

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
CRIMINAL SESSION CASE NO. 452 OF 2010

UGANDA :::::::::::::::::::::::::::::::::::::::PROSECUTOR

VERSUS

NAKALYANGO GRACE & BEROCAN R.:::::::::::::::::::::::::::::ESPONDENT

BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE

JUDGMENT

On the night of 10th June, 2009, Sekibule Henry was hacked to death by three strange men at his home in Buyinja Zone, Nangabo Sub-county in Wakiso District. The brief facts were that upon the attack the deceased stormed out of the house while making an alarm but nobody came to his rescue. As the deceased struggled to escape, he was pursued by the unidentified men who kept cutting him with a panga till he collapsed near the gate of Dr. Besigye where A2 used to guard. A1, Nakalyango Grace was by then living with the deceased as husband and wife, and the said Nakalyango Grace was a friend of A2, Berocan Robert who worked as a watchman to Dr. Besigye's farm which neighbours the home of the deceased.

Both Nakalyango Grace and Berocan Robert were suspected and upon arraignment in this Court, they pleaded not guilty. By that plea, they put in issue all the essential ingredients of the offence of murder. It is trite law that the Prosecution must prove beyond reasonable doubt all the essential ingredients of the offence charged before a meaningful conviction can be secured. Accused persons like in the present case bear no burden of proving their innocence as they are presumed innocent until proved guilty or until they have pleaded guilty. The case of **Oketcho Richard Vs Uganda Supreme Court Criminal Appeal No. 26 of 1995** is in point.

Furthermore, it is also trite law that an Accused person or persons should only be convicted on the strength of the prosecution case and not on the weakness of their defence. See **Sekitoleko Vs Uganda [1967] E.A. 531.**

The essential elements requiring proof in the offence of Murder are:-

1. That the person alleged to be murdered is dead;
2. That he died as a result of unlawful act or omission;
3. That whoever killed him did so with malice aforethought.
4. That the Accused persons are the ones who caused the death of the deceased.

In order to discharge the burden of proof as cast on it by law, the Prosecution called the evidence of nine (9) witnesses. These were PW1, No. 35654, Detective Constable Okiriza Godfrey who was then attached to Kasangati Police Station, PW2, Joseph Kasozi, the Defence Secretary LC1, Buyinja Zone, Nangabo Sub-County, PW3, **No. 32891 Detective Seargeant Mwaya Ronald Boss** who was then attached to Kasangati Police Station in the Department of Criminal Investigations, and **PW4, Olal Dale Johnson**, a Detective Superintendent of Police of Criminal investigation Department.

Other Prosecution witnesses were PW5, **No. 25125 D/Sgt. Mitango Twaha and PW6, D/Superintendent of Police Mpungu George**, attached to Criminal Investigations, PW7 was **No. 16708 Sgt. Murashi James** attached to General duties at Kasangati Police Station, PW8 was **Assistant Inspector of Police were Iman**, attached to Kireka Special Investigation Unit and PW9, **Maurine Asiimwe**, a client relations Officer of MTN (U) LTD.

The Prosecution also relied on the Post-mortem report, Police Form 48B in respect of the deceased, made by Dr. Moses Byaruhanga of the City Mortuary. The same was admitted in evidence under Section 66 of the Trial on Indictment Act.

The Accused persons on the other hand gave sworn testimonies in their defence and called no witnesses. A1, Nakalyango Grace denied the charge and alleged that she was an aggrieved person and victim of the attack as she was together with her deceased husband at the time, while A2, Berocani Robert raised the defence of total denial and alibi.

Ms. Samali Wakooli, a Senior Principal Resident State Attorney, Nakawa represented the State, while Mr. Okwalinga Moses represented both accused persons.

