

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL SESSION CASE NO. 100 OF 2012.

UGANDA V OKELLO JOSEPH & AKURO FLORENCE .

BEFORE: HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The two accused persons Okello Joseph and Akuro Florence were indicted for murder c/s 188 & 189 of the Penal code Act. It is alleged that the two and others still at large on 19th May 2012 at Akocokoco village in Kaberamaido district with malice aforethought caused the death of Ayeo Helen.

Prosecution was led by Mr. Noah Kunya SSA while accused persons were represented by Mr. Alfred Ewatu on state brief.

Assessors were Ochole Joshua and Amaso Christine.

Prosecution had a duty to prove beyond reasonable doubt that the two accused persons with malice afore thought caused the death of the deceased.

To prove malice aforethought, prosecution had to prove intention to cause death or that the two accused persons did not care if their actions led to the death of the deceased.

Proof of death

That the deceased died is not disputed. PF48 admitted by agreement of both counsel as Pexh. 1 shows that a post mortem was carried out on the body of Ayewo Helen on 19th May 2012 at Akocokoco village where the body was found lying in a pool of blood.

Whether death was unlawfully caused.

Pexh. 1 shows that the examining health worker found deep cut wounds at the posterior aspect of the neck, right shoulder , left scalp and left shoulder . He certified these wounds as cause of death and the likely weapon used was a very sharp panga or axe. The state therefore proved that the death was unlawfully caused.

Malice aforethought and participation.

Prosecution relied on three witnesses to prove these two elements of murder.

According to PW1 Egou Ambrose, A1 Okello Joseph is a relative of his father while A2 Akuro Florence is a paternal aunt while the deceased was his mother. Prior to the killing, there was bad blood between the family of the witness and A2 Akuro over land. The land dispute between Akuro and Ayeo Helen the deceased was decided by Kaberamaido court in favour of the deceased Sometime in 2010.

The evidence of PW1 Egou is that prior to the killing, A1 Okello had boasted that he had been hired to kill the deceased and within two weeks the deed would be done. Indeed, two weeks had not passed when the deceased was killed.

The evidence of PW1 Egou is also that within the two weeks, A2 Akuro quarrelled with the deceased warning that she would die without benefiting from another piece of land. In cross examination, the witness confirmed that he was present when these threats were made to his mother.

This evidence of prior threats is corroborated by PW2 Ejolu who testified that Akuro A2 quarrelled with his mother the deceased often and would threaten her with death. That these quarrels sometimes took place in the gardens. According to PW2 Ejolu, A1 Okello told the deceased that he was left to receive a balance 50,000/ then he would kill her. The evidence of PW2 is that his mother told him about this threat which was made while she was in the market and two days later, she was killed.

According to PW1 Egou, on the night of 18.5.2012, at about 8 pm, he entered his house located some ten meters from that of his mother, to sleep. At about 12.30 a.m, he heard a bang at the door of his mother's house and when he got out of the house, he saw Akuro and Okello emerge from his mother's house armed with blood stained pangas. The witness testified that he flashed a torch at the two accused persons and he was able to identify them as the sky was clear.

PW1 then made an alarm calling his brother Ejolu PW2 who lived in the same compound he came out of his house and the two chased the assailants for short distance the assailants were armed.

On their return, the two brothers entered their mother's house only to find her with a deep cut wound at the back of the neck, arms and back. According to PW1 Egou, the head was almost decapitated.

They reported to the clan chairman Ebule who accompanied them to the police to make a report.

The defense suggested in cross examination that the PW1 Egou was making up the testimony that he saw Akuro that night leaving the scene because in his police statement, he only mentioned seeing Okello A1. According to the defense, the reason for naming Akuro as one of the two assailants he saw that night was because the two brothers wanted to take over her land as she was a woman.

PW1's response was that he was confused that morning as he made his statement having lost his mother. At the time Egou testified, he was 18 years that means he was 15 years old when the killing occurred.

