

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT LUWEERO**  
**HIGH COURT CRIMINAL SESSION CASE NO: 111 OF 2013**  
**(ARISING FROM NAK-001-AA-026-2012)**

UGANDA:..... PROSECUTION

VERSUS

SEMANDA GEOFFREY MWESIGE :..... ACCUSED

**BEFORE: HON. MR. JUSTICE JOSEPH MURANGIRA**

**JUDGMENT**

**1.1 INTRODUCTION:**

1.2 The prosecution is represented by Nabasitu Daisy, Principle State Attorney, the Resident State Attorney Luweero District. And whereas the accused, Semanda Geoffrey, Mwesige is represented by Mr. Richard Kiwanuka from Kiwanuka & Co. Advocates, Old Kampala.

**1.3 The assessors in this case are:-**

- Mr. Ddamulira Christopher
- Mr. Kiwalabye Issah

**2. Facts of the case**

The accused Semanda Geoffrey Mwesige and others still at large on the 29<sup>th</sup> day of April, 2012 at Kakooge Town Council in Nakasongola District with malice aforethought murdered Kyendo Ali. He was arrested, and indicted.

Hence this trial.

**3. Indictment**

**3.1.** The accused is indicted with murder contrary to Section 188 and 189 of the Penal Code Act, Cap 120, Laws of Uganda.

### **3.2. Ingredients of the Indicted offence**

In order for the prosecution to prove this case, the following ingredients must be proved by the prosecution beyond reasonable doubt:-

- (i) The person named in the indictment is dead.
- (ii) That the death was caused unlawfully.
- (iii) That the death was caused with malice aforethought.
- (iv) That it is the accused who participated in the killing of that person in the indictment.

### **4. Burden of Proof**

**4.1.** Proof of the charged offence against the accused has to be based on the prosecution evidence. The burden of proof always rests on the prosecution. The burden of proof does not shift to the accused person to prove himself/ herself innocent.

- a. The standard of proof is proof beyond reasonable doubt.
  
- b. The accused is presumed innocent until proved guilty by the prosecution. The trial court has to consider the prosecution evidence and the defence evidence in order to either acquit or convict the accused. If there is any doubt in the prosecution evidence, such doubt must be resolved in favour of the accused. See the case of **Woolmington Vs DPP (1935) AC 462 and Zungu Denis Vs Uganda (2007) 2 HCB 7.**

### **5. Witnesses for the parties**

#### **5.1 Prosecution witnesses.**

The prosecution in order to prove the ingredients of the charged offence beyond reasonable doubt called the following witnesses.

1. D/ASP Osele Stephen, the then O/C Kakooge Police Post, PW1.
2. Kabugo Rashid, the crime preventer of Kakooge Sub -county, PW2.
3. No.43702 D/Sgt Katarinawe Godic, who at the time was attached at Kakooge Police Post, PW3.
4. ASP Olupot John, the then O/C Katugo Police Post in Nakasongola District, PW4
5. NO. 43711 D/Cpl. Nakajja Grace, the investigating officer in this case, PW5.

## **5.2 Defence Witnesses**

- (i) Semanda Geoffrey Mwesige, the accused, DW.
- (II) Ssekatawa Bashir, DW2
- (iii) Twagira Issah, DW3
- (iv) Abu Zaituni, Nassur DW4

## **6. Exhibits in this case**

### **6.1 The prosecution exhibits**

The prosecution relied on the following exhibits:-

- (a) PF 48C, the post mortem report as EXH P1.
- b) PF24A, on which the accused was examined, EXH P2.
- c) The sketch plan of the scene of crime, EXH P3.
- d) Photograph of the deceased, EXH P4
- e) Police Statements of Kabugo Rashid (PW2), CT 1 and CT 2.

And a big stone allegedly used in the murder which was allowed on court record for identification purposes.

### **6.2 The defence exhibits**

In defence of the case, the accused relied on the following exhibits:-

- a) PW3's Police Statement, EXH D1
- b). PW5's Police Statement, EXH D2
- c). DW1's Charge and caution statement, EXH D3.