I shall now proceed to deal with or consider the ingredients of the offence one by one. As far as the first element of the offence is concerned, there is no doubt that the deceased, Sekibule Henry is dead. All the Prosecution witnesses alluded to the fact of death of the deceased. In particular, PW1, found the deceased dead and he was identified by A1, Nakalyango Grace as her husband. PW2 Corroborated the evidence of PW1. The Post-mortem report by Dr. Byaruhanga Moses was tendered in Court at the beginning of the trial under S.66 of the Trial on Indictment Act.

The Accused persons also in their defence confirmed the death of the deceased. There was therefore overwhelming evidence that the deceased died on 10/06/2009. I am therefore satisfied that the Prosecution has proved the first ingredient of the offence beyond all reasonable doubt.

As regards the second ingredient of the offence as to whether the death of the deceased was unlawful, the law as correctly submitted by M/S Samali Wakooli for State is that all homicides are presumed unlawful unless excused by law. The case of **R. Vs Gusambizi S/O Wesonga [1948] 15 EACA 65** is in point.

Death is only excusable if caused by accident, in defence of property or person. See **Uganda Vs Okello [1992 – 93] HCB 68. Article 22 (1)** of the Constitution of Uganda also spells out circumstances under which death is excusable. In this particular case, A1, Nakalyango Grace's testimony was that they were attacked in their home with the deceased and deceased was cut by the assailants. The evidence of PW1 and PW8 is relevant and the recovered panga was blood stained. The nature of the injuries as seen from the Photographs of the deceased tendered in Court also show that the death was unlawful. Mr. Okwalinga for the Accused in his submissions also conceded that the death was unlawfully caused. I therefore find and hold that the Prosecution has proved the 2nd ingredient of the offence beyond all reasonable doubt.

As far as the third ingredient of malice aforethought is concerned, it is the mental element of the offence of murder. As defined under S.191 of the Penal Code Act. Being a mental element, it is difficult to prove by direct evidence. However, the law is now settled that malice aforethought can be inferred from the surrounding circumstances of the offence as stated in the case of **R Vs Tubere S/O Ochen [1945] 12 EACA 63**. The circumstances are:-

- a) The nature of the weapon used (whether lethal or not)
- b) The part of the body targeted (whether vulnerable or not)
- c) The manner in which the weapon is used (whether repeatedly or not; and
- d) The conduct of the Accused before, during and after the attack (whether with impunity).

As far as the present case is concerned, and from the exhibits tendered at the trial, the weapons used were sharpened new pangas. I have no doubt whatsoever that pangas are lethal weapons. Mr. Okwalinga for Accused persons submitted that there was no evidence of malice aforethought as PW2 testified about misunderstandings between A1, Nakalyango and deceased and that such domestic misunderstandings exist and don't warrant a spouse to kill the other. He added that PW2 did not tell this Court that the quarrels were violent. Mr. Okwalinga further submitted that malice aforethought on the part of A2 was totally missing as A2, Berocani Robert was not linked to the deceased. With all due respect, it is the finding of this Court that Counsel for Defence was confusing the 3rd ingredient of the offence with the 4th ingredient of identification of accused persons as the ones who participated in the murder. We are yet to deal with that. However, and as far as malice aforethought is concerned, this Court is satisfied that whoever used the sharpened pangas while cutting the deceased had the intention of killing the deceased. A panga is a deadly weapon and no one can play with it on a body of another as the result will always be disastrous as happened in the present case. The other consideration is the part of the body which was targeted. The deceased (from the exhibited photographs), had multiple cut injuries on the head, the neck and hands.

According to the Post-mortem report, the external injuries were ten deep cut wounds on the upper back, four deep cut wounds at the back of the head, cut wounds on the right shoulder and a cut wound on the hand, the jaw, the left side of the neck, the left elbow, e.t.c. the cut wounds were not only on the vulnerable parts of the body such as the neck, hands and the head, but they were repeated imagine 14 different cut wounds. All that was a clear manifestation of the intention to kill the deceased, hence malice aforethought. The other consideration is the conduct of the Accused persons before, during and after the crime. According to the testimony of PW1, he found the body of the deceased lying in a pool of blood. PW1 added that A1, Nakalyango Grace was sober and not bothered at all and gave different stories about who opened the door when the attack took place.

