

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
CRIMINAL SESSION CASE NO. 33 OF 2012
UGANDA.....PROSECUTOR

V

1. MARANI ALI..... 2. MARANI ADAM....	}	ACCUSED
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BEFORE: THE HON. JUSTICE LAWRENCE GIDUDU

JUDGMENT

On the afternoon of 11th July 2011, extra ordinary events took place in Buyasere village, Bumooni sub-county, Manafwa district. By evening, Kisaka Mary was dead and her husband Kuremu Calisti was injured and nursing wounds in hospital. The two accused who are step sons of the deceased were charged with her murder c/s 188 and 189 PCA. They denied the charges hence this trial.

According to the prosecution witnesses, the events unfolded in dramatic style. That afternoon, Kuremu, husband to the deceased, asked his daughter in law Zainabu Namakanda (PW4) what one would do if a drinking straw got blocked. He advised that it should be broken. He then went to his home ¼ a kilometer away. At home, Kuremu declined to eat food. Shortly, his brother Wabutsamu arrived and demanded for food. Before he could be given, he said he wanted to dig out a pot that had been buried at the grave yard nearby. Shortly Marani Al (A1) arrived in company of one Simiyu with a hoe. A1 said he was going to dig out the pot with charms buried near one Charles' grave.

A1 one dug out a pot and Wabutsamu raised an alarm which attracted villagers. Wabutsamu and a mob started beating Kuremu accusing him of witch craft. The deceased tried to leave the home but met Marani Adam (A2) who together with one Simiyu set upon beating her as A2 stabbed her with a knife. They led her towards the police but she collapsed due to extreme beatings. She was rushed to hospital but died of her wounds on arrival.

Meantime, Kuremu had called the police which rescued him from further beatings. He had been taken to the police post at Munamba for safety. Later he was taken to hospital to treat his bleeding wounds. It is while there that he saw the deceased brought in. She was badly assaulted that she died before receiving treatment.

The two accused denied participating in the murder of their step mother. They each set up an alibi saying by the time the deceased was assaulted to death, they were at Munamba police post watching over their injured father who had been rescued by the police and detained. They only returned home after he had been taken to hospital by the police. It is then that they learnt that she had been assaulted and taken to hospital.

Their version was supported by their father Kuremu (DW1) and their sister Nandayi Betty (DW2).

In criminal cases, the burden of proof lies upon the prosecution throughout the trial. The prosecution is required to prove all the essential ingredients beyond reasonable doubt. **Sekitoleko v Uganda (1967) EA 531**

On an indictment for murder, the prosecution is required to prove the following elements of the offence.

- I. The death of a person.
- II. That death was caused unlawfully.
- III. That death was caused with malice aforethought.
- IV. That each of the accused participated.

It is not in dispute that Mary Kisaka is dead and buried at her parents' place. A postmortem report by Dr. Bumba reveals multiple injuries on the head, back, fingers and knees. The injuries comprised cuts, lacerations and fracture. The body was soaked and soiled in blood. The cause of death was increased internal

pressure due to skull fracture and over bleeding from the cuts and lacerations. Pictures of her body were exhibited and I must say were a horrific sight. Both the prosecution and defence witnesses agree she was buried. I believe them that the deceased is dead.

Was her death caused unlawfully? The law is that homicide is presumed to be by law unlawful unless it is authorised by law or caused by accident. **R v Gusambizi s/o Wesonga (1948) 15 EACA 65.**

The undisputed evidence on record is that the deceased was beaten to death by a mob on suspicion that she was a witch. It was an extra judicial killing. It was not just brutal but was unlawful because there was no due process.

