

THE REPUBLIC UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA SITTING AT
ENTEBBE
SESSION CASE NO. 181 OF 2012
CRIMINAL CASE NO. 038 OF 2011
CRB. NO.1712 OF 2011

UGANDA
..... **PROSECUTOR**

VERSUS

A1 MUTEBI MUHAMED

A2 NSIIZA
ISAAC
ACCUSED

Before: HON JUSTICE WILSON MASALU MUSENE

JUDGMENT

On the 4th day of October, 2011 the residents and people of Kikajjo, Kasenge Zone B, Nsangi sub- county in Wakiso District were treated to a very rude shock by the horrific death of one of their own, Namakula Stamilah. The dead body of the deceased Namakula Stamilah, lying on the floor of her bed-room in a pool of blood was brought to the attention of the villagers by the late Namakula’s young children aged 6 years and 4 years respectively, who innocently thought their dear mother was just sleeping in a pool of blood. And the reality was that she was long dead after being slain with a knife which was also found besides the said dead body. Equally shocking was the realization that morning that the property of the deceased, notably two television sets, radio cassette, one crown DVD player, two Compaq, two CPU, two key boards, two extension cables, one battery starter, one woolen blanket, two bags, one bed-sheet, one flat iron, one carpet and 18 shariats had also been robbed the previous night.

When the long arm of the law caught up with the two accused persons now in the dock, Mutebi Muhamed and Nziiza Isaac, they were indicted for aggravated Robbery contrary to sections 285 & 286(2) of the Penal Code Act in Count I, and Murder contrary to section 188 and 189 of the Penal Code Act.

Upon arraignment A2 Nziiza Isaac pleaded guilty to both counts and was convicted on his own pleas of guilty in both Counts. Sentences of A2 were reserved till the end of the trial. As for A1, Mutebi Mohamed, he denied both counts. By those Pleas of Not Guilty A1 put in issue all the essential ingredients of the offences of aggravated Robbery and Murder. It was therefore incumbent upon the prosecution to prove beyond reasonable doubt each and every essential ingredients of both offences before a meaningful conviction can be secured. That is because an accused person, in this case A1, Mutebi Muhamed bears no duty of proving his innocence. He is presumed innocent till proved guilty. See **Oketcho Richard Vs. Uganda Supreme Court Criminal Appeal No. 26 of 1995.**

Since there are two counts, I shall start with aggravated Robbery. The essential ingredients in an offence of Aggravated Robbery are:-

1. That the property of the complainant was forcefully taken.
2. That in the process, a dangerous weapon was used and /or harm or injury or even death resulted.
3. That it was the accused who committed the Robbery in question

In a bid to discharge the burden of proof cast upon it by law, against A1, the prosecution called evidence of 8 witnesses. These were Nziiza Isaac, the Co. accused (PW) Abdul Nsimbe, the husband of the late Namakula Stamilah, (PW2), Semakula Muduumi, the LC1 Chairperson of Kazinga B village (PW3), Musa Lugemwa Mayanja (PW4), Kateregga Nordin (PW5), Muhamed Kigozi (PW6), No. 39551 D/Corporal Segawa Julius (PW7), and D/AIP Kasajja Fred (PW8). A1, Mutebi Muhamed on

the other hand gave a sworn testimony of total denial and did not call any witness.

As far as the 1st ingredient of the offence of forcefully taking away the deceased's property, the testimony of Nziiza Isaac, PW1 was very long and elaborate. But in summary, PW1 stated that he had known A1, Mutebi Muhamed as a friend for a period of 3 years and they were staying together in Kikajjo, Kasenge.

PW1 told Court how A1 approached him on 30th day of September, 2011 about a deal of Ug. Shs. 8,000,000/= which was with the wife of his brother. PW1 added that A1 told him to pretend as a customer who had gone to buy clothes and that on the first day, the mission flopped as he was scared.

In fact PW1's further testimony was that he wanted to abandon the plan but A1 insisted they go there on another day. And that after 3 days, they returned at night, 11:00PM when they were sleeping. PW1's testimony was that A1 showed him the window where he passed and entered and thereafter he opened for A1 who also entered.