Even the testimony of PW5, Detective Sergeant Mitango Twaha the scene of crime officer is pertinent. He took photographs which were exhibited as P5. The pictures indeed show the savage manner of the attack, which was a clear manifestation of malice aforethought. Even the evidence of PW6, Mpungu George who took the charge and caution statement which was admitted in evidence after the Trial within Trial. The preparations by A1 were all indicators of malice aforethought. And during the misunderstandings between A1 and deceased after the deceased married a second wife, PW2, Joseph Kasozi, the defence Secretary heard a warning by A1 to the deceased. PW2 stated; **“I told Sekibule to find a way of controlling his wives otherwise they would bring him problems. I advised the deceased to take one to the village. A1 warned the deceased that if he did not leave the Co-wife, they would all loose him...”**

Motive in Criminal matters is relevant in view of the Provisions of S.8 (3) of the Penal Code Act. All in all, this Court is satisfied that from the circumstances under which the deceased was killed, there were clear inferences of malice aforethought on the part of whoever killed the deceased. I accordingly find and hold that the Prosecution has proved the third ingredient of the offence beyond reasonable doubt.

I now turn to the last ingredient of identification of Accused persons as the ones who caused the death of the deceased. PW1’s testimony was that he received a complaint from one Kamayanja Caroline, escorted by A2, Berocan Robert that the deceased was near the gate of Dr. Kiiza Besigye in Nangabo Sub-county. He added that when a patrol vehicle came, A1, Nakalyango Grace also arrived and identified the body as the one of her husband Sekibule Henry. PW1’s testimony was that Nakalyango appeared sober as if nothing had happened, despite the cries of other people. PW1 further revealed that A1 told him that when three armed attackers came, they knocked and she was the one who opened for them as the deceased husband was in the bedroom: PW1 added that Nakalyango told him that the attackers, armed with pangas went straight to the bedroom where the husband was as she ran away with the children and never raised any alarm. PW1 added that he immediately arrested Nakalyango as he was shocked that armed people attack them, she opened for them, leaving the assailants cutting her husband as she ran away. PW1 also visited the house in Nakalyango’s presence and it was full of blood sprinkled on the bed sheets and clothes. PW1 concluded that Nakalyango told him that nothing was stolen from the house. Before that, PW1 added that after D/C Were had arrested A2, Berocan Robert, he went to A2’s

home for a search. And that from Berocan's room, they recovered exhibits, MTN Sim Card which had made one call to A1, Nakalyango Grace. They also recovered a pair of canvas shoes with a sole from one of them removed and had the same footmarks found at the body where the deceased was lying and even at the home of the deceased. And yet PW1 added that when A2, Berocan reported to Police, he was in sandals, which meant he had removed the shoes.

PW2, was the defence Secretary of the area who had entertained complaints and handled cases of misunderstandings between A1 and deceased husband. PW2's testimony was that the misunderstandings arose when the deceased married a second wife and that Nakalyango warned the deceased that if he did not leave the second wife, they, both A1 and second wife would lose him. PW2 added that after one week, he received a telephone call from Babirye that Sekibule had been taken out of his house by unknown assailants who consequently killed him. PW2 added that it was A1, Nakalyango who had gone to Babirye's house to inform her. And that Nakalyango came after the body of the deceased had been put on a patrol car of Police. PW2 also recovered three sharp pangas, blood stained which he handed over to Police. PW2 concluded that he too suspected Nakalyango and he told Police to arrest her.

During cross-examination by Defence Counsel, PW2 testified that he concluded A1, Nakalyango was responsible because of what she had said earlier and that nothing was stolen from the house. PW2 also wondered how the deceased could have been killed when they were together with Nakalyango and nothing could happen to her.

