

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KUMI**  
**CRIMINAL SESSION CASE. 65 OF 2012**

**UGANDA.....PROSECUTOR**

**VERSUS**

- 1. ILUKANGOLET JOHN WILLIAM**
- 2. OGWANG CHARLES**
- 3. OONYU MARK**
- 4. IKASAI JACKSON**
- 5. OMONGOT KUPULIANO ALIAS SUNDAY**
- 6. AMOROKAN JULIOUS 7**
- 7. SABATA PAUL**

**ACCUSED**

**6.1.2014:**

All seven accused present.

Alleluya for all accused persons.

Court Clerk Ecutu.

A1: I deny the charge.

A2: I deny the charge.

A3: I deny the charge.

A4: I deny the charge.

A5: I deny the charge.

A6: I deny the charge.

A7: I deny the charge.

Court: Plea of not guilty entered for all 7 accused persons.

State: I apply for a hearing date.

Court: Case fixed for hearing on 8.1.2014.

Assessors: Okwii Francis and Adong Betty.

All accused persons: No objection.

**Hon. Lady Justice H. Wolayo,  
JUDGE,  
6.1.2014.**

**8.1.2014:**

All seven accused present.

Alleluya for state.

Erabu for accused person.

Court Clerk Ecutu.

Assessors Okwii and Adong Betty.

Assessors sworn in.

State: Counsel and I have agreed on the following evidence. Post mortem report PF 48 B and PF 24 for all. Seven accused persons.

Court: PF 48 B admitted as P. exh. 1

PF 24 marked 2 to 8.

**PW.1 protestant sworn, Arionget Geoffrey**, 38 years old, cultivator resident of Kotio village, Aligo parish, Kachumbala Sub County, Kumi district states:-

I know all seven accused persons. Ilukangolet William A1, is my neighbour.

A2: Ogwang Charles is my neighbour.

A3: Oonyu Mark is my maternal son.

A4: Iksai Jackson is my maternal uncle's son.

A5: Omongot Kupuliano is my maternal uncle's son.

A6: Amorokin Julius, is my neighbour.

A7: Sabata Paul, is my villages mate.

I knew late Okaali Sam. He was my paternal uncle, eldest brother to my father.

On 18.4.2011 in the evening, at about 7.00 p.m. I was at home of Elongat Joseph my paternal uncle, father's youngest brother. While there, Ojulong Peter came and told me that a group of people had run to my paternal uncle's home (Okaali Sam) and were alleging that he had killed Sangura by poison.

I called my brother Ayenga Stephen on phone and told him about the impending attack. Ayenga then came to where I was and we both rushed to Okaali's home and we did not find anyone at home but the door was open. We took the direction of the swamp and Ayenga ran ahead of me. This was because when we reached the deceased, home, I heard him making an alarm.

As Ayenga ran ahead of me, I got dislocation and fell down, when the pain eased, I approached the area to save the old man. On arrival at the scene, I got Amorokin Julius assaulting the deceased with a stick. Sabata Paul held a rope. At that time Sabata and Amorokin were at the scene, Also Ayenga and Okubai were there.

Okoboi and Eyenga were protecting deceased from Sabata and Amorokin. I also joined them to protect the deceased. I and Ayenga, Okoboi and Okunge left the scene to call the defence secretary. We took along Okaali Sam. Sabata and Amorokin continued to struggle with us all the way. On the way, we met Ilukangolet A1, Oonyu A3, Jackson Kasai A4.

These three joined Sabata and Amorokin in assaulting the deceased as we tried to stop them; they beat him with sticks and fists. We reached the place of Okello, defence secretary; I called the defence secretary to open the door as people were trying to kill Okaali. He finally opened the door and came out with a knife.

Okello helped us to push the assailants away. As Okello went to open the door of his house, Iksai blocked him, Okello then succeeded to open front door. I pushed Iksai away but Iksai and his group resisted attempts by us to pull the deceased into the house. We finally succeeded to pull the deceased in the house and we locked ourselves with defence secretary. We called a boda boda rider Opio to take Ayenga and Opio I. Opio came and carried Ayenga and I and as we reached a bar near sub county, Headquarters, we met Okello defence Secretary. Earlier it was Okello and Okaali were locked inside the house while I and Ayenga remained outside.

