

**THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT – 02 – CR – SC – 0252 OF 2012

UGANDA :::PROSECUTOR

**VERSUS**

KOMAKECH GEORGE       A1  
OCAYA MICHAEL         A2  
OTEMA PATRICK         A3  
OLONI DEE               A4  
APIRE JALON             A5  
OBOTE MILTON OKOKE A6

**JUDGMENT OF HON. LADY JUSTICE MARGARET MUTONYI**

1. Komakech George hereinafter referred to as A1, Ocaya Michael A2, Otema Patrick A3, Oloni Dee A4, Apire Jalon A5 and Obote Milton Okoke A6 where indicted with murder c/s 188 and 189 of the Penal Code Act.
2. The particulars of the offence were that the 6 accused and others still at large on the 25/6/2012 at Palenga Trading Centre, Gulu District murdered Kakanyero Victor hereinafter referred to as the deceased.
3. The brief summary of the case is that the deceased was found in the shop of A1 between 5:00am to 6:00am by some people including A4. He was locked in the shop. A1 was called by A4. People started gathering but for fear of the possibility of the thief being armed, the door was not opened.

A6 came to the scene in a vehicle driven by one Ojok Simon and using the lights from the vehicle, peeped in the shop and noticed that the thief was just a child. Meanwhile A1 had threatened to kill the thief at whatever cost.

Thereafter A6 left: That A1 was helped mainly by A2 and A3 to assault the boy as A5 encouraged them. A5 is the LC1 chairperson of the area. The boy was beaten unto death, hence this case.

4. The Prosecution was conducted by learned Senior State Attorney Kizito Aliwaali while the defence by learned Counsel Anyuru Geoffrey. Mr. Ocen David and Mr. Odongkara Franklin assisted court as Court Assessors.

5. Burden of proof

It is trite law that the burden of proof in criminal cases rests on the prosecution unless excepted by statute. This principle of the law has been laid down in a number of cases: The prosecution in this case has to discharge its burden of proof of all the essential ingredients of the offence.

6. Standard of proof

The standard of proof is also very high. The prosecution must prove beyond reasonable doubt that the accused committed the offence unlike in civil cases where the standard of proof is on the balance of probabilities.

Where there is doubt, it is always in favour of the accused. The evidence must prove that it was the accused who committed the offence and not maybe they could have committed the offence.

7. Joint offenders

This case has 6 accused persons S.20 of the Penal Code Act provides for scenarios where there are more than one accused person: it provides “When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them

is deemed to have committed the offence: As court evaluates the evidence, it will have to form an opinion on whether these accused had a common purpose to commit the crime.

#### 8. Ingredients of murder

The offence of murder has ingredients which the prosecution must prove beyond reasonable doubt.

The state had to prove the following ingredients

1. The death of a human being
2. That the death was caused by unlawful act.
3. That the death was caused with malice aforethought
4. That the accused persons participated in the unlawful act.

The above essential ingredients translates into four issues to be resolved by court.

1. Whether death of a human being occurred.
2. Whether the cause of death was unlawful
3. Whether the death was caused with malice aforethought
4. Whether each of the 6 accused persons caused the death.

#### 9. Resolution of the issues

To prove the above ingredients, the prosecution called six witnesses. The accused also defended themselves but did not call any witnesses.

A1 and A2 made unsworn statements while A3, A4, A5, and A6 made sworn statements in defence.

It is a cardinal principle of the law that an accused person has no burden to prove his innocence. Whether one calls witnesses or not or whether one makes a sworn statement or not in defence, it does not matter much. The duty to prove a case rests on the prosecution as no conviction is based on the weakness of the defence. I will resolve the issues in their chronological order.

##### **1. Whether death of a human being occurred.**

The young boy Kakanyero Victor was known before he met his death. PW2 Dr. Madrama Charles confirmed to court that the person who was identified as

Kakanyero Victor died. Both the prosecution and the defence agree that a human being died. This issue is therefore not contentious. It is resolved into affirmative.