PW1's testimony was that they both searched the sitting-room for the money but they did not find it and so they decided to go the bed-room. PW1's further testimony was that in the bed-room, the deceased made an alarm but PW1 pointed a knife at her and then she stopped the alarm and started fighting him. PW1's testimony was that as they struggled, he cut the deceased who eventually fell down and he came out of the bed-room to tell A1 that there was no money. PW1 added that he also left the knife in the bed-room where the deceased was.

He added that A1 suggested that if the money was missing, then they take the property. PW1 then testified that they collected the properties listed in the indictment from different rooms. PW1's testimony was that a 15 inch Television was in the deceased's bed-room which he picked as he covered the deceased who was naked with a blanket. Other properties collected and mentioned by PW1 included carpets, computer sets, DVD, electric flat iron, shariats and a machine for charging batteries.

PW1 added that A1 went and brought a Dyna vehicle and both of them loaded the property. And that after loading the properties, A1 told him he was taking it to his colleague and they parted.

During Cross Examination by Counsel for Accused, PW1 revealed that he stabbed the woman (deceased) when she wanted to grapple him otherwise he had not intended to kill her.

PW1 in clarification from Assessors added that before arrest, he met with A1 in Nateete to agree on how to share the robbed properties.

PW2, Abdul Nsime was the husband of the deceased, Namakula Stamilah and the properties robbed belonged to him and the deceased. His testimony was that he was not there at the time of robbery but on 4th day of October, 2011, he received a call from A1 Mutebi Muhamed, that his wife had been murdered. He arrived only to find a dead body of his wife with stab wounds on the shoulders, chest and head. He also found house-hold properties were recovered from the home of his Cousin, Muhamed Kigozi (PW6). And PW2 added that Kigozi Muhamed told him that it was A1 who took there those properties on the date of murder.

PW3, Semakula Muduumi was the area LC1 Chairman, was the one who discovered the dead body the following morning and alerted police. He also received information that A1 was one of the people who had participated in the robbery and murder. PW3 further testified that when Mutebi, A1 was arrested, he revealed that it was A2, Isaac who had killed the deceased.

PW3 also testified that was A1, Mutebi who revealed that he found Isaac, A2 with the stolen properties which he removed from him. PW3 added that Isaac went into hiding and was arrested after 2 months. During Cross Examination by counsel for Accused, PW3 added that it was Mutebi, A1 who revealed that Isaac killed the deceased and he himself had taken the properties to Muhamed Kigozi.

PW4, Musa Lugemwa was the special hire tax driver whose vehicle A1 hired on 4th day of October, 2011 that carried the robbed properties from Kinawa to Katwe. PW4 even narrated to the Court the stolen

properties as listed in the indictment. The properties were taken to Katwe.

PW5 Kateregga Nordin's detailed evidence also implicated A1, Mutebi Muhamed as one of the persons who robbed the property and killed the deceased. PW5 added that A1 confessed to him that he took Isaac, A2, to steal properties but Isaac killed Namakula. He concluded that the stolen properties were recovered from the home of Muhamed Kigozi A1 had taken them.

PW6, Muhamed Kigozi is where the stolen properties were taken by A1 and he confirmed so to this Court. He told Court that when he returned and found the properties dumped in his house by A1, he became suspicious and reported to the LCI Chairman and Police.

PW7, No. 39551, D/Corporal Segawa Julius was the scene of crime Officer. He took photographs of the deceased and found a knife at the scene, deadly weapon used both in the robbery and murder.

Lastly was PW8, D/Corporal Kasajja Fred who was the Investigating Officer. According to him, the stolen items were recovered to Katwe from Kigozi's house and were taken there by PW4 a special hire driver. The search Certificate in respect of the stolen properties was tendered in evidence and marked P11. Asked as to why Muhamed Kigozi was not charged with stealing or receiving stolen properties, PW8 clarified that Muhamed Kigozi was faithful as he reported the case and became a witness. He also clarified during Cross-examination by defence Counsel that it was A1, Mutebi who told him that he was with Isaac, A2 during the Robbery and Murder and that it took long to arrest Isaac because he was in hiding. However, he concluded that when A2 was arrested, he conceded and even pleaded guilty in Court.