When we met Okello, he told us he had escaped the house through the rear door and left his wife in the house. Okello was using a motor cycle. Together we rode to Kachumbala police post. We got to the police post at 9.00 p.m. While there Opunga rang and told us the assailants (same group) left behind broke into the house where deceased was hiding, dragged him. We informed O/C police post, Mr. Okware.

A police patrol vehicle arrived and we went with them Opinga directed us to the home of Sangula whom Okaali was alleged to have poisoned. We went to Sangula's home and found the body in the compound. Sangula's body was lying in the house.

There was nobody else in the vicinity. The two bodies were taken away by police. I gave information to police regarding culprits. I knew accused persons before. They were close to me. Also during the scuffle there was a lot of contact. I have no grudge with any of the accused persons. From the time we left the swamp at about 7.00 p.m. It took 2 hours till the time I reported to police.

XX by Erabu:-

- I made a statement to police.
- I signed it.
- It is true Okaali died in my absence.
- I was told Oluka strangled him.
- I can identify Oluka called Ilukangolet John William.

- He was commonly known as Oluka.
- Ikait Sam is not in the dock.
- Ikait was in the same group that assaulted my uncle.
- He ran away Okurut is no in the dock.
- When I left the deceased at defence Secretary's place, we left the defence and his wife there.
- At the time, deceased was still alive.
- Deceased died in my absence. And I was at police post.
- Re examination by state:
  - - I did not witness twisting of the neck.
  - Opunga called me and informed me.

Counsel: I pray I be allowed to tender police statement by pW.1

State: Not necessary.

Court: sustained.

**PW.1 Church of Uganda, sworn, Ayenga Stephen** 28 years old, cultivator, Kolio village, Mukongoro , Kachumbala sub county, Bukedea district states:-

I know all seven accused person. I know

A1 Ilukangolet, a village mate

A2: Ogwang a village mate.

A3. OOnyu Mark , a village mate.

A4: Ikasai a village mate.

A6: Amorokin, a village mate.

A7: Sabata Paul, a village mate.

Ilukangolet John William is commonly known as Oluka. I knew Okaali Sam. Deceased, he was my parental uncle. On 18.4.2011, in the evening, I was at trading centre at the home of Joseph at about 7.00 p.m. While there, Arionget Geoffrey rang me and told me that a group of people who ran towards Okaali's home, I ran to Okaali's home where I met Arionget. The door of Okaali's home was open and there was no one. We heard an alarm from the direction of the swamp. We ran there. On our way, Arionget fell down and I continued running. I got Amorokin Julius, Sabata Paul, Oonyu Mark beating the deceased.

I rescued the deceased and as we moved with deceased and his assailants, we met Arionget. We moved while quarreling and fighting. The assailants were quarreling that they want to kill the deceased because he had killed Sungula. When we met Arionget, we decided that Okaali should be taken to someone in authority.

On our way to the home of defence secretary, we met Oluka alias Ilukangolet, Ogwang, and Omongot. They stopped us, Ikasai was also there. Ikasai blocked the road saying he wanted to kill the old man. They had sticks, some had sticks and some kicked and used fists. We forced Ikasai out of the road and continued with deceased to the home of defence secretary. The home is about 1 ½ miles or

2 to the home of defence secretary. As we moved, the group was beating the deceased, kicking him and assaulting him with fists. The defence secretary came out of the house and fought the accused persons to rescue the deceased. After rescuing the deceased, he pushed Okaali inside the house and locked the door.

Okello, defence Secretary escaped from the house using another door and went to police. I and Arionget remained outside. Ogwang, Oluka, Ilukangolet, Omongot, began hitting the door using sticks and throwing stones until it opened. Oonyu, Amorokin, Sabata, also participated. When the door opened, Oluka ,Oonyu Omongot and Ogwang entered the house.

We thought the defense was in the house, I and Arionget decided to run to police. On our way to police we met the defence secretary. On our way, Arionget received a phone call, he was told the Oluka , had killed the old man and carried away the dead body. Oluka, Oonyu , Iksai, Ogwang ,Omongot ,Sabata were also named. There were other people who had gathered and were standing aside. We were fighting the assailants as we moved to the home of defence secretary. At defence secretary's home, we were there for about ½ an hour, then left for police post.