The evidence of PW2 Ejolu Moses supports that of PW1. His evidence was that at approx. 12.30 a.m on 18th May 2012, he was asleep in his house when he heard his brother Egou calling him repeatedly while saying he had seen Okello A1 and Akuro A2 emerge from their mother's house armed. PW2 first ran to his mother's house where he found her dead from cut wounds on the nape of the neck, back and arms. He began making an alarm but no one responded.

According to the witness, his brother Egou advised that they pursue the assailants but he declined as he did not know how many there were. So the two brothers decided to report to the clan chairman who then accompanied them to the police to make a report. The LC 1 chairman was not at home when the three went to make a report that night.

In his testimony, PW2 confirms that when he emerged from his house that night, he saw the assailants as they entered the bush whom he identified as the two accused persons as they entered a garden that separated the home of the deceased and that of A2. According to PW2 Ejolu, A2 was limping as he retreated and it was the witness' testimony that A1 walks with a limp while A2 was dressed in a dark skirt.

His evidence further is that there were stars in the sky and it had not rained so he was able to identify the assailants.

It was suggested by the defense that in his police statement tendered as Id. 1 recorded on 19.5.2012, Ejolu did not mention that he identified A2 and that in the additional statement recorded on 23.5.2012 exhibited as ID.2, he then merely suspects A2 as being one of the assailants on account of land disputes with her.

The variance between the police statements of the two witnesses and their testimonies in court is a matter that cannot be brushed under the carpet. While the two police statements are mostly consistent with their testimonies on identification of Okello Joseph, there is no mention of identification of Akuro Florence in the police statements. Indeed PW2 Ejolu made a second statement on 23rd May 2011 in which he stated clearly that he suspected Akuro Florence as among the assailants.

In **Uganda v Joseph Baluku Kampala HCCC No. 15 of 2012**, reported at www.ulii.org, Hon. Lady Justice Monica Mugenyi was confronted with a similar situation where there was a difference between what the witness told court and what she told the police. Lady Justice Mugenyi found that the witness had insisted that she told police what she had told court and went on to observe that she was aware that the diligence with which police statements are recorded leaves a lot to be desired. As a result, Lady Justice Mugenyi emphasised that she relied on independent testimony of an expert witness and not on the impugned evidence of the witness.

I was confronted with a similar situation in **Soroti HCCC. No. 22 of 2012 Uganda v Olupot and others** where a witness testified on evidence that had not been recorded in the police statement and he asserted it was an omission on his part. I accepted his explanation and relied on his testimony and that of other witnesses.

Even without the evidence of inconsistencies between police statements and oral testimony in court, it is clear that A2 Akuro, in the period preceding the murder, she had uttered a threat to the deceased in the presence of PW1 Egou that the deceased would not live beyond two weeks and indeed, the threat came to pass as Ayeo was murdered before the two weeks expired. This coupled with the land dispute between her and the deceased that was decided in favour of the deceased is further evidence that there was animosity between the two women.

In her defence, she made an unsworn statement in which she acknowledged she had land wrangles with Ejulo and that while she had no problem with the two brothers Ejulo and Egou, they had issues with her.

With regard to A1 Okello, the evidence against him is overwhelming. He was positively identified at the scene of crime that night that had a clear sky by his limp and also because the two witnesses knew him.

In addition, he had uttered threats that once he received his balance of 50,000/ he would kill the deceased for hire. It was the deceased who mentioned this threat to PW2 Ejolu and two days later, the deceased was killed.

Other evidence implicating A1 in the murder is his conduct after the night of the murder. According to PW3 Irasa Francis, a police officer attached to Kaberamaido police post, on 19.5.2012 in the morning, together with other officers, proceeded to Okello 's homestead and when Okello saw police officers approach at a distance of approx. 200 meters, he ran away. PW3 was directed to the home of Okello by PW2 Ejolu and he too confirmed that Okello ran away on seeing police officers.

Okello was arrested a week later at his in law's home.

