the chest. He even twisted the knife in the body of the deceased before pulling it out.

25 He tried the same with PW2 but missed narrowly only inflicting a wound on the rib.

30 The deceased died of excessive bleeding due to a pierced heart as seen from the Medical Report.  
The heart is a vulnerable part of the body.

35 The above factors indeed show that the Accused intended to inflict the maximum damage on the deceased which he achieved. He then ran away from the scene and was only arrested several months later.

His defence of alibi has been punctured by the very clear identification by PW2 and PW3 who have properly placed him at the scene.

- 5 His conduct of running away from the scene shows the conduct of a guilty person. **(Uganda Vrs. Yowana).**

The Assessors gave a joint opinion in which they stated that the Accused was properly placed at scene of crime.

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I agree with their opinion. I find that the prosecution has proved all the ingredients of the offence of murder, beyond reasonable doubt.

- 15 I find the accused guilty of the offence of Murder c/s 188 and 189 of the penal Code Act, and convict him accordingly.

20 **Godfrey Namundi**  
**JUDGE**  
**13/11/2013**

13/11/2013:  
Accused in court  
Prosecutor: Kitimbo  
Kiiza for Accused

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Court: Judgment read and explained to Accused's understanding.

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Prosecutor: There is no previous record. The offence has a maximum sentence of death. The act was gruesome and brutal. Brian Bogere was young and did not deserve to die in the manner he did. The Convict also inflicted other injuries for very selfish reasons - fighting over a girl. Pray for life imprisonment.

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Kiiza: The Convict is a young man with a productive life ahead of him. He has been on remand for 3 years. He is a first offender. Pray for a lenient sentence of 11 years in prison.

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Court: **Sentence:**  
Brian Bogere was killed in a very brutal and inexcusable manner. There has been no justification within the available defences which in any case were not raised. The convict committed the offence well knowing what he was doing. Being a first offender does not absolve him from his brutal conduct. He should be removed from society for safety of other people.

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I sentence him to life imprisonment.

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**Godfrey Namundi**  
**JUDGE**  
**13/11/2013**