## 2. **Whether the cause of death was unlawful**

Under common law, all homicides are presumed to be unlawful unless proved otherwise the prosecution tendered in court PE1 which was the Postmortem Report PF 48C. The report indicated that the deceased's decomposing body had depressed skull fracture at the temporal region (left). PW2 Dr. Madrama Charles informed court that the cause of death was brain injury following force trauma caused by a blunt object.

The prosecution also tendered in court PE2 (five) photographs in number which were taken at the scene of the crime. The deceased was in a pool of blood, flossed and spills of blood where he was allegedly killed from.

Article 22(1) of the 1995 Constitution of the Republic of Uganda, provides that ***“No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the Highest appellate court”***

Much as evidence on both the prosecution and defence bring out the fact that the deceased was alleged to be a thief, he was not tried by court of law and in any case even if he had been tried, he would have not been sentenced to death being a child. With the above evidence on record on how he met his death and our constitutional provision, the death of the deceased was caused by unlawful act. The defence also concedes this finding.

## 3. This brings me to the 3<sup>rd</sup> issue of whether the death was caused with malice aforethought?

Malice aforethought is the criminal intent, or the thoughts

and intentions behind a wrongful act. It also includes the knowledge that the act intended to be done is illegal but the person goes ahead to do it.

S.191 of the Penal Code Act provides for circumstances where the inference of malice aforethought can be made.

1. Evidence must show the intention to cause death of any person, whether such a person is the one actually killed or not or
2. That the accused had knowledge that the act or omission causing death will probably cause death of some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not or by a wish that it may not be caused.

PW3 Ojok Simon informed court inter alia that on that fateful day he was driving a tipper motor vehicle Reg. No. UDN 526. He was in company of A6 and some other person. On reaching Palenga Trading Centre, he saw many people gathered and he branched to help thinking there was a problem of sickness.

When they stopped A6 came out and asked what was wrong. The people informed them a thief has been locked in the house. A6 opened the door and brought a boy outside. Using the light of the vehicle, he saw A2 and A3 hold the hands of the boy and A1 started boxing the cheeks of the boy asking him why he broke into his house. The boy answered while crying that it was hunger which made him break into the shop. He informed court that A6 went back to the vehicle and they left when the boy was being beaten.

PW6 Ajok Filder a resident at Palenga Trading Centre informed court she heard noise outside her house and saw bright light. She heard people saying a thief had been caught. She went to the scene to see what was happening. While at the scene, A1 came and a lady called Agnes who was sharpening a panga asked whether the authorities have been informed. Then after reporting to Apire the LC 1 chairperson i.e. A5, he came and gave authority for the thief to be killed. This witness saw A2 beat the boy with the side of a panga, and saw A1 step on the neck of the boy holding him on the ground. She informed court that A5 said the people were just joking with the

boy. That A2 then hit the boy from the side of the head and blood started oozing from the mouth and nose.

A1 then dragged the boy in front of his shop to the roadside. That A5 instructed A4 to pick a block and smashed the head of the boy.

That A5 then instructed people who had gathered to disperse so that when police comes people should say, they don't know the killer.

The concrete block which inflicted the final blow was tendered in court.

PW4 D/AIP Odong Andrew the scene of the crime officer went to the scene, he saw blood on the base of a pillar in front of the shop. He went where the body was. It was covered with the blanket. It was a body of a small boy lying in a pool of blood. The body had bruises on the hands, and the head had wounds and depression. A concrete stone with blood was lying near the deceased.

A3 in his defence informed court he heard people shouting "***kill him, we are tired of him***"

With the above evidence on record, it is apparent that the deceased was wounded with the intention of killing him which evidence leaves a very clear manifestation of the requisite malice aforethought. The attack on the deceased and injuries inflicted would make any reasonable person know that at least grievous bodily harm will result and death.

There is sufficient evidence to prove the existence of malice aforethought to support the charge of murder. I don't agree with the submission of the defence that it is doubtful on the evidence that the accused intended to kill or cause grievous harm and therefore give the benefit of doubt.