PW3's testimony was that when he got a print out of Nakalyango's phone (0782729532) and analysed it, he discovered she had received telephone calls on 10/06/2009 between 6:00 p.m. to 1:00 a.m. from telephone number 07836887712, which had two phones, Nokia 6030 and ZTEA35. PW3's testimony was that after getting the Court Order, he tracked the phones which led him to one Fatuma, another worker of Dr. Kiiza Besigye from whom A2, Berocan had borrowed the phone and interchanged the sim card. PW3 confirmed that Fatuma informed him that she had given her phone to only one person, A2, Berocan on 11/06/2009. A1 added that when they checked the messages, they showed that A2 had received airtime from 0783688712 and the line was inserted in Fatuma's phone. PW3's further testimony was with regard to printout of the phones which showed A1, Nakalyango's number calling 0783688712 ON 10/06/2009 from 6:50 p.m. – 12:00 a.m, and she was at Kasangati. The fourth printout,

according to PW3 showed the current line of Nokia 630, the number of A2, Berocan since 10/06/2009 – 12/06/2009.

And during cross-examination by defence Counsel, PW3 confirmed that Nokia 630 belonged to A2 Berocan and it is the same phone he was calling A1, Nakalyango Grace. He further added that over 7 calls were made between A1 and A2, and that all along, it was Nakalyango calling Berocan. And that was on 09/06/2009 before the incident.

PW3 concluded that if the death had not occurred, then the frequent calls would have indicated or meant the two had a love affair, and that the calls between the two continued even after the murder. PW3 also added during cross-examination that at Kiira Road Police Station, A1 confessed having participated in the murder with A2.

PW4's testimony was more or less the same like that of PW3 on the telephone communication between A1 and A2 before and immediately after the death of the deceased. PW4 also participated in the search of A2's room where the sim card used by A2 to communicate to A1 was recovered and the pair of white shoes, whose marks marched with those at the scene of crime and led to the house of the deceased.

PW5 was the scene of crime Officer who took photographs of the deceased showing various cuts on the head, the neck, the back and other vulnerable parts of the body. The 8 photographs were exhibited in Court.

PW6, D/Superintendent of Police recorded the confession statement of Nakalyango Grace. When Nakalyango Grace re-traced the statement, a trial within trial was held. That was in conformity with the Supreme Court decision in **Supreme Court Criminal Appeal No. 33 of 2001, Ssewankambo Francis & 2 Others Vs Uganda.**

This Court found that the confession statement was voluntarily made by Nakalyango Grace before D/Superintendent of Police Mpungu George, who was above the rank of Assistant Inspector as required under the evidence Act. The statement was recorded in Luganda, the language understood by the Accused and translated in English. This Court rejected those submissions of Counsel for Accused that A1 was induced to sign a recorded statement.

This was particularly in view of the details in the charge and caution statement about A1 and her husband attending to Traditional Healers, the attack on A1 by demons and other bedroom matters which were within her personal knowledge. How on earth could the Police Officer have known such details so as to record and induce Nakalyango to just sign?

The Court was satisfied that the law and Procedure were properly followed by PW6 and so the confession statement was admitted in evidence. The same was found to have been made by the Accused A1 freely and was therefore relevant as provided under **S.26 of the evidence Act**. The rules and procedure as laid down in the Supreme Court case of **Festo Asenwa and Another Vs Uganda, SCCA No.1 of 1998** were indeed followed.

A1 gave a detailed narrative to PW6 (PW1 in the trial within trial) how she had marital problems with the deceased for 2 years since 2007, including children continuously falling sick and the deceased not caring at all. A1 told PW6 that she coerced the deceased to go to traditional healers who told both A1 and deceased that the second wife of the deceased wanted both A1, Nakalyango and her children dead. She added that the deceased, upon return home threatened to chase her and kill her children so that he could produce others with the second wife. A1 added that she also used to get attacks from demons and that in the end she consulted Robert Berocan, A2 who was her friend on the way forward. A1 revealed that A2 advised her to kill the deceased before the deceased killed her, and that A2 would get her the people to do the job. PW6 narrated that A1 told her that Robert Berocan A2 told her that they would come at night and she opens the door for them to execute the mission. A1 revealed in the confession statement that indeed on the night of 10/06/2009, she developed stomach ache and as she opened the door to go out with one of her daughters, armed people entered the house and demanded for money. A1 gave them Shs. 370,000/= and ran away. A1 revealed to PW6 that she then heard cries from her husband as he was being cut by those armed men and then later heard that the deceased's body had been found lying at Dr. Kiiza Besigye's farm. This Court after careful consideration and as already outlined rejected the defence by A1 that she was induced in making the statement so as to be set free.