It is now generally accepted that flight is evidence of a guilty mind.

In his defence, A1 gave an unsworn statement in which he denied killing the deceased and alleged he was asleep in his house.

For the reasons given above, i agree with the two assessors that the state has proved beyond reasonable doubt that Okello Joseph A1 killed the deceased with malice aforethought going by the injuries inflicted intended to decapitate the head , the threats uttered immediately prior to the murder and his conduct after the murder. He is convicted of murder c/s 188 of the penal code as indicted.

With regard to A2, i accept the testimonies of the two witnesses with regard to her participation in the murder of Ayeo in the planning stage.

The evidence of the two witnesses of threats by Akuro that Ayeo would not live long days before she was killed is circumstantial evidence of her participation in the plan to kill the

deceased. Circumstantial evidence has been defined as evidence that tends point irresistibly to the accused person as the perpetrator of a crime and no one else.

However, i will not rely on the evidence in their testimonies that the two brothers Egou and Ejolu identified Akuro at the scene of crime because there is a marked contradiction with the police statements that are silent on participation of Akuro in the actual murder , and at best a mere statement of suspicion by PW2 Ejolu. Accordingly, i find that the state has not proved beyond reasonable doubt that Akuro participated in the actual killing of the deceased.

Instead, i find that the conduct of A2 is tantamount to a conspiracy to murder c/s 208 of the Penal code Act. I therefore disagree with the assessors that A2 is guilty of murder for the reasons i have given above.

A2 Akuro Florence is convicted of Conspiracy to murder c/s 208 of the penal code.

DATED AT SOROTI THIS 20th DAY OF MAY 2015.

HON. LADY JUSTICE H. WOLAYO

20/5/2015:

Both accused present.

Sera Rita Becky for state.

Ewatu fro accused.

Court Clerk Ecutu.

Court: Judgment read out.

State: No past criminal record against both convicts. This was a brutal murder where deceased was slaughtered. Pray court takes cognisance of rampant murders. Need for a decisive message. This is a rare of rarest cases. This calls for death penalty for A1. A2 maximum sentence is 14 years. She played central sole in the planning. Deceased left orphans.

Ewatu: The convicts fare first offenders. They are repentant. They have been on remand for a period of three years. A1 has four children. A2 has seven children and three others as of her late sister.

Pray for mercy. Her piece of land has been taken. 4 ½ acres of land, 10 head of cattle, 2 bicycles and six pigs. Children have been chased away from the land. Even A1 his family has been chased away from his 12 acres and 12 cows.

A1 Okello in allocutus:

I have other responsibilities. I look after my late brother's children and orphans of my paternal uncle.

A2: Akuro:

My marriage failed and returned to my parents. Place with seven children and three other children of my sisters.

Court: For sentence on 26.5.2015.

HON. LADY JUSTICE H. WOLAYO,
JUDGE,
20.5.2015.

SENTENCE

The gruesome manner in which the deceased lost her life is an aggravating factor. [She was hacked to death with a sharp object almost decapitating her head. This court has a duty to protect the right to life. The lawless attitude to life demonstrated by the utterances of convict Okello is a further aggravating factor.

That he is a family with child children is a mitigating factor.

Appropriate sentence is 35 years. As he has been on remand since May 2012, he is sentenced to 32 years imprisonment.

As for convict, Akuro Florence, her participation in the plan to kill the deceased is an aggravating factor. That she has children who might be homeless is a mitigating factor.

Appropriate sentence is ten years. As she had been on remand since May 2012, she is sentenced to seven years.

DATED AT SOROTI THIS 26TH DAY OF MAY 2015.

**HON. LADY JUSTICE H. WOLAYO,
JUDGE,
26.5.2015.**

26. 5. 2015:

Accused present.

Amerit for state.

Ewatu for accused.

Court Clerk Ecutu.

Court: Sentence read out.

**HON. LADY JUSTICE H. WOLAYO,
JUDGE,
26.5.2015.**