## **7. Resolution of the case by court.**

In his submission, Counsel for accused Mr. Richard Kiwanuka, considered at length the burden of proof and the ingredients of the charged offence. Counsel for the accused in his submissions, conceded that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> ingredients of the charged offence were proved by the prosecution. He however, vehemently contested the 4<sup>th</sup> ingredient of the charged offence. He submitted that this case was a fabrication from the beginning to the end; that which was calculated as a pay-back for the bad blood between the accused and the police force of Nakasongola Police Station and that of Kakooge Police Post.

**7.1** In reply, Counsel for the prosecution Ms Nabasitu Daisy, Principal State Attorney, on ingredients 1, 2 and 3 of the charged offence agreed with Counsel for the accused and submitted that prosecution proved those first three ingredients of the charged offence beyond reasonable doubt.

On the fourth ingredient of the charged offence, Counsel for the prosecution in reply did not agree with the submissions by Counsel for the accused. In her submissions, she too evaluated the evidence on the court record as a whole and submitted that prosecution proved all the ingredients of the charged offence beyond reasonable doubt

**7.2** On the 1<sup>st</sup> ingredient of the charged offence: the person named in the indictment **is dead.**

On the 1<sup>st</sup> ingredient the prosecution adduced evidence to prove that the person named in the indictment is dead through the post mortem report, Exh P1. All the prosecution witnesses and the defence witnesses gave evidence that Kyendo Ali is dead. Therefore, I am in agreement with

both Counsel for the parties and the two gentlemen assessors, and hold that the prosecution proved the 1<sup>st</sup> ingredient of the charged offence beyond reasonable doubt.

**7.3 On the 2<sup>nd</sup> ingredient; that the death was caused unlawfully.**

Both Counsel for the parties and the two gentlemen assessors agreed that the death was caused unlawfully. I have perused the entire evidence of the prosecution and the defence, and find that the late Kyendo Ali was murdered in cold blood. Article 22(I) of the Constitution of the Republic of Uganda, 1995, guarantees protection of right to life. To this effect, no person shall be deprived of his or her life except as is provided by law or by a sentence of death confirmed by the Supreme Court of Uganda. Again in the case of **Wanda Alex and 2 Others Vs Uganda, Supreme Court Criminal Appeal No. 42 of 1995**, it was held that;

**“After the court has properly considered all the essential elements which constitute the offence of murder, then killing was unlawful, since it was not accidental or authorized by law.”**

Therefore in agreement with both Counsel for the parties and the two gentlemen assessors, I hold that the prosecution proved this 2<sup>nd</sup> ingredient of the charged offence beyond reasonable doubt.

**7.4 On the third ingredient of the charged offence; that death was caused by malice aforethought.**

Both Counsel for the parties and the two gentlemen assessors agreed that death of Kyendo Ali was caused with malice aforethought. I have evaluated the evidence as a whole on court record. Considering the manner in which Kyendo Ali met his death by stoning and eventually setting his body ablaze using old tyres and fuel as confirmed in evidence on court record, the acts of the aggressor`s were lethal. From the way the deceased was stoned and later burnt, he couldn`t have survived. In this case therefore, I agree with both Counsel and the two gentlemen assessors that the death of Kyendo Ali was caused with malice aforethought. In that regard, I hold that the prosecution proved the 3<sup>rd</sup> ingredient of the charged offence beyond reasonable doubt.

7.5 On 4<sup>th</sup> ingredient of the charged offence: the participation of the accused person in the commission of the charged **offence**.

Counsel for the accused Mr. Richard Kiwanuka, seriously criticized the prosecution witnesses. He submitted that this case against the accused was a fabrication of his haters especially the Police at Nakasongola Police Station and Kakooge Police Post. That there was a grudge between the accused and the said police officers. He gave in his submissions reasons for him to believe that there was grudge between the accused and the police officers in the Nakasongola jurisdiction. He said that this case was borne, nurtured and developed in the vengeful minds of the police officers and cooked to imperfections at the office of the Resident State Attorney at Nakasongola. That in that regard, the evidence relied on by the prosecution to prove its case against the accused is tainted with lies and inconsistencies. That it also lacks credibility. He further submitted that the evidence of PW1, PW3 and PW4 is tainted with his falsehoods and inconsistencies.