PW7, a store man and Police Officer of Kasangati Police Station received a phone, a pair of sports shoes, two pangas and a blood stained mosquito net. He identified the two pangas which were exhibited in Court and marked P.8.

PW8, Were Iman was the investigating Officer. He gave a very detailed narrative as to how they discovered that the attackers had entered the house after the wife of the deceased had opened for them and the observation of PW8 and his team was that deceased was cut from the bed and finished off outside. PW8 also testified about the shoe impression in blood stains, which very shoe mark impression was at the scene where the attackers finished the deceased. PW8 also testified about the investigations with MTN Department about the phone recovered, which led to Fatuma's discovery and how Fatuma's handset of 0774671076 had been used by A2, Berocan which made them arrest A2. PW8 also talked about the sole of the shoes impression which had been cut by A2 to disguise or conceal the fact that he had used it on the night of murder of deceased.

I have had to summarise the evidence of the Prosecution witnesses in detail to show the link with both A1 and A2 and how eventually both participated in the murder of the deceased. This is a very clear case where the evidence pinning the Accused persons is not only the confession statement of A1, Nakalyango, but also corroborated by circumstantial evidence. **In the case of Kooky Sharma and Kumar Vs Uganda; Supreme Court Criminal Appeal No. 44 of 2000,** the Supreme Court relied on the case of **Simon Musoke V.R. [1958] E.A. 715.** They held in a **case depending exclusively on circumstantial evidence, a Court must, before deciding on a conviction find that the incalpatory facts are incompatible with the innocence of the Accused, and incapable of explanation upon any other hypothesis other than that of guilt.**

In the present case, and as correctly submitted by Ms. Samali Wakooli for the State, the charge and caution statement implicates both A1 and A2 and the role they played in the murder of the deceased. Prior misunderstandings were clearly brought out. The fact that A1 was sharing the same bed with the deceased and she escaped un hurt meant that she knew the attackers, otherwise what explanation can one give for the attackers to have killed one person and left the other, A1. Nakalyango Grace is further implicated by the testimony of PW1 that she looked or appeared sober when she subsequently showed up, as if nothing had happened when the other people were crying and yelling, mourning the deceased. A1, deceased's wife looked unbothered according to PW1, and in my view that was a confirmation that she had indeed planned for the murder of the husband with A2. And as Counsel for the State submitted, A1 did nothing to

protect the husband. **She did not even raise an alarm but just disappeared with the children** leaving the husband being cut to death by ruthless hired assailants.

The other piece of circumstantial evidence was the MTN Card and Phone recovered from the home of A2, Berocan, which revealed the Telephone conversations between both Accused persons. A1 gave her own line to A2 and made only one call on her line, and upon arrest, PW8 told this Court that A1 had deleted both the received and dialled calls, as a play to cover up the conversation between her and A2. Unknown to her, the Printouts from MTN revealed it all, how the calls started from 6:00 p.m. on the fateful night up to midnight. In any case, neither A1 nor A2 in their defences denied the telephone conversations between themselves. The question is what they were discussing all along and so intensively if not how to execute the murder of the deceased. All that is circumstantial evidence which points to the two accused persons as the culprits in this case. Indeed the calls between A1 and A2 were to coordinate the pre-meditated and planned murder of the deceased.