I have carefully studied and considered the evidence of the Prosecution witnesses as far as the charge of aggravated Robbery is concerned. All the prosecution witnesses, particularly PW1, PW4, PW6 and PW8 are clear and elaborate as to how both A1 & A2 hatched a plan, at first to steal money, but after failing, they robbed the household properties.

PW1 was spot on when he testified that both him and A1 collected the stolen properties from different rooms. And in the process, force or a dangerous weapon was used which resulted into the murder of the deceased. And as emphasized by the gentlemen Assessors in their joint opinion, it was A1 who hired PW4 to transport the properties robbed that night from the scene to crime to PW6's place in Katwe from where they were recovered.

A1's defence that he was in Jinja, (thereby creating Alibi) at the time of Robbery has been found negative by this Court. A1 could not convince this court whether he was in Jinja for one week, ½ weeks or 2 weeks. In any case, this Court's finding and holding is that PW1, PW4, PW5 and PW8 had properly pinned A1 at the scene of Crime.

I therefore find and hold that all the ingredients of Aggravated Robbery have been proved by the prosecution beyond reasonable doubt against A1, Mutebi Muhamed. And as advised by the gentlemen Assessors, I do hereby convict A1 with the offence of Aggravated Robbery contrary to sections 285 & 286(3) of the Penal Code Act.

I now turn to the offence of Murder. The essential ingredients requiring prove beyond reasonable doubt in murder are:

1. Death of a human being
2. That the death was unlawful
3. That the death was out of malice aforethought
4. That it was the accused who participated in the murder of the deceased.

I have already summarized the evidence of the prosecution witnesses as I handled Count 1 of Aggravated Robbery. So on the first ingredient of fact of death, I find and hold that there is no dispute at all. All the prosecution witnesses allude to the fact of death of Namakula Stamilah on the night of 3rd October, 2011. The Postmortem Report was tendered in evidence at the beginning of trial under S. 66 of the Trial on Indictment Act. The report was signed by Dr. M.M.W. Kalyemenya and the cause of the death was described as Haemorrhagic shock as a result of bleeding from multiple stab wounds.

The accused No.1, Mutebi Muhamed has not in his defence denied the death of the deceased. In the premises, I find and hold that the first ingredient of the offence has been proved beyond all reasonable doubt. ON the Second ingredient of murder, in the case of **Akol Patrick & Others Vs. Uganda [2006] HCB Vol.(6)**. It was held that in homicide cases, death is always presumed unlawfully caused unless it was accidentally caused in circumstances which make it excusable.

In the present case, the way the deceased was assaulted and the weapon used, it is clear that her death was unlawfully caused. The Second ingredient of the offence had therefore been proved beyond reasonable doubt.

The next ingredient is malice aforethought. The same case of **Akol Patrick & Others Vs. Uganda (Supra)**, it was emphasized that in arriving at the conclusion as to whether malice aforethought has been established, the court must consider the weapon used, the manner in which it was used and the part of the body injured. It was further held that if the assault and the resulting grave injuries indicated that a great deal of Violence was used, then it can be inferred that there was intention to kill the deceased, hence malice aforethought.

In the present case, Postmortem Report referred to above revealed that there were multiple stab wounds on the right hand shoulder- 20 x 5 mm, then 35 x 20 mm, lateral mid arm 20x 15mm, and lateral proximal fore arm, 35 x 20mm.

The cause of death was as already noted haemorrhagic shock she bled from the multiple wounds. The prosecution witnesses, PW2 testified that there were wounds on the chest, shoulders and head. PW3, also confirmed that the body of the deceased was naked, had wounds on the head, the back and near the breast. He added that there were covered with the blood at the scene. And lastly was PW7, the scene of crime Officer who identified the body in a pool of blood, took photographs. His testimony was that the assailants used the window to access the house of the deceased. He also confirmed that there was a deadly weapon, the knife.

In the premises, considering that a deadly weapon, a knife was used and moreover repeatedly on vulnerable parts of the body such as the head, the chest and near the breast, I find and hold that there was malice aforethought. The third ingredient of the offence has therefore been proved by the prosecution beyond reasonable doubt.

I now turn to the last ingredient of identification of the accused persons.

A2 already admitted and so he was present and the one who killed the deceased thought administering of stab wounds on the different vulnerable parts of the body.