We came back with the DPC to the home of defence secretary and deceased was not there. The door had been removed. The body was found at the home of Sangula. Sangula's body was in the house. I have no grudge with any of the accused person. Some are my friends/in-laws. Ariong Geoffrey is my paternal cousin, our fathers are brothers.

XX by Erabu:-



- The incident took place on 18.4.2011.
- I made a statement at police.
- I can identify my signature.
- At the time, I recorded the statement, some were in police custody and some were at large.
- Ogwang , Oluka and alias Ilukangolet, were in police custody
- I made statement on 21.4.2011.
- I was present when the door was forced opened.
- Ogwang had stone.
- Omongot had a stick to hit the door.
- Oonyu had a stick and hit the door. Oluka had a stick, he hit the door. Iksai used small stones to throw at the door, Sabata and Omorokin were fighting us as we fought to secure the door. The defence secretary left us.
- We left for police with accused persons were trying to force the door open.
- The door was broken. In my absence, we left them trying to break the door that was broken in my absence.
- I saw the seven accused persons.
- There were other people standing by who did not participate in the attack.
- I was not present when deceased met his death.
- I left the accused persons trying to break the door.

Re- examination:

- At the time I left to call the police, I left the accused persons hitting the door with sticks and throwing stones at it.

- I referred to mob in police statement because there were other people standing aside.
- I identified the accused persons.

**PW.3, catholic sworn, Omong Nathan**, 19 years old, cultivator, Mukongoro, Koiir village, Kachumbala sub county, Bukedea district states:-

I know the 7 accused persons.

A1: Oluka alias Ilkuangolet , a neighbour.

A2: Ogwang, a neighbour.

A3: Oonyu, a neighbour.

A4: Iksai, a neighbour.

A5. Omongot , a neighbour.

Magino, I don't know if he has another name.

A neighbour A6.

A7: Sabata , a neighbour.

I know Okello Bernard Peter Chemeri. He is my father. He is the LC defence secretary. I live with him. I knew Okaali Sam. I was at home at the time he was brought.

On 18.4.2011, at about 8.00 p.m. he was brought home. I was at home with my mother Acan Stella and my father Okello Bernard Peter. I was outside the house. Ariong and Ayenga brought an old man Okaali to the door of the house. These three were the first to arrive, shortly after all the accused persons arrived. When the accused persons arrived, they caused commotion, wanting to fight. Iksai blocked the door saying the old man should not be taken into the house because he is a witch.

My father picked a knife threatened Iksai and he left the door at this point the old man was pulled into the house. When the old man was pulled into the house, the accused persons remained outside quarreling. I was standing outside watching the events. My father then left to call police. Then I saw Sunday Oonyu and Magino (A6) pick stick and begin hitting the door. I did not hear them say anything. The three broke the door opened and entered the house. I don't know whom among them entered the house.

I saw Sabata pulling the old man outside together with A6 (Magino) and Ogwang. The three people took the old man away, followed by others. These others include Oluka, Oonyu Sunday.

I did not follow them. I knew these people before. I stood about 2 meters away from where events were unfolding. As the old man was pulled inside the house, he group was quarreling while saying "let us break and get him out". I learnt of Okaali's death the next day. There were other people present a home that evening. I did not recognize them. I have no grudge with any of the accused

persons. The door was brought down. At the compound, I saw the wood used for breaking the door and a stone.

XX by Erabu:-

- A part from the accused persons, there were other neighbours who had come to see what was happening.
- I did not recognize all the people who came home that night.
- The time was 8.00 p.m.
- three people, Oluka, Oonyu and Sunday did not enter the house but remained outside fighting Ariong and Ayenga.
- I did not see the direction the old man was taken.
- When Okaali was taken, none of the people remained.
- Only members of the family remained.
- All people followed the direction Okaali was taken.
- I don't know what happened after Okaali was taken away.
- I recorded the statement on 21.4.2011.
- I cannot recall when Okaali was killed as I was still young.
- At the time I made a statement, the accused persons had been arrested.
- I did not see them in the cell but I was aware they were in custody.
- I was at home when accused persons were arrested.

Re examination: Nil.