He then evaluated the evidence of the prosecution witnesses and submitted that the lies, falsehoods and inconsistencies in the prosecution case cannot be relied on by this court to convict the accused of the charged offence of murder.

In reply to this issues raised by Counsel for the accused, Counsel for the prosecution Ms Nabasitu Daisy in her submission she does not agree with the submissions by Counsel for the accused. She submitted that the prosecution evidence is truthful, credible and consistent with each other. That the issues raised by accuser's Counsel do not hold water at all. She prayed this court to have them dismissed.

On the issue of fabrication of the case and pay-back for the bad blood that allegedly existed between the police force at Nakasongola Police Station and at Kakooge Police Post that was raised by Counsel for the accused, Mr. Richard Kiwanuka, I evaluated the evidence on record as a whole and note that submission was not supported by the evidence on court record. The alleged facts were submissions from the bar. It is the evidence of PW1, PW3 and PW4 that they had a good working relationship between them and the accused. That they had no grudge with the

accused. This prosecution evidence was confirmed by the evidence of the accused and his witnesses. In cross examination by the prosecutor, the accused, DW1 stated that:

**“I had a good relationship with Kakooge police post and Nakasongola police station.”**

In further cross examination by counsel for the state, DW1, the accused stated:

**“I was working hand in hand with the police. I could go to court and the police station to check on my people who could be arrested. I could report to police people who had committed offences for their arrest.”**

Again, PW3 in his evidence told court that he is the one who reported this case of murder by a mob and there after they recorded police statements of what they saw and heard while at the scene of crime.

In view of the above stated evidence, I find that the allegation raised by the Counsel for the accused is unfounded. There was no such grudge between the accused and the police in the Jurisdiction of Nakasongola District.

On the Counsel for accused’s submissions that it’s the accused who instigated meetings in Nakasongola district that was attended by high profiled police officers from the Police head quarters, Kampala, as from the evidence on court record, it is not true.

PW3 stated in his evidence that these meetings were convened as a result of an increase in murder cases at the time in the district. That the meetings were convened with an intention to see how these murder cases could be curbed down. Then PW4 in his evidence stated that he was present in the said meetings and nothing was mentioned there and that it was the accused who had initiated those meetings. This piece of evidence was never challenged in cross examination by the defence nor in defence. It is therefore my finding that the prosecution case is not a fabrication, and that no grudge existed between the accused and the prosecution witnesses.

On the inconsistencies raised by the accused's lawyer, indeed there are some inconsistencies on who of PW1, PW3, and PW4 arrived at the scene at Bamusuta and eventually at Ekitangala first. From the account given by the prosecution witnesses, it is clear that they arrived at Bamusuta at different times, using different means. PW4 stated in his evidence that the victim was carried on a police motor cycle from Bamusuta to Ekitangala junction. Yet PW1 and PW3 indicated that the victim was moved on the motor cycle of a lay person. However I hasten to add, that these are minor inconsistencies as to who arrived at the scene of crime at Bamusuta and Ekitangala junction first and whether the victim was taken at the scene of crime using a police motor cycle or the motor cycle of a civilian known as boda boda. Such inconsistencies do not go to the root of the prosecution case. Such inconsistencies would have been grave if they were pointing at the manner the offence was committed.

My findings on this issue are supported by the case of **Alfred Tajor -Vs- Uganda EACA, Criminal Appeal No. 197 of 1969** which was quoted with approval in the case of **Kalulu Isingoma -Vs- Uganda, Criminal Appeal No. 23 of 2003**, whereby the issue of inconsistencies and/ or discrepancies were settled down. That such inconsistencies and discrepancies that do not go to the root of the prosecution case are minor and would be ignored.