I agree with the authority cited R vs Joseph S/o Byarushengo and Another (1946) 13 EACA 187 but the facts in the instant case prove the ingredient of malice aforethought beyond reasonable doubt.

This brings me to the last and most crucial issue of whether the accused persons caused the unlawful death of the deceased. Court has to consider their participation in the unlawful act. The prosecution called three eye witnesses.

PW1 Okema Santo identified himself as a business man at Palenga. He knew all the 6 accused persons by name and appearance. At the time he arrived at the scene, the boy was almost dead. He saw A1 beating the deceased. He also saw A2 and A3 standing near the person who was beating the child.

The witness saw A5 standing at a distance of about 5-7 meters and he did not hear him speak anything. He did not see A6 at the scene. The boy was thrown near the road after he was beaten from in front of A1's shop. The witness made two statements that were tendered in court.

In the first statement, he claimed he did not identify the people who participated in the killing. In the second statements, he mentioned names. He however maintained that he knows all the accused persons.

PW3 Ojok Simon a driver and resident of Palenga knew all the accused persons by name, save for A4 whom he knew by appearance because he had just come to Palenga as a shop dealer. PW1 also described A4 as a trader in Palenga.

On 26/6/2012 he was driving motor vehicle Reg. No. UDN 526. It was coming to 6.00am. He flashed his light at people who had gathered. A6 who was with him got out of the vehicle and they asked what the matter was. The people said a thief was locked in the house. He saw A6 open the door and came out with a boy.

Then A2 and A3 held the hands of the boy and A1 started to box the cheeks of the boy asking him why he broke into his house. He informed court. A6 went back to the vehicle and they left them beating the child.

This witness managed to see because the light of the vehicle flashed at the door and the people who beat the boy. He informed court he did not see A5 and A4 but clearly saw A, A3 and A2.

In cross examination, he informed court, he was not there at the time the child was killed and that he never expected them to kill a child.

PW6 Ajok Filder was the third eye witness. She was a resident of Palenga trading centre and knew all the accused persons and the deceased child.

She informed court she saw what happened with her naked eyes. She informed court that A5 the LC chairperson authorized people to kill the child and that A1 opened the door got the boy by the neck and hand and threw him out.

She saw A2 beating the boy and assuring him that they were going to kill him. A1 had stepped on the boy holding him on the ground while A5 claimed they were just joking with the boy. A2 then hit the boy and blood started oozing from the mouth and nose. He was hit on the side of the head. This witness saw A4 smash the head of the boy with a concrete block after A1 dragged him to the roadside.

A5 instructed people to disperse and nobody was to tell the police who the killers were.

She said she also saw A6 punch and kick the boy at the back.

All the accused persons denied the charge against them.

A1 claimed at the time he arrived the deceased was already dead. He was not there when they killed him. The remaining part of his evidence is a narration of what happened after the killing. He claimed the witnesses lied about his participation.



A2 claimed he was there but did not participate in the killing. That they saw that Kakanyero was a very young child when they brought him out. They left him there.

A3 informed court, he received a phone call from a friend and he went to the scene. That A6 came and checked in the shop and said the person inside the shop looks like a child. That he immediately opened the door and came outside with a child. He said this was a young child and they should look for the parents so that they compensate the padlock.

That A6 thereafter went to the vehicle and went away.

That people started shouting that they were tired of the boy and starting slapping him. That he tried to rescue the boy by taking him back to the shop where he was found and closed the door.

That he went for a short call and shortly after he saw the boy outside. Many people shouted "Kill him, we are tired of him"

That he decided to move away from that place and shortly after he heard the boy had been killed. He got the call between 5-6 am and he claimed it was still dark. He therefore denied any participation at first there but when he returned from the short call he had left.

A3 further informed court that he saw A4 standing at his shop.

A4 Aloni Dee informed court on that day 26/6/2012, he come for work only to find many people gathered and a body covered with the blanket.