**Okwonga Ronald Prison warder, Kumi takes interpreter's oath (to interpret in Acholi):-**

**PW.4 Catholic sworn, Acan Stella, 42 years cultivator, resident of Kotia**

Kachumbala Bukedea district states:-

Okello Bernard Peter defence Secretary is my husband. I know all seven accused persons.

A1: Ilukangolet alias Oluka, a neighbour.

A2: Ogwang Charles, a neighbour.

A3: Oonyu Mark, a neighbour.

A4: Iksai Jackson, a neighbour.

A5: Omongot Kupuliano alias Sunday, a neighbour.

A6: Amorokin Julius , a neighbour.

A7: Sabata Paul, a neighbour.

I knew Okaali Sam. I recall circumstances of his death.

On 18.4.2011 at about 8.00 p.m. I was mangleling millet (bread). I heard people shouting outside within a few minutes, I saw very many people in my compound. When I inquired, I was told Okaali Sam had been brought who had killed Sangula. My husband was in bed. When my husband heard the noise, he went outside. The mob said Okaali had killed Sangula. There were very many people. I identified three people. Ayenga, Opiya, Arionget. These people asked my husband to help us people wanted to kill their father. My husband (Okello) went inside to pick a knife but people refused to disperse. Okaali was seated in front of the door. My husband emerged with a knife.

Later he entered the house through the rear door opened the front door and pulled Okaali inside the house. After pulling Okaali inside, he instructed me to stay with the old man as he was going to call police. Then I heard people banging the door. They continued until the door was broken. When the door was broken I raised an alarm. The first person I saw entering was Oluka (A1). He started flashing a torch searching for Okaali. He went to the children's bedroom. When he found Okaali two other people Ogwang, and Kasai entered the house. The three started beating Okaali from inside the house when he became unconscious, the three carried him outside. There were very many people outside, it was night time. I only saw the three who entered the house.

I recorded a statement with police. I mentioned the three who entered the house. I have no grudge with Kasai, Ogwang and Oluka. The door was completely damaged. After some time, we came out of the house. In the morning, there were many foot prints but no blood. There were sticks.

When the three entered the house, Oluka held a stick. The others kicked and boxed the deceased. While I was inside the house, the two said the man is dead as they carried him out. When the deceased was unconscious, they said let this man also stay with Sangura.

XX by Erabu:

- I recorded a police statement at home.
- I don't understand English.
- The statement was not read back to me.
- I signed the statement.

- That night, I saw about 50 people in my compound. When Ogwang, Kasai Oruka carried deceased outside, all people left the compound.
- The three who entered the house killed the deceased.
- He died inside my house.
- Oluka, Ogwang and Iksai.

Re - exam: Nil.

State: I wish to tender the sketch plan to close the prosecution case.

Court: I have listened to the evidence and addressed myself to the law and I am of the opinion that a prima facie case has been made out. Accused persons are put on their defence.

Provision of section 73 of the TIA explained to the accused persons.

Erabu: All seven accused persons elect to give sworn evidence.

Court: For defence on 9.1.2014.

Hon. Lady Justice H. Wolayo,  
JUDGE,  
8.1.2014.

9.1.2014:

All seven accused persons present.

Erabu for accused.

Alleluya for state.

Court Clerk Ecutu.

State: Case for defense.

Erabu: Accused persons have changed their minds. They will make unsworn statements.

**A1:Ikangollet John William**, unsworn, 40 years old, resident of Kotio, Mukongoro, Kachumbala Sub County, Bukedea district states:-

I know nothing about the case. As I am a builder, I had gone to build at the home of Taganeya in Komolo village. After my work, I returned home, finished my work at about 6.00 p.m. I reached home at about 7.30 p.m. My wife gave me bathing water. After which I had supper then went to bed. As I was asleep, I heard someone calling from outside.

I opened the door, as soon as I opened the door, I was arrested and hand cuffed and ordered to board a vehicle. There were other people in that vehicle. We drove up to Atutur. We were ordered to remove bodies from the motor vehicles. We were taken to Bukedea police station where we were detained. I know nothing about the case.

**A2: unsworn Ogwang Charles**, 37 years old, resident of Kolia, Mukongoro, Kachumbala, cultivator states:-I don't know how Okaali was killed.