Furthermore, Counsel for the accused submitted that the police officers did not take charge of the situation that therefore, they were negligent and that led to the death of Kyendo Ali.

I have evaluated the evidence on record as a whole. All the prosecution witnesses and those of the defence witnesses in their respective evidence were in conformity that there was a big crowd at the scene of crime which was crowdy and that the police officers were trying to protect the life of the victim. And in executing their duty, the police officers fired in the air to disperse the crowd which in fact led to the injuring of some people, including Pw2 a one Kawesa. The circumstances that pertained at the scene of crime as per the evidence on court record shows that the police was overpowered by the crowd, thus in succeeding in killing the victim, Kyendo Ali.

It is therefore my finding that PW1, PW3 and PW4 in their respective actions did their best in transporting the victim to Kakooge Police Post which from the evidence on record and the sketch



plan of the scene of crime was about 300 meters away from the scene of crime. I thus confirm that the police was not negligent in their case, but it was over-whelmed by the crowd.

On the real killing that took place at the scene of crime of the victim, Counsel for the accused in his submissions raised the issue of alibi. That at the time the victim was killed and burnt by the mob, the accused was still at the burial of the late Luwazafalu whom it is alleged might have been killed by the victim in this case. That by the time the accused came to the scene of crime, the victim was already dead. Further in his submissions, he criticized the evidence of PW1, P3 and PW4 that it was full of lies, falsehood, inconsistencies and contradictions. That there is no way how from such a crowd could PW1, PW3, and PW4 have been able to identify the accused as a person who participated in the killing of Kyendo Ali.

In his submissions, Counsel for the accused submitted that the evidence of DW2, DW3, and DW4 corroborated the evidence of the accused, DW1 to the extent that by the time the accused arrived at the scene of crime, the victim was already dead and burnt. Counsel for the accused also relied on PF24, the post mortem, EXH P2 whereby he submitted that the medical report made a finding that the cause of death was burning of the body of the victim. That there were no external marks on the body. That the medical evidence contradicts the evidence of PW1 who stated that it is the accused who hit a stone at the victim on the head and that the stone killed him. That, that was not seen by the Doctor who examined the victim's body for a post mortem. He ended up by submitting that the prosecution in totality failed to prove the 4<sup>th</sup> ingredient of murder. He prayed that the accused be acquitted of the charged offence and be set free.

In reply to the submissions by Counsel for the accused, Counsel for the prosecution Ms Nabasitu Daisy, Principal State Attorney does not agree. She evaluated the evidence on court record as a whole and submitted that the prosecution proved its case against the accused beyond reasonable doubt. In her submissions, she asserted that it is the accused who participated in killing Kyendo Ali the deceased.

The assessors in their joint opinion stated that the evidence of PW1, PW3 and PW4 has a lot of contradictions, inconsistencies and lies. That the evidence of both the prosecution and the defence proved that at the time of the incident, the accused was at the burial of the late Muzafalu which was 30 miles away from the scene of crime. That therefore the accused reached the scene of crime when the victim was already burnt. With that they found that the prosecution had failed to prove the 4<sup>th</sup> ingredient of the charged offence beyond reasonable doubt. They then advised me to acquit the accused person. Therefore the assessors are in agreement with the submissions by Counsel for the accused.

It should be noted that the role of assessors in criminal trials before the High Court of Uganda is that they are Judges of fact. The law on assessors then is to make opinions on any fact relevant to the issues in the case. But the decision on any question of fact and the law shall be dealt with by the Trial Judge alone. In

this instant case, therefore, am not bound by the advice of the two gentlemen assessors.

In proving the participation of the accused in the commission of the charged offence, the prosecution witnesses stated that there was an incident where a mob of people were lynching the victim after suspecting him to have been behind the murder of the colleague, Muzafalu a boda boda cyclist and stole the latter's motor cycle.