In essence, he denied any participation in the murder.

A5 the LC1 chairperson claimed he just went and saw a person locked in the house. He left to dress up properly and report to police. By the time he went back, the deceased was killed. He alleged PW6 had a grudge with him.

A6, admitted opening the door and bringing out the child but denied beating the child or participating in killing him. He said all the co-accused persons were there and he left the child with A3. He did not expect the child to be killed.

PW5 D/Sgt Arop Michael Thomas attached to Gulu CSP investigated the case. His investigation revealed that A1, A2, and A3 were the key suspects in the murder of the deceased because the witnesses informed him they really beat the deceased.

A5 encouraged the killing of the child and one lady Agnes also participated in the killing but she has ran away from the place.

Investigation also revealed that A4 did the mobilization and A6 opened the door only to discover the deceased was a child.

Both the state Attorney and accused's counsel submitted in support of their cases.

From the above evidence, both from the prosecution and the defence, it is very apparent that all the accused persons have been placed at the scene of the crime. Much as PW1 said he did not see A4 and A6 at the scene, and that A5 was standing at the distance.

PW6 saw all the accused persons. It is evidence from the chronology of events that PW1 arrived when the child was almost dead. A1 continued to beat the almost dead child until he finally passed on.

PW3 Ojok Simon provided the light from the vehicle which was bright enough.

A6 opened the door and came out with the child the suspected thief. He clearly saw A2 and A3 hold the child and A1 started beating the child.

This witness i.e. Ojok Simon was a resident of Palenga and knew the 3 accused persons very well that is A1, A2, and A3. He was working with A6.

This witness did not see A5 and A4. He left with A6 when the beating had just started.

PW6 was at the scene of the crime. She identified all the accused persons who participated.

The participation of A1, A2 and A3 in the beating is very apparent. A4 was also at the scene of crime. PW6 informed court that A4 used the concrete cement to crash the boy's head. The police officer who visited the scene found a concrete block stained with blood next to the deceased.

He observed wounds and a depression on the head of the deceased. PW2 Dr. Madrama Charles who carried out the post mortem after exhuming the body, found a depression in the left temporal region of the scalp. According to him, the cause of death was brain injury following blunt force trauma. This reveals that A4 inflicted the very final blow on the deceased crashing and depressing the scalp: fracturing the skull.

A5 the LC chairperson was at the scene of the crime. He witnessed the killing and PW6 informed court that he encouraged and authorized the assailants to kill.

He further told people to go away and close their lips about what they had witnessed. The police was not to be informed of the killers.

After the murder, he now went to report to police. His statement was tendered in court. He clearly informed police that he saw the people who killed.

To quote from his statement, he said, “ ***But of all these people, the people I saw them beating and killing the young boy were Komakech George, Ocaya Michael, Otema Patrick and Agness Pa Lateng who caned the deceased using a stick***”

He went on to say, “***I saw George forcefully pulling the young boy from inside and when he started beating the boy Ocaya, Otema and Agness also started beating the boy and it was the three men Komakech, Ocaya and Otema who beat the boy upto death***”

PW6 informed court that A5 arrived with A1 and A1 opened the door got the boy by the neck and hand and threw him out. A1 told the boy not to say anything because he was going to be killed A2 and A3 joined him in the beating.

From the evidence on record, A5 did not beat the boy but incited people to kill the boy. He gave authority he did not have.

The participation of A6 was his boldness to find out who was inside the shop. The door was not even locked from inside. The boy had been locked inside. After realizing it was a child he went away.

The facts of this case presents the doctrine of common intention which is provided for under the Uganda Law S. 20 of the Penal Code Act.

I have considered the evidence carefully and I have no doubt that A1, A2, A3, A4 acted in concert to beat the deceased and must have known the probable consequences of the beating that is the possible of death ensuring which it did.