On 18.4.2011, I went to Ajelele village to harvest mangos and oranges for sale in the market. After the harvest, I put them in bags, and carried them to the home of Imeko's grandmother. At about 7.00 p.m. I returned to my home. My wife gave me water for bathing. I was served with tea, then later with food by my wife. We then went to sleep.

In the night, my wife asked if I heard anything. I heard Arionget's voice. I went outside. Before I could inquire, I was hit with a gun and assaulted. Then dragged to the police patrol van. We drove to Atatur mortuary and my fellow suspects were ordered to off load bodies. We then drove to police. At police, I was carried by my fellow suspects to the cells. I did not know why I had been arrested.

**A3: Oonyu Marks** 38 years old, resident of Koli , Mukongoro, Kachumbala states:-

On 18.4.2011, I know nothing about the killing. As I am a builder, I was picked by Onyabuko Yokolamu for building work. After work, between 5.00 and 6.00 p.m. Onyabuko asked me to accompany him to Sironko Town. We went to Sironko where we arrived at 7.30 p.m. and left at 9.30 p.m.

When I reached my home, my wife told me policemen had been to my home alleging I had killed Okaali. Among the group was , Asengai and Tukei. The next day, I was at my home. I was there for five days. On fifth day, I received a call that there was work in Nakaloke. I was arrested on 23.4.2011 from Sironko district as I waited for a vehicle to take me to Nakaloke. I was arrested by Tukei police came and I was taken to Mafudu police post, while there, Ayenga and Tukei

came on a motor cycle. They told a police officer they wanted to take me to Kachumbala. That day I was taken to Kachumbala police by police men, later to Bukedea.

**A4.Ikasai Jackson**, unsworn, 31 years old, resident of Kolia Mukongoro, Kachumbala states:-

At about 3.00 p.m. I was in Kyebube village, searching for oranges and sweet potatoes to take to Akamu market. I purchased sweet potatoes and oranges and took them to Sironko where I arrived at about 6.00 p.m. I left Sironko at 7.00 p.m. I returned the bicycle I had used. At 7.30 p.m. I reached home; my wife gave me water for bathing. She told me about death of Sangura. I promised to go to the home next day, I went for bed.

In the night, I heard voices calling me from outside and recognized Arionget. I was ordered to open the door as soon as I stepped out; I was arrested and ordered to sit down.

Tukei had a big stick. I was taken to Bukedea police station. There were other people in the vehicle. I did not recognize. Some of the people in the vehicle are in court except Oluka Thomas.

**A5: Omongot Kupuliano** , unsworn, 36 years old Kolia, Mukongoro, Kachumbala, states:-

I am a cultivator and businessman. I know nothing about the death of Okaali. I spent a month in Kidongole village, while there, I received a call that Sangura had died. I went to the village on 21.4.2011. After attending the funeral of Sangura, I stayed at home. While at Sangura's I heard Okaali was killed.

On 21.5.2011, I left my home for Korir, I went to the health centre, after that I went away to look for goats. On my way, I met the husband of my aunt Oitom. He requested me to take him to Kolir trading centre to take tea. I carried him on my motor cycle. I got police officers who flagged us. I stopped for the police. They demanded for the key of the motor cycle. Then Arionget emerged from the bush. The police officers to Kolir Police post then transferred me Bukedea police post. At Bukedea, I was told I had killed someone. I was not told the name.

**A6: Amorokin Julius** un sworn 24 years old, resident of Kotia Mukongoro, Aligoi parish, Kachumbala states- I know nothing about the death of deceased.

I left my home in January 2011 and went to Mbale where I worked as welder for an Indian, Kamutesh. I worked for the Indian for the till July 2011. One Sunday in July, 2011 after work, I left at about 6.00 p.m. and returned to my rented house. I slept up to about midnight; some people came and asked me to open the door. These people arrested me and took me to the LC. 1 Chairman of, Half London. Police officers from Mbale police station came and got me at the home of LC.1 Chairman. They called Nakaloke police to collect me. At Nakaloke I was told I was charged with murder. At Nakaloke police post, I saw Rujanga come to the station. I was finally transferred to Bukedea police station. I was told I was charged with murder of Okaali Sam. From Bukedea, I was transferred to Kumi.