The other implicating evidence as submitted by Counsel for the State is that A2 remained with the line of A1 till after arrest. The question is since both A1 and A2 were neighbours, why did A2 not return the same till it was recovered from his home after arrest?

This is not to forget the testimonies of PW3, PW4 and PW8 that they found a mark of the shoe print at the home of the deceased, which shoe was recovered from the home of A2, and which shoe prints were also found at the second scene where the deceased's body was found lying in a pool of blood. That was a strong piece of circumstantial evidence linking A2 with the crime or pinning him at the scene of crime as one of the three attackers. This Court therefore rejects the defence of alibi put up by A2 and the submission by Mr. Okwalinga for accused that the shoe prints were found at the scene of crime where the body was lying when A2 was responding to the alarm. The question in the mind of this Court is what about the same shoe prints impressions at the house of the deceased. And the bigger question is why did A2 remove the sole of the shoe bearing the marks if not to conceal the fact that he had been one of the attackers who hacked the deceased to death.

And even PW1 in his testimony also stated that by the time A2 reported to Kasangati Police Station, he was wearing sandals. All those add up to strong circumstantial evidence against A2.

The other piece of circumstantial evidence is the exchange of airtime between A1 and A2, ('me to you') at the time of the death of the deceased. This Court wonders how A1 and A2 could go to that extent of exchanging not only phones but even airtime of **"me to you"** if they were only mere neighbours, without strings attached.

The conclusion is that it was a manifestation of the coordination or plans to kill the deceased or they were lovers or even both as the circumstances indicate. A1 was called 4 times by A2 and A1 called A2 8 times that very night alone. That intensity of telephone conversations was not or could not be said to be among mere neighbours as Counsel for the Defence submitted.

So notwithstanding the intensity of the conversations between A1 and A2 at that crucial time, and the retention of the phone by A2 up to 12/06/2009 after the murder, the other question is why did A2, Berocan insert his line in Fatuma's phone which he then used to communicate with A1. The act of A2 borrowing Fatuma's Telephone set and inserting a different sim card to call A1 were not actions of an innocent man and neighbour. All that were clear manifestations of meticulously planned activities not only to kill the deceased but to conceal whatever traces that would lead to the discovery of the connection which unfortunately never worked.

And whereas Counsel for the defence's submissions were that communication between A1 and A2 did not mean communication to convict murder, this Court found that the defence of both A1 and A2 did not bring out why they had such intensive telephone conversations since they both denied being lovers. Why that closeness on the fateful dates of 9/06/2009 before the murder and on 10/06/2009, the date of the murder?

PW9, Maurine Asimwe, a client relations Officer of MTN (U) Ltd clearly narrated to this Court the printouts of the telephone conversations and all the five printouts were tendered in Court. The conversations and whatever the printouts brought out were not denied by the defence.

Having found and held that the confession statement was properly administered by a qualified Police Officer, then I reject the submissions by Counsel for Accused about accomplice evidence. This is because under the evidence Act, accomplice evidence is admissible if it implicates both the co-accused and the maker. And that was the position in the present case. Nakalyango did not only implicate A2, Berocan, but she implicated herself as well. This is not to forget the

telephone conversations between A1 and A2, the shoe print impressions and the conduct of the accused persons before and after the commission of the offence.

As already noted, this Court wondered how on earth Nakalyango could not only escape the attack if she was not involved, but raised no alarm and from the testimony of PW1, appeared as sober as a catholic nun when all neighbours were mourning the death of her husband if at all she was not the mastermind behind the death. In my view, the circumstantial evidence on record leads to no other inference other than that of guilt of the two accused persons, Nakalyango Grace and Berocan Robert.

I therefore find and hold that the Prosecution has proved the fourth ingredient of the offence beyond reasonable doubt. Having found and held that the Prosecution has proved all the four ingredients of the offence beyond reasonable doubt, and as advised by the lady and gentleman Assessors, I do hereby find both Accused guilty and convict them of murder C/S 188 and 189 of the Penal Code Act.

