

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**SITTING AT ENTEBBE**

**CRIMINAL SESSION CASE NO. 312 OF 2012**

**CRIMINAL CASE NO. 008 OF 2012**

**CRB NO. 971 OF 2011**

**UGANDA ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::**

**::::: PROSECUTION**

**VERSUS**

**GULOBA ROBERT alias**

**KANYAMA::::::::::::::::::::::::::::::::::::: ACCUSED**

**Before: HON JUSTICE WILSON MUSENE MASALU**

**RULING**

The accused, Guloba Robert alias Kanyama was indicted for murder on two counts. In count I, he is alleged to have murdered Ochaya Sam, while in count II, the deceased was Kalyango David alias Ssalongo.

The prosecution was led by M/S. Mbaine, State Attorney, while M/S. Sarah Awello represented the accused on state brief. The prosecution called three witnesses and closed their case. This Court has carefully consideration the prosecution evidence on record and my findings are that in cases of murder, the following ingredients must be established.

- (i) Death or Deaths of Human being.
- (ii) That the death was unlawful.

(iii) That the death was out of malice aforethought.

(iv) That it was the accused who committed the murder in question.

As far as the first ingredient of the offence is concerned, in view of the post mortem report in respect of both deceased persons, there is no doubt that the two persons died. Even all the prosecution witnesses allude to the fact of death of both deceased, persons. So the first ingredient of the offence has been established. Even the second ingredient that the death was unlawful has also been established. This is borne out by the postmortem reports and the evidence of PW2 and PW3. Death by drowning was definitely unlawful. This Court however, has problems with the third and 4<sup>th</sup> ingredients of the offence, notably malice aforethought and identification of accused as the perpetrator of the murder.

The Prosecution's key witness was PW2, Ronald Lukyamuzi. That is because the evidence of PW1, Henry Kyesula Balemezi, chairperson of the fishing was what he was told by Lukyamuzi. He was only present when the bodies of the deceased persons were recovered from the water and he was told by Lukyamuzi that it was accused who drowned them, but he was not there during the drowning. And in re-examination, PW1 testified that he had ever received reports that accused is one of the thieves of fish. Unfortunately, he is not this time charged with theft of fish.

Turning to PW2, he is what in law referred to as single identifying witness. Whereas the testimony of a single indentifying witness is relevant it must be handled with caution and in most cases needs corroboration.

PW2's testimony was that he heard an alarm between 1:00-3:00am when the two deceased persons made an alarm calling for help. And that when he went to their rescue, he did not find

them there and he assumed the accused had already drowned them. He found the accused swimming and holding a boat with one hand.

PW2 added that he **did not see any action of drowning**. And unlike in the **Entebbe Criminal Session Case No. 330 of 2012, Uganda Vs. Kawooya Muhamed** where the key witness heard the words **Kawooya Onziita** or **translated Kawooya your are killing me**; in the present case, PW2 just heard deceased calling for help. There was no mention of the name of the accused or of any other person as the perpetrator.

PW1 added that it was Ochaya who was shouting on top of their voice. And contrary to his own testimony earlier that he did not see any action as he was 100 meters away, he turned in the course of the same testimony that the accused killed the deceased persons when he was seeing. This Court was left wondering which statement of the key witness should be believed, that he saw the killing or that he did not see any action. And during cross examination by Counsel for the Accused, PW2 stated that he did not see accused pushing or beating anybody but found accused.

He added that by that time, Kisekka (PW3) was very far and arrived very late after him. And during clarification from one of the Assessors, PW2 stated that by the time Kisekka arrived, accused was almost reaching the shores. Being deep in the night, between 1:00am -3:00am, the evidence of PW2, a single identifying witness needed corroboration before accused could be pinned as the one who killed the two deceased persons.

PW3, Kisekka Stephen who would have given the necessary corroboration was stated by the said PW2 to have arrived late when accused was almost reaching the shores. However, PW3 in his testimony stated that he was with Lukyamuzi PW2 and that he heard an alarm to the effect that **“we are dying. There is a**

**thief here”**. And PW3 stated that the alarm was being raised by Kalyango.

This Court finds a grave contradiction because whereas PW2 said Kisekka (PW3) was far away and came when accused was reaching the shores, PW3’s testimony was that he was there. The question now is whether PW3 was there or not together with PW2. And whereas PW2 had stated that it was Ochaya who made the alarm, PW3 stated that it was Kalyango who raised the alarm. That was another contradiction. And to make it worse, whereas PW2 who said he arrived first and never saw any fighting or action, Pw3 testified during Cross Examination by Counsel for accused that he saw the action when they were fighting.

This Court therefore finds and holds that PW3, who was supposed to corroborate the testimony of PW2, the single identifying witness, instead contradicted PW2 in material particulars that went to the root of the case. So it is unfortunate that another key witness for state was reported sick and they closed prematurely. Even the witness, PW3 in his testimony stated that he had not known the accused before.

In the premises, I find and hold that the prosecution evidence on record has not established all the ingredients of the offence of murder.

Secondly, the same is punctuated by contradictions, particularly as between PW2 and PW3 to the extent that a reasonable tribunal cannot convict on the same. The conclusion of the Court is that there is no Prima facie case made out against the accused. He has no case to answer.

I accordingly, find the accused person not guilty and do hereby acquit him under the provisions of Section 73(1) of the Trial on indictment Act. Accused set free henceforth unless otherwise lawfully held on other charges.

Signed by: .....  
**WILSON MASALU MUSENE**  
JUDGE

**16//01/2014;**

Accused present

Sarah Awello for accused

Mbaine for state

Assessors present

Namujjumbi Tracy, Court Clerk present.

Signed by.  
**WILSON MASALU MUSENE**  
JUDGE

**COURT;**  
Ruling read out in open Court.

Signed by: .....  
**WILSON MASALU MUSENE**  
JUDGE