**A7: Un sworn Sabata Paul**, 38 years old, resident of Kolio, Mukongoro village, Aligoi parish, Bukedea district boda boda rider states:-

I operate from Mbale. I know nothing about Okaali Sam. It happened when I was not at home. I heard about it when I was in Mukongoro. I went to Mukongoro in February, 2011. My friend Okwalinga invited me to Mukongoro to do some work. I stayed there till January 2012 when I was arrested in the morning by police. After arrest, I was taken to Mukongoro police post. From Mukongoro, I was transferred to Kumi police station. I was told I had killed Okaali. Police officers from Bukedea picked me. I was taken to Bukedea police station. My statement was finally recorded. I was later charged.

Erabu: That is the close of the defence case. I don't wish to make submissions.

State: I wish to submit on common intention. The principle is that if two or more undertake to commit an offence each of them is responsible. If violence is used in the crime, all participants are liable in equal measure.

**U v Sebaganda 1977 HCB - 7.** Prosecution could not tell who killed but the accused persons were at the scene.

### **SUMMING UP TO ASSESSORS**

In this case, the assessors need to be mindful that seven people are charged joint with murder. They can be found criminally liable either individually or jointly. In

case of the latter, prosecution needs to adduce evidence that the seven acted with common intention to murder the deceased.

From prosecution witnesses testified. Note the discrepancies between evidence of PW.1 Ariong and PW. Ayengai in the accounts of the evening of 18.4.2011.

If they are minor, you are at liberty to ignore them and rely on the evidence as a whole.

You need to be satisfied that conditions were favourable to proper identification.

Since the assault on the deceased took place at night.

Consider as a whole including defence case and given an opinion on whether the accused persons are guilty or not guilty of the offence charge.

Court: Summing up read. For opinion on 10.1.2014.

**Hon. Lady Justice H. Wolayo,  
JUDGE,  
9.1.2014.**

**10.1.2014:**

Accused present.

Alleluya for state.

Erabu for accused.

Adong and Okwi assessors.

Court Clerk Ecutu.

**Okwii: Joint opinion:-**

We appreciate summing up. We have carefully listened to prosecution and defence.

Deceased Okaali Sam died. This death was unlawful and with malice aforethought.

Assailants dragged deceased to the swamp, where he could not be rescued. This is confirmed by witnesses PW1 and PW.2, the found some three accused persons with a rope and stick.

**On Participation:-**

PW.4 recognized three accused persons:- A1, A4 and A3 who entered the house, as A1 flashed a torch.

A3, A6 A7 assaulted the deceased at the swamp A2 assisted in hitting the door until it opened.

We find all the seven accused persons guilty.

Court: For Judgment on 19.12.2013.

10.1.2014:

All seven accused present

Alleluya for state.

Erabu for Accused.

Court Clerk Ecutu.

Ct. Judgment read out.

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KUMI**  
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**UGANDA.....PROSECUTOR**

**VERSUS**

1. ILUKUANGOLET JOHN WILLIAM
2. OGWANG CHARLES
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5. OMONGOT KUPULIANO ALIAS SUNDAY
6. AMOROKAN JULIOUS 7
7. SABATA PAUL

**ACCUSED**

**JUDGMENT**

The seven accused persons are charged with murder c/s 188 of the penal code. It is alleged that the seven accused persons and other still at large on the 18<sup>th</sup> day of April 2011 at Kotia Mukongor , Kachumbala sub-county, Bukedea district murdered Okaali Sam.

Prosecution was led by Ms Alleluya while accused persons were represented by Mr. Erabu on state brief.



Assessors were Okwii Francis and Adong Betty.

Prosecution had a duty to prove beyond reasonable doubt that the accused persons with malice aforethought or without caring whether their actions would result in death, caused the death of the deceased.

### **Proof of death.**

Both Counsels agreed to the admission of a post mortem report admitted as P. exh. 1. The report shows that the body of the deceased was examined on 19.4.2011 at Atatur hospital and it had external injuries on the skull and there was brain damage. Cause of death was due to brain damage.

### **Whether death was unlawfully caused and participation by accused persons**

Prosecution relied on testimony of four witnesses to prove that the death was unlawfully caused with malice aforethought by the accused persons.

Events that led to death of the deceased began at about 7 p.m on 18.4.2011.