PW5's testimony was that A1, Mutebi Muhamed confessed to him that he took A2 to steal but instead A2 killed the deceased. Even PW8, the Investigating Officer testified that when A2 had been arrested from a hide out, that A2 revealed that they were with A1 when they robbed and killed the deceased. He added that it was A1 who gave A2 the lethal weapon, the knife. This Court therefore finds and holds that there is no way A1 can disassociate himself from the events that took place. A1's defence of Alibi has been found to be negative as he was not clear as to how long he was in Jinja. A1 also clearly told this Court that he had no grudge with his friend Nziiza Isaac, A2 or even his other brothers and half brothers who testified as prosecution witnesses. He conceded some of them not only educated him, but they brought him up.

Lastly is the Doctrine of common intention. This is defined under Section 20 of the Penal Code Act.

“When two or more people from a common intention to execute a mission and in the Course of execution of such mission like in the present case the initial mission to steal, and death occurs, then both of them are liable irrespective of who inflicted the fatal blow”.

And there was no way A2 would have struggled and fought with the deceased in the bed- room without the knowledge of the person in the sitting-room, A1 Mutebi Muhamed. Those are stories to be told by A1

to Nursery kids and not to this Court. In any case, PW1 in re-examination conceded that A1 must have heard the struggle as he was witnesses testified that A1 is the one who gave A2 the dangerous knife that was used in the murder of the deceased.

That was a clear manifestation of common intention and confirmation that both A1 and A2 acted together and /or in concert, not only in the execution or robbery, but even in the cruel- some murder of Namakula Stamilah. I therefore find and hold that the fourth ingredient of the offence has been proved against A1 beyond reasonable doubt.

Having found and held that the prosecution has proved all the ingredients of the offence beyond reasonable doubt, and as advised by the gentlemen Assessors, I do hereby convict A1 of Murder contrary to sections 188 & 189 of the Penal Code Act.

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014

17/01/2014

2 Accused Present

Basutte for state

Basaza for Accused

Assessors present

Betty Lunkuse- Court Clerk

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014

Court:

Judgment read out in open Court.

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014

M/S. Basutte Cate;

We do not have previous Criminal records but the offence is rampant and grave. The offence was meticulously mediated and planned. A life was lost in the process. The two convicts took the law in their hands. The right to life is inherent. It should not be taken away. The deceased left 4 children behind. Convict A1, Mutebi Muhamed breached the trust of his brothers who brought him up and educated him. He is not remorseful. He is dangerous to society. I pray for a deterrent sentence, preferably the maximum.

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014

M/S. Gloria Basaza;

A2 never wasted Court's time and resources. In both cases, they are first offenders. They have been on remand for 2 years. They are both young men. I pray for a reformatory sentence.

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014

SENTENCE AND REASONS:

Without writing it again, I wholly adopt the submission by M/S. Basutte Cate for the state. It was indeed sad that A1, Mutebi Muhamed, who was brought up in that family turned against the very woman who cooked for him as from childhood. The whole plan was hatched by Mutebi Muhamed which indeed portrays him as a dangerous person. These are the type of people who can blow themselves to death like

the Osama bi laden of this world and his cohorts. They deserve to be kept out of Society for long, so that even if are young as their Advocate, M/S. Gloria Basaza has stated, they will come out of prison relatively old and reformed.

A2, Nziiza Isaac, although pleaded guilty is not excused especially where life was lost. If it had been robbery alone, A2 could have been treated leniently. But to the extent that murder was committed, life lost, this Court will be firm and pass such sentence as to deter other would be Criminals. In the premises, I sentence you as follows:

COURT 1: ROBBERY

A1, instead of 18 years, I reduce it by years of remand and so he will serve 16 years imprisonment.

A2, because he readily pleaded guilty, instead of 12 years, I reduce it by 2 years and sentence him to 10 years imprisonment.

COURT I1: MURDER;

Instead of 32 years imprisonment, I reduce it by 2 years and A1 will serve 30 years imprisonment. As for A2, although he was the actual murderer, but because of pleading guilty, instead of 27 years, I do hereby sentence him to 25 years imprisonment. The sentence will run concurrently.

Delivered on the 17th day of January, 2014.

Signed:
WILSON MASALU MUSENE
JUDGE
17/01/2014