In the case of **Dracaku s/o Ajia v. R (1963) EA at page 366, Sir Trevor Gould Ag. P then, quoting from Keny's outline of Criminal Law 17<sup>th</sup> Edition at page 20 described the scenario where a person engages in a murderous beating and a stranger joins. " Thus if one person were engaged in a murderously beating another to death and a stranger, without being requested, were to rush in and add some more blows so that the victim's death were more speedily brought about, both would be guilty of murder and the first man could not be allowed the defence that it was the second assailant's strokes that finally ended the victim's life".**

Much as in the instant case no one is blaming the death on another, I just wish to bring out the fact that when two or more people engage in the act of beating a suspected thief, or any other person and the beating results into death, you are all liable for his/her death regardless of who inflicted the fatal blow.

In the book of Russell on Crime 11<sup>th</sup> Edition at pages 33-34, it is said, ***"It may be stated as a general rule that when A intentionally participates in what he knows B to be doing, then the result of their combined activity will be considered in law to be no less the actus reus of A than it may be of B and thus will be so whether or not B wished for or knew of A's action in the matter. Nor will it make any difference if A's contribution to the affair be superfluous or even in effective. For example if C a stranger sees A engaged in kicking B and where upon without being in any way invited to do so by A, should join in and himself make an attack on B than, however innocuous his own attack on B may be, he will make himself responsible (of course to the extent that he has the appropriate mens rea) for whatever actus reus this combined attack may inflict on B"***

The above scenario is what exactly happened in this case. A1 started beating the deceased because he had broken into his shop A2, A3 and A4 joined in the beating without any invitation to help A1. The common intention was to get rid of a suspected thief who has been terrorizing people at the trading centre. They beat the deceased until he collapsed or passed on. After A1 dragged his lifeless body from in front of his shop where the assault was done, A4 used a concrete block to smash his head.

Needless to mention, A4 inflicted the final blow according to the evidence of PW6. People then dispersed.

As regards A5, the LC 1 chairperson of Palenga, PW1, PW3 and PW6 confirmed he was at the scene of the crime. He claims he returned when the boy had been killed.

I have no reason to doubt PW1 who said A5 was there standing aside. This puts him at the scene of the crime I also have no reason to doubt PW6 who informed court he saw all the accused and A5 authorized and incited the accused to kill the young boy. In all respects A5 joined A1, A2, A3, and A4 to achieve that common purpose of killing the suspected thief.

Section 20 of the Penal Code Act applies to A5 in this case. He is deemed to have committed the offence.

In his statement to police, he mentioned the people he saw killing the child. He later on changed his mind because, he was among them. He actively participated in murder of the boy.

As regard A6, I found it difficult to ascertain his mensrea. At the time he participated in identifying the person who was locked inside and realized it was a young child, he did not have any common intention with the co-accused to kill.

PW3 informed court that he left the place with A6 before the child was killed.

Much as PW6 informed court that she saw A6 assaulting the deceased, I don't have strong reasons to disagree with A6's defence. Where the accused are jointly charged like in this case, the prosecution has a duty to prove all ingredients of the offence as against every accused person. It is my considered view the ingredient of malice aforethought and participation of A6 to cause the killing of the deceased has not been proved beyond reasonable doubt.

Never the less, the people had gathered and scared of the suspected thief. A6 saw the people charged. He went ahead and got a child and left him with people who started assaulting him in his presence. Needless to mention, he set the ball rolling by bringing the defenceless boy out. Much as he claims he left before they beat the child, I don't believe him.

PW3 clearly told court when A6 opened the door and brought him out. A2 and A3 held the boys hands and A1 started boxing the boy.

He told Opoka who was with them to call A6 and they left. He said, ***“A6 came and we left them beating the child.”***

A6 did not reflect on the possible danger the child was exposed to. His conduct was rash and or negligent. It is not enough for him to claim, he did not expect the child to be killed when he saw people armed.

Section 87 of the Trial on Indictment Act provides that ***“When a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he or she was not charged with it”***

Of course, one may argue that the person would not be given an opportunity to defend himself on the minor charge. After careful evaluation of the evidence and submission of both Counsel, court is of the view that convicting A6 of a rash or negligent act causing death c/s 227 of the Penal Code Act will not be fatal to him or a violation of his constitutional right to a fair trial.