Malice aforethought refers to the mental demeanor of the assailant to cause death. The act or omission must be proved to have intended to result in death. See **sec. 191 PCA, Cap 120.**

The intention to cause death can be inferred from the nature of weapons used, the vulnerable parts of the body targeted for injury or prior threats to cause death and the conduct of the accused before and after. See. **Uganda v Okello (1992-93) HCB 68.**

The assault on the deceased was so brutal and savage. The injuries comprised cuts and lacerations which caused her to bleed to death. Her body was soaked in blood. Her skull was fractured. The brain was immobilized. She was rushed to hospital but died on arrival. The beating was indiscriminate and persistent. The injuries were so grave and the body parts targeted were so delicate. It leads me to conclude that whoever caused these injuries intended to kill her. The intention was to cause death.

It is my finding that the prosecution has proved that Kisaka is dead, her death was caused unlawfully and with malice aforethought.

Did the accused participate in her murder? Each of them denied. The prosecution adduced the evidence of Nabifo Diana (PW3) a step sister to the accused and Zainabu Namaganda (PW4) a sister in law to the accused. The prosecution asked me to find that these two were eye witnesses who witnessed the crime happen during broad day light. It was submitted that they were at close range and knew the accused very well so they did not mistake their identity.

The prosecution also asked me to consider the conduct of the accused when they disappeared from the village. They were arrested much later. A1 was arrested almost four months after the death from Kampala while A2 was arrested trying to sell off his land.

The accused supported by their father denied being at the scene where the deceased was assaulted from. It was their case that after the mob had assaulted their father, they followed him as the police took him with the pot that had been unearthed from near the grave yard. They stayed at the police post until he was taken for treatment and only got news of the death of their step mother after reaching home.

Their father DW1 supported their version and said he saw the two accused outside the police post while he was under detention. When he was being taken to hospital on a motorcycle, he again saw them. Their sister Nandayi Betty, DW2, supported the defence case that she was with them at the police at the time the deceased was being assaulted. An LDU called Mwalye Michael, DW3 also supported the defence case that he was the one who escorted Mr. Kuremu to the police after he had been assaulted by the mob and that the two accused went with him and stayed outside the police post until their father was taken to hospital.

The law is that an accused person who sets up an alibi has no duty to prove it. It remains the duty of the prosecution to adduce evidence to place the accused at the scene of crime. Even where the court finds the alibi false, it still has to establish if the evidence proves the case against the accused beyond reasonable doubt. See **Sekitoleko's case supra**.

The state asked court to dismiss the alibi as false on grounds that the accused had been place at the scene by eye witnesses and that the witnesses who came to support the alibi are discredited. It was submitted that the defence witnesses are fugitives who have since run away from the village on account their complicity in the murder.

Indeed DW1 testified that he cannot go back there because he would be harmed by the people. He has since migrated with his family to Jinja.

While courts are usually confronted with cases of deaths that are caused at night, creating problems of identification of the assailants, this death was caused during broad day light between 3.00 pm and 5.00 pm. It was caused on a public road in full view of the public. The deceased was accused of being a witch. The events leading to her death occurred in a programmed way. First, her husband DW1 asks PW4 what a person would do to a blocked straw. He then advises such a straw should be broken. To break is to destroy. In the next few minutes, DW1 arrives at his home and declines to eat food by DW1. He is in pensive mood and in the next few minutes, his brother Wabutsamu arrives and says he is going to dig out a pot with fetishes in a grave yard near DW1's house. In another few minutes A1 arrives with one Simiyu(on the run) and armed with a hoe, he heads to the grave yard and digs out a pot covered with a black polythene. There upon DW1 is beaten and so is the deceased.

The question is how would mere dreaming take them to a particular spot to dig out a pot they themselves had not buried? These events were planned and DW1 had a clue going by his parable of a blocked straw.

What followed was uncontrollable. First DW1 is attacked by his brother. He is saved when he calls the police that acted fast to rescue him. The mob then went for the deceased who was not lucky to survive.

PW3 and PW4 testified that A1 and A2 were the ring leaders in assaulting the deceased. That while A1 was acting with some restraint, A2 was stabbing the deceased and along the way picked a stone which he threw at her causing her to collapse down. She never recovered.

