

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CR-SC- 24-2012

**UGANDA.....PROSECUTOR
VERSUS**

A.1 NAMUKASA KAMUYATI

A.2 MUTADUBA ROGERS.....ACCUSED

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Both accused persons are indicted with the murder of **Balam** on the 2nd of June 2011.

Both accused denied the charge. The prosecution has the burden to prove the case beyond all reasonable doubt.

The ingredients to be proved are that;

1. Death occurred.
2. Death was unlawfully caused.
3. Killer had malice aforethought.
4. Accused participated.

Both the prosecution and defence agreed that ingredients (1-3) were proved as herebelow.

1. Whether death occurred

PW.1, PW.2, PW.3, and PE.1 (post-mortem) confirmed that the deceased (Balam) died.

2. Whether the death was unlawful.

The law of Uganda, Article 22 of the Constitution provides for lawful death. Every homicide is unlawful except accidental, or authorised by law, or killed by virtue of a legal excuse. PW.1, PW.2, PW.3 to the effect that deceased was beaten by a stone (blunt object) which had to his death. According to the post-mortem, the death was unlawful. The ingredient is also proved.

3. Whether there was malice aforethought.

The evidence through PW.1, PW.2, PW.3, PE.1 shows that the mode of death and circumstances of the death, point to a motive to kill. Malice aforethought was therefore proved.

4. Whether the accused persons participated in the murder

The evidence by the prosecution to prove this ingredient according to submissions by Resident State Attorney is found in the testimony of PW.1 who said he reached the scene and found A.2 hitting the deceased with a hard core stone which led to his death. He referred to evidence by PW.2 that the deceased used to live in the home of **A.1 Kamuyati**. It was further revealed by PW.2 that A.1 was arrested while under hiding at **Wanyama**'s home. A.2 was meanwhile on the run.

PW.3 testified that during his investigations, he got information that A.1 made an alarm claiming that deceased was a thief, and A.2 and others responded and beat the deceased to death. PW.3 further said that at the scene there was a trial which showed that the body was brought and dumped there. He claims to have followed

the trial and it led him to the home of **Kamuyati**. In the home, **Kamuyati**'s home was deserted, she had run away. The homes of the neighbours were also deserted and padlocks were on the house. Later the witness broke the padlocks and made arrests of **Annet** (wife of **Mutaduba**) and **Namuge** who revealed that the problem causer was hiding in the chairman's house. He was led there and indeed found **Kamuyati** hiding under the bed and she was arrested. He said that 'the trail' was footsteps and sign of pulling and it went up to the house of **Kamuyati**.

The defence through both accused denied the charge; putting up the defence of alibi. Counsel for defence stated in submission that participation of both accused was not proved. He argued that evidence by PW.1 that he identified A.2; hitting the deceased, contradicts.

PW.3 Serulo's testimony that deceased was pulled from **Kamuyati**'s home to the scene. He further pointed out the contradiction in PW.1's statement that the police took the body to chairman's home and **PW.2 Etianga**'s testimony that the body was never taken to chairman's home. He faulted PW.3's failure to photograph **Kamuyati** in the chairman's house, and stated that it was a missing link which causes doubt as to whether she was actually found at chairman's place or when going to fetch water as she claimed in her defence. He explained that evidence by PW.3 that all accused were found under hiding was not fatal to them since all people had gone under hiding.

The assessors and myself warned ourselves on the dangers of convicting on such evidence, which is wholly circumstantial.

It is the duty of this court to examine the evidence as a whole and weigh the circumstances in order to establish possible corroboration, explanations, lacunas and chains of causation arising therefrom.

The contradictions in the evidence pointed out by counsel for accused, can be explained away by the evidence on record as follows.

PW.1's evidence that he personally saw deceased being chased, he ran towards Nyanza/Wandawa cell, where there is a tank and trench of water, when he fell down. A.2 was ahead and other people following, A.2 got a stone and hit the deceased.

PW.2, was informed immediately as police officer to book at the scene. His team of detectives got information that deceased was living at **Kamuyati (A.2)**'s place. PW.3 said at the scene they found a trail of footsteps and sign of pulling which went up to the house of **Kamuyati (A.2)**. This is in conformity with PW.2 and PW.1's testimonies connecting the deceased to **Kamuyati**. What was pointed out as contradictions in evidence of PW.1, PW.2 and PW.3 by counsel is in my view evidence of corroboration.

It is not impossible to conclude that deceased was chased (pursued) from **Kamuyati**'s home (explained by the trail). Tried to run but fall down and was finished from the scene as described by PW.3.

The fact that immediately the death occurred the accused persons and their neighbours deserted their homes (see evidence of PW.3) and (PW.2), to the extent that A.1 was arrested under a bed in another person's home, and A.2, disappeared

for sometime is conduct which points at guilt. The mode of participation was through evidence of PW.1 and PW.2 that of a mob.

It is explainable that normally after mob justice is committed, people ran and go under hiding fearing police action. The investigating officers (PW.2 and PW.3) confirmed having received first hand information of the participation of A.1 and A.2 as confirmed by evidence of PW.1.

The defences offered by A.1 and A.2, carefully avoided saying anything about their alleged involvement in this crime. Both put up blanket denials, which I do not believe. The evidence of DW.1 and DW.2 could not be tested by cross-examination being unsworn. The evidence by the prosecution was tested by cross-examination and was at the end, found credible, truthful and consistent. I therefore believe the prosecution's case regarding the participation of both accused persons in this murder. The ingredient is therefore proved.

The assessors in their joint opinion agreed with the prosecution that accused persons did participate in the murder and should be found liable and be convicted as charged. I agree with the above opinion for reasons that I have pointed out above.

I do find that both accused persons are guilty of the murder of **Balam David**, and I do convict each of them thereof as charged.

Henry I. Kawesa

JUDGE

22.01.2014

22.01.2014

Accused present.

Resident State Attorney, **Chekwech** present.

Wabwire for **Mutembuli** on brief.

Resident State Attorney: Matter for judgment.

Court: Judgment read out in open court in presence of parties above.

Henry I. Kawesa

JUDGE

22.01.2014

Resident State Attorney:

Both accused are first offenders. The offence attracts maximum of death. Each accused has stayed on remand for 2 ½ years. Considering the circumstances, it was a brutal murder by a mob. The participation of both was paramount since are now prominent claiming the life of many innocent Ugandans. I pray that a maximum sentence be meted to deter others.

In circumstances, an innocent life was lost. Let them be used as a lesson to others I so pray.

Henry I. Kawesa

JUDGE

22.01.2014

Counsel:

I have not interacted with them let accused say it themselves.

A.1: I ask for forgiveness, I don't know what happened to me, let me be set free.

A.2: I pray for leniency that sentence be like to set me free.

Sentence

Both accused have been convicted of murder. The conviction is for a capital offence whose maximum penalty is death. Accused are first offenders. Resident State Attorney prays for maximum. Accused in mitigation prayed for mercy. I will in view of those mitigations and period spent on remand move the penalty from death to custodial. The offence was gruesome. Deterrence of the effect sought for by Resident State Attorney. But rehabilitation is the second effect court is looking at. A sentence of 15 years would suffice, if you remove remand period, each accused is sentenced to a custodial period of 12 years. I so order.

Henry I. Kawesa

JUDGE

22.01.2014