S.227 of the Penal Code Act provides, “ Any person who by any rash or negligent act not amounting to manslaughter, causes the death of another person is liable to imprisonment for a term not exceeding seven years or to a fine not exceeding 70,000/= or both fine and imprisonment.

Indeed, A6's act of opening the door and bringing out the child to the accused persons who were charged and moving away thereafter leaving him being beaten was a rash and negligent and eventually led to the death of the decease.

The two gentlemen assessors advised court to find A5 guilty because he was the LC1 chairperson of the area and that there was contradiction in the testimony of the eye witnesses.

I have decided to disagree with them because they did not evaluate the evidence properly. The contradictions did not go to the root of the case because the eye witnesses did not arrive at the scene at the same time. PW6 was there before PW3 and PW1 was the last to arrive at the scene. By the time PW1 arrived, the accused were inflicting their final blow i.e. A1, A2 and A3.

I also do not agree with the submission of the defence counsel that the offence should be reduced to manslaughter. Sufficient mensrea and malice aforethought was proved beyond reasonable doubt.

The accused had sufficient time to plan and execute their mission of killing the suspected thief.

In view of the above, I am very satisfied that the prosecution has proved all the essential ingredients of the offence of murder and convict A1 A2 A3 A4 and A5 under S. 82 of the Trial on Indictment Act.

A6 is convicted of a minor and cognate offence of rash and negligent act c/s 227 of the Penal Code Act.

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Margaret Mutonyi

Judge

6/3/2015

All the 6 accused in court.

Omia Patrick Senior Resident State Attorney

Anyuru Geoffrey for all accused.

Ocan Daniel

Odongkara Franklin gentlemen assessors.

Anna Alengo for clerk.

**Omia:** The case is for judgment and we are ready to receive.

**Court:** Judgment read and delivered in the presence for the above.

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Margaret Mutonyi

## Judge

**State:** I do not have any record of the previous conviction against them. They are treated as first offenders. However, their act killing a suspected thief amounted to taking the law into their hands more so in jute views of LCI chairperson who should have prevailed over them.

This was a primitive and savage act where all the convicts who were adults at that time should have taken corrective measures to the juvenile suspected offender.

The law is that no person has a right to take the life of another which position originates from the Holy Book , the Bible.

The offence is rampant, and the act commonly known as mob justice which is mob injustice is very common. It is the duty of the court to curb this crime.

Death sentence is the maximum penalty for this offence. Our humble prayer is that this case deserves such a death. We therefore pray for death sentence on convicts 1-5 respectively.

We also pray for maximum sentence of 7 years imprisonment on convict number 6.

This will go along way of having criminals who are at law abiding. The bible says he who lives by the sword should die by the sword. I so pray.

**Anyuru Geoffrey**

I pray that I be given one minute with convicts before I can say something in mitigation.

**Court:** No objection. Get their final instructions to ably represent them in mitigation.



As rightly put by the State Attorney the convicts are first offenders who should be treated with leniency. They are remorseful and pray for leniency.

This court is a court of justice that should give fair punishment. It is supposed to bring reform to convicts and not vengeance. I therefore pray that the court exercises its judicial mind.

The first convict has a wife with 5 children of his own. 3 orphans, i.e. 8 children under his care. His absence impacts on the welfare of children aged between 4 years and sixteen.

The second convict has 3 wives 8 children and 6 orphans. He is praying for leniency.

A3 has a wife and six children two orphans leaving positively after loosing their parents of HIV. His wife is disabled and has difficulties in taking care of this children.

A4 has a wife and five children, one orphan and has elderly mother who is sick, because of advanced age.

A5 has a wife and four children of their own and 5 children of his late brother, one granddaughter left under his care as a result of defilement. He is living with a bullet in his body he got as he helped UPDF as they fought rebels. It was inflicted in 2001.