It was the evidence of PW3 that the two accused alleged that the deceased had bewitched them not to marry and to be poor. Similarly, PW3 testified that DW1 used to have the same view. These two eye witnesses recognized the accused, their relative called Malita, and Simiyu son of Wabutsamu as the people who beat the deceased together with others in a mob.

According to PW4, when DW1 was being assaulted he alleged that the pot belongs to the deceased and it is upon this information that A1 and A2 went for the deceased.

It was the evidence of the accused that they were present only when their father was being assaulted and once the LDU arrived to take him away as he bled, they followed him to the police and do not know who assaulted the deceased.

If the accused's version is tested with the evidence of Tom Simiyu, PW5 and Mauka Bosco, PW6, it becomes weak. The two testified that the accused persons disappeared from the village that very day and did not even attend burial. PW5 discovered A2 who was in the company of escorts and alerted the police that

came and arrested him. He had come to sell off his land so that he may leave the area.

A1 was arrested four months later from Nsambya in Kampala at 4.am by PW6. He was staying with a friend and when PW6 confronted him, A1 just froze and was taken to the police.

The courts have held in a number of cases that the sudden disappearance of an accused from the village soon after the commission of a crime may provide corroboration to other evidence that the accused is guilty of the crime. This is because sudden disappearance is incompatible with innocent conduct of such a person. See **R. Kiwanuka v Uganda Cr App. 41 of 1995(SC)**

The two accused are step sons to the deceased. They did not attend her burial and though they could have reason to fear for the reasons advanced by their father that the relatives of the deceased were hostile to people from the family where she was married, there was no reason to run away from their homes and from the village. As soon as A2 appeared days later, he was arrested. Whilst the arrest of A1 took months of tracing and tracking until he was smoked out of a friends' house in Kampala, miles away from his home village. Besides, DW1 Confirms he has shifted his family from that village apparently for fear of revenge from the deceased's relatives.

The conduct of the accused of running away after the incident gives away their alibi. It renders it false. Similarly the evidence adduced to support the alibi by DW2 and DW3 can only be false.

The deceased was killed in what could be called a mob action. However, among this mob the prosecution witnesses identified the accused as lead participants. The accused also had a reason to desire to kill the accused on the belief that she

was a witch who had targeted them. They believed they could not marry or have money because of the deceased's witchcraft. It follows from the dramatic events of this case that the mob joined to beat the deceased after the two accused had already formed a common intention to kill her. They had a prior grudge against her believing she had bewitched them. They believed their suffering was a result of the deceased's sorcery. Their intention was to kill. By stabbing and hitting her with missiles of stones, the intention was to end her life which amounts to murder. They were not just torturing her but wanted her dead. The force and brutality used in persistently and savagely hitting and stabbing her leads me to conclude that the two had formed a common intention to terminate her life. The mob just joined a pre arranged plan to kill the deceased.

The gentlemen assessors advised me to find each of the two accused guilty for the reasons that they were identified during daytime by persons at the scene who knew them very well. That, the two were conspicuous and played a prominent role in the murder of the deceased.

The gentlemen assessors also observed that the accused were arrested while on the run which is a sign of guilt. They advised that the evidence of the defence regarding the alibi is false. They advised me to find the two guilty of the offence of murder.

I agree with the two gentlemen assessors that the two were conspicuous in the beating of the deceased and wish to add that they had formed a common intention to kill her. They had planned to attack her home by digging in the nearby grave yard and unearthing a pot they could have buried there as a pretext to kill the deceased.

After careful consideration of the evidence adduced by the prosecution and the

defence of alibi raised by the accused, I have come to a conclusion and in agreement with the gentlemen assessors that the prosecution has proved its case beyond reasonable doubt. I find each of the two accused guilty of murder and convict each of them accordingly.

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Lawrence Gidudu

JUDGE

19th September, 2014