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W. M. MASALU

JUDGE

10/06/2014

2 Accused present.

Wakooli Samali for State present.

Mr. Okwalinga Moses for both Accused is absent.

Aida Mayobo, Court Clerk present.

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W.M.MUSENE

JUDGE

Court: Case adjourned to 13/06/2014 at 11:00 a.m.

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W.M.MUSENE

JUDGE

13/06/2014

2 Accused present.

Wakooli Samali for State.

Mr. Okwalinga for Accused.

Assessors present.

Betty Lunkuse, Court Clerk present.

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W.M.MUSENE

JUDGE

Court: Judgment read out in open Court.

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W.M.MUSENE

JUDGE

M/S Samali Wakooli:

The Prosecution has no previous records. That notwithstanding, nobody has the right to take away life in such a savage and cruel manner. The circumstances were meticulously pre-meditated. A person sustaining 14 cut wounds with some of the body parts cut off. My submission is based on **Rule 20 of the sentencing guidelines**. A1 was a wife of the deceased and abused the trust. A2 was a security Officer on the village, who was to protect the lives of the people.

Attempts to conceal the evidence shows meticulous planning and would fall under the instances of rarest of the rare. I pray that both convicts be sentenced to life imprisonment or 80 years each.

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W.M.MUSENE

JUDGE

Mr. Okwalinga Moses in mitigation:

The purpose of sentence is to reform. The two convicts are within the age bracket of 30's. A1 is a single mother, who is supposed to look after four orphans. These are young children, no matter the circumstances. The second convict has 6 children and was the sole bread winner. Both convicts are first offenders and as such, we pray for leniency. We further pray that Court notes the first convict broke down and had belief in witchcraft and jealousy. This would drive any woman in a state of high emotion. So I pray for a lesser custodian sentence.

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W.M.MUSENE

JUDGE

Sentencing and reason:

Article 126 (1) of the Constitution provides that Judicial cover is derived from the people and shall be exercised by the Courts established under the Constitution in the name of the people and in conformity with the values, norms and aspirations of the people. The aspirations of the people of Uganda are a quest for a peaceful society, where law and Order lives are guaranteed and

protected. That is why the same Constitution, which is the Supreme Law of the land provides for sanctity of life.

No one is allowed to take away one's life unless authorized by Law. It is therefore the duty of the Courts to punish those who commit crimes, particularly serious ones like convicts in the present case.

Secondly, this Court would like to denounce the increase in cases of Domestic Violence, whereby marital problems like in the present case involving jealousy and rivalry by co-wives could have been solved amicably in Civil Courts as opposed to criminal intentions of killing the husband. The question is who is to look after the children of the deceased? Such lawlessness cannot therefore be encouraged and deterrent sentences have to be meted out to serve a lesson to members of the general public not to take the Law in their hands under the cover of darkness, thinking that they will not be found out.

The Prosecution has instead of the death penalty, and using the sentencing guidelines prayed for each convict to be sentenced to 80 years. The submissions of Counsel for the State are understood; particularly in the context of loss of life in a barbaric cruel, inhuman and crude manner, far much below civilization.

Mr. Okwalinga has prayed for a lighter sentence, preferably 10 years, given that both convicts are still within the youthful bracket. He also added the fact of young children of both convicts but as I have already ruled in the case of **Uganda Vs Bongomin Kennedy**, I would rather direct the Government through Ministry of Gender, Labour and Social Welfare to take care of such children other than giving lighter sentences. In the premises, and considering the circumstances of the offence, I do hereby decline 80 years as that would mean the convicts would continue serving their sentences in hell (after death) and not on earth. My powers are confined to this mother earth planned.

The Court will take into account the period of remand of 5 years. So instead of 35 years, A2, Berocan Robert is hereby sentenced to serve 30 years. As for A1, Nakalyango Grace, instead of 25 years, I reduce it by 5 years and sentence her to serve 20 years imprisonment.

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W.M.MUSENE

JUDGE