A6 has six children and six other orphans. He is a diabetic with high blood pressure. All his children are left alone their mother having passed on.

All the dependants look at the convicts for survival and a future. They have been on remand for 2 years 8 months since 2012. We pray that this court exercise leniency to the convicts and gives appropriate sentence.

**Court:** Adjourned to 12/3/2015 for sentencing.

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Margaret Mutonyi

## Judge

### **Sentence and Reasons**

The five convicts of murder i.e. A1, A2, A3 A4 and A5 committed a heinous crime against a little boy who was fit to be their child.

All the convicts have children but they acted in a monstrous manner towards a child who was atrociously beaten unto death.

The act of taking the law in their hands which is commonly known as mob justice is injustice of the highest order because it violates the supreme law of the land and principles of natural justice.

Even if Kakanyero Victor had been a thief of which he was not because no court of law had pronounced him as such, theft or burglary or house breaking is not punishable by death.

Even if he was an aggravated robber, no court of law would have sentenced a child to death by stoning.

A5, a local leader set a very bad precedent to participate in the killing of a child and conceal the crime and protected the murderous, himself inclusive. Human blood is sacred, that is why the law forbids unlawful killing and spilling of blood.

Suspected criminals are often denied justice by such acts of injustice condemning them to death unheard. Even if the High Court condemns a person to death, that sentence has to be confirmed by the Highest Court of the land, the Supreme Court.

The deceased was murdered in the most gruesome manner and his plea fell on deaf ears.

Murder is one of the most serious crime in Uganda. It is punishable by death on conviction as the maximum sentence.

However, since the Kigula case, it is no longer mandatory to sentence the convict to death. It is the duty of this court to protect society from lawlessness. Uganda as a country upholds to Rule of law, and doesn't condone the public taking the law in their hands. We have the judicial systems which are operational.

The convict's conduct did not only violate our Ugandan laws but breached the international laws that protect children from torture and abuse.

Even if Victor was a delinquent child, he was a victim of neglect from society which owed him a duty of care.

At his tender age, he needed tender, loving care from adults not savage treatment.

The attack on him was too brutal to be inflicted on a minor. It's the duty of court to ensure that laws are respected and children are protected from the wicked society which has become so hostile to them. Even if he was a vagabond, he did not deserve to have his life terminated in the most atrocious manner.

According to the sentencing guidelines which were not passed in vain constitution (sentencing Guidelines for courts of Judicature) practice Direction 2013, the starting point for murder is 35 years. Beating a child to death is also rare as usually adults or teenagers are the ones who are killed in the like manner. But I will not treat this case as the rarest of the rare.

I have not seen any mitigating factor in this case. All factors aggravate the crime.

Mob justice is prevalent. The victim was a minor of between 9-12 years. His criminal liability was not apparent or established. The manner in which he was killed was very gruesome and the convicts have wasted a lot of court's time.

But since they are first offenders and from their look from the dock, as submitted by their defence lawyer appear remorseful and pray for leniency, this court is going to give them a second chance to behave when they get a suspect.

However, because they decided to kill a child who was already in their custody safely locked in a shop that he would not escape and instead of letting the law take its course decided to kill him, they must suffer some kind of punishment to serve as a deterrent to others and themselves.

From the evidence on record, their participation varied in degree and I am going to sentence them accordingly

A1 Komakech George is sentenced to 10 years in prison

A2 Ocaya Michael is sentenced to 10 years in prison

A3 Otema Patrick is sentenced to 10 years in prison

A4 Oloni Dee is sentenced to 10 years in prison

A5 Apire Jalon is sentenced to 10 years in prison

A6 Obote Milton Okoke is sentenced to 2 years 8 months period on remand inclusive.

All the above sentences include the period spent on remand which implies that A6 will be released at the rise of court.

Right of Appeal against both conviction and sentence explained to the convicts.

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Margaret Mutonyi

Judge

12/3/2015

Sentence delivered in open court in the presence of all the parties.

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Margaret Mutonyi

Judge