PW1 Arionget was at the home of Elongat Joseph when one Ojulong Peter called to inform him that a group of people had run to the home of Okaali Sam alleging he had killed one Sungura. Okaali Sam was paternal uncle to the witness.

PW1 together with Ayenga PW2 rushed to Okaali's home but he was not at home although the door was open. PW1 and PW2 then ran towards the swamp from where they heard the deceased making an alarm.

While PW1 states that on arrival at the scene, PW1 got Amorokin Julious A6 beating the deceased with a stick while Sabata Paul A7 held a rope, PW2 Ayenga states he found Amorokin A6, Sabata A7 and Oonyu A3 assaulting the deceased.

The discrepancy is explained by the fact that PW2 Ayenga was first to reach the scene and PW1 Arionget followed later, having fallen and got hurt as they ran to rescue Okaali.

PW1 and Pw2 succeeded in rescuing the deceased and as they made their way to the LC defence secretary's home, the accused persons, namely, Sabata A7 and Amorokin A6 continued to want to assault the deceased as PW1 and PW2 stopped them. According to PW1 Arionget, as the group made its way, they met Ilukangolet A1, Oonyu A2, Ogwang A2 and Iksai A4 who joined Sabata A7 and Amorokin A6 in assaulting Okaali as he and PW2 Ayenga protected Okaali. PW2 Ayenga's account of these events is consistent with PW1's account save that he mentions Omongot A5 as part of the group they met. According to PW 2, this second group comprised of Ilukangolet A1, Ogwang A2, Omongot A5, and Iksai A4 was armed with sticks and they too assaulted Okaali with the sticks and fists while some kicked him. PW1 and PW2 managed to force their way to the home of the defence secretary Okello Benard Peter, as the accused persons fought them with Iksai A4 insisting they wanted to kill Okaali, the deceased.

It was on reaching the home of Okello, the intention to kill Okaali became more clear. According to both PW1 and PW2, the defence secretary tried to rescue Okaali from the accused persons assisted by PW1 and PW2 by pulling Okaali into

the house and then shut the door with the defence secretary, and Okaali inside while the accused persons and PW1 and PW2 remained outside.

In the meantime, according to PW2, Ogwang A2, Ilukangolet A1, and Omongot began hitting the door with sticks and stones until it opened. Others who participated in breaking the door included Amorakin A6, Oonyu A3 and Sabata A7, according to PW2. When the door opened, Ilukangolet ( also referred to by witnesses as Oluka) A1 , Oonyu A3, Omongot A5, and Ogwang entered the house. At this point, PW2 Ayenga run with PW1 Arionget to police. On their way, they met Okello who had sneaked out of the house to get police assistance.

This aspect of the narrative from the time the group arrived at the their home, is corroborated by PW3 Omong Nathan son of the defence secretary. He testified that at about 8 p.m, he was at home with Acan Stella his mother and father Okello Bernard Peter. He was outside the house when Pw1 Arionget and PW2 Ayenga brought to the door an old man called Okaali. They were followed shortly after by all accused persons who caused commotion and wanting to fight as they demanded that the old man should not be taken into the house as he is a witch. According to PW3, his father Okello succeeded in pulling the old man into the house, leaving the accused persons outside as they quarreled, saying ' let us break and get him'. The witness learnt that his father Okello then left to report the matter to the police.

PW3 Omong further corroborates PW 2 Ayenga when he testified that as he stood outside, he saw Oonyu A3, Sunday ( Omongot ) A5 Magino ( Amorakin ) A6, pick sticks and begin hitting the door until it opened and they went inside. The witness

did not know who among the group went inside the house but he saw Sabata A7, Amorokin A6, and Ogwang A2 pulling Okaali from the house and took him away. On the next day, he learnt that Okaali had died. The witness knew all accused persons as his neighbors.

PW1 and PW2 learnt of Okaali's death while on their way to police when PW2 received a phone call that Okaali had been killed and the body carried away.

The testimony of PW3 Omong about the accused persons who entered the house and took away the deceased is corroborated by PW4 Acan Stella wife of Okello. PW4 was at home in the evening of 18.4.2011 when she heard people shouting and in a few minutes, she saw very many people in her compound. Her husband Okello went outside and she heard the group of accused Okaali of killing Sangura. Okello managed to rescue Okaali from the group by pulling him inside the house. She remained with Okaali as Okello went for the police. Soon after, she heard people breaking the door and when it opened, she saw A1 Ilukangolet A1 flash a torch while searching for Okaali while Ogwang A2 and Iksai A4 followed him. The three accused persons began beating the deceased from inside the house, then carried him outside. She heard them say, 'the man is dead' as they carried Okaali outside.

From the foregoing, it is clear that the death of the deceased was unlawfully caused by all seven accused persons. The common intention to kill was formed from the time the accused persons attacked the deceased at the swamp at about 7.00 p.m on 18.4.2011, witnessed by PW1 and PW2, throughout the journey to the defence secretary to whom PW1 and PW2 bravely fled with Okaali in an

attempt to rescue him from the accused persons as the accused persons assaulted the deceased, to the events at the home of the defence secretary where the accused persons bayed for Okaali's blood, to the time they broke into the house where Okaali had taken refuge, until they murdered him in cold blood inside the house. Each of them is criminally responsible for the death of the deceased as they actively participated in assaulting him, and breaking down the door even when A1 Ilukangolet, A2 Ogwang and Ikasai A4 performed the final deed. The murderous common intention is manifest by their conduct throughout the evening until the death of Okaali that night.

When PW1 and PW2 returned with police officers to Okello's home, they found the door broken and the deceased nowhere to be seen. They later found the body of the deceased at the home of Sangura whose body also lay in the house.

In cross examination of PW3 and PW4, it was revealed there were many other people in the compound and the defence tried to suggest these other unidentified people could have been responsible for Okaali's death. As shown in the above analysis, it was the accused persons who actively participated in the criminal acts that manifested an intention to kill and they were positively identified.

With regard to conditions of identification, although there is no mention of moonlight, all accused persons were residents of the same village as the witnesses and indeed they were neighbors to PW4 Acan, Omong PW3. A3, A4, A5 were maternal cousins to PW1. A7 was a village mates to PW1. A1, A2 and A6 were his neighbors. All accused persons were village mates to PW2.

These people were familiar to each other and the length of time spent by PW1 and PW2 with the accused persons from 7.00 p.m to the time they rushed to report to the police is sufficient time for positive identification.

Each of the accused persons raised the defence of alibi in their unsworn statements. I disbelieved their defences in light of the prosecution evidence that places them at the scenes of crime. I am in agreement with the two assessors that all accused persons are guilty as charged.

I am satisfied beyond reasonable doubt that the seven accused persons with malice aforethought murdered Okaali Sam and they are convicted jointly of the offence charged.

**Hon. Lady Justice H. Wolayo,  
JUDGE,  
10.1.2014.**

### **Mitigation**

State: I have no previous criminal record against convicts. A1 to A6 have been on remand for 2 years and 8 months. A7 has been on remand to 2 years. Their actions were clear case of mob injustice. They need to be heavily punished for the following reasons. They interfered with justice groups. They killed a person under suspicion. Their actions traumatized the family members. It is only humble prayer; only heavy punishment will stump out injustice. I pray for a custodial sentence Up to 30 years.

Erabu: Convict 1 to 6 have spent three years except convict seven who had been on remand for 2 years.

**SENTENCE:**

Nobody had a right to take the law into their hands. The conduct of accused persons in attacking the deceased even after he had been secured, and conduct of breaking into the house of LC defence secretary exposes all accused persons as persons who consider themselves above the law. Their conduct demonstrated a very high degree of lawlessness which is completely unacceptable in Uganda of today.

The community also needs to be protected from these lawless people. Appropriate sentence is 35 years for each accused person. A1 to A6 have been on remand for about three years.

Court: Sentence read out.

**Hon. Lady Justice H. Wolayo,  
JUDGE,  
10.1.2014.**

For A1, A2, A3, A4, A5 and A6 each of them is sentenced to 32 years imprisonment with regard to A7 he has been on remand for 2 years. A7 is sentenced to 33 years imprisonment.

**Hon. Lady Justice H. Wolayo,  
JUDGE,**

**10.1.2014.**

**10.1.2014:**

All seven accused present.

Alleluya for state.

Erabu for accused.

Court Clerk Ecutu.

Court: sentence read out.

**Hon. Lady Justice H. Wolayo,  
JUDGE,  
10.1.2014.**