Prosecution witnesses testified that as much as it was a mob, they managed to identify the accused from the mob and in doing that the prosecution witnesses pointed out the role played by the accused in causing death of the victim, Kyendo Ali. PW1, PW3, and PW4 gave evidence that he did that by throwing a big stone that hit the victim, who was still alive.

Counsel for the accused raised an issue of lack of identification of the accused by PW1, PW3 and PW4. To resolve this issue of identification, I evaluated the evidence on record as a whole. I have looked and considered the accused's conduct before his arrival at the scene of crime, during the commission of the offence and his conduct after the commission of the offence. PW1, PW3 and PW4 told court that they knew the accused before this incident as the Local Councilor of Kakooge Sub County at Local Council 5, Nakasongola District. This piece of evidence was

confirmed by the accused, DW1 in his evidence in defence. From this evidence it is clear that the accused was known to the prosecution witnesses.

It is also a confirmed fact from the evidence of both the prosecution and the defence that this incident took place during the day time. Thus there was sufficient light to enable PW1, PW3 and PW4 to see the accused whom they even knew before this incident.

PW1, PW3, and pw4 who were eye witnesses in this incident gave evidence that they received information on the 29<sup>th</sup> April, 2012 at 1:00pm. That there was a suspect, motor cycle thief being beaten up by a group of people at Kyampisi. They proceeded to that place, though at different times using different means of transport but reached Kyampisi at the same time, where they witnessed this incident. This incident took approximately between 2-3 hours and from their testimonies it ended at 4:00pm, which was still day time. This evidence is corroborated by the evidence of all the defence witnesses, who stated that they came at the scene of crime between 1:00pm- 3:00pm depending on the witnesses's arrival at the scene of crime.

On the issue of the participation of the accused in the commission of this offence, PW1 told court that while at the scene of crime at Ekitangala junction he saw the accused coming in a motorvehicle with other mourners, jumped out and came running to the scene of crime where Kyendo Ali was and that the accused said that;

**“Why are we wasting time with this man? Don't you know that police is good at protecting thieves?”**

That at that time the accused picked a big stone that was lying near the trench where the victim was lying, threw it at him. PW1 went on to state in his evidence that at that time the victim was still alive and that after throwing the big stone at the victim, the accused mobilized fuel and old tyres to burn the victim. PW1 stated that he managed to identify the accused from the big crowd because he was not knew to him and that the accused was three (3) paces away from where he was standing while trying to contain the mob. His evidence was corroborated by also the independent evidence of PW3, D/Sgt

Katarikawe Godic whose evidence is almost similar in a way the accused came to the scene of crime. PW3 in his evidence confirmed to Court that he saw the accused pick up a big stone from near the trench and threw it at the victim who was lying in the trench. That it was at that point that the victim died. PW3 went on to state in his evidence that he managed to identify the accused as a person who threw the big stone at the victim because of the role the accused played at the scene of crime.

That after the victim`s body was rescued from burning by the police officers who had come from Nakasongola District Police Headquarters, and the crowd had been dispersed, he picked the said big stone and exhibited it at Kakooge police post and on the stone he marked, “**Murder Kakooge.**” I wish to note that the stone was tendered in court for identification purposes because the exhibit slip was mis-placed in the police stores.

Further, this evidence of the accused`s participation in the commission of the crime is further stated by A/S/P Olopot John, PW4 who also was at the scene of crime and witnessed the whole incident as it happened up to the end. In his evidence in chief, he indicated that on arrival from Kyampisi as he was following the suspect/victim, they met a big crowd of people at Ekitangala junction who started throwing stones at the victim who was lying in a trench. He further stated that there was some shooting by the police officers in order to disperse the crowd which stopped him from moving closer to where the victim was lying to ascertain whether he was still alive or dead. And that it was at that time he saw the accused come running towards the big crowd and that it was at that time he saw the accused throwing a stone at the victim who was lying in the trench.

From the evidence of PW1 and PW3 as analyzed above, by the time the accused threw the stone at the victim the victim was still alive. Again from the evaluation and analysis of the prosecution evidence, it is my finding that all the conditions for proper identification of the accused at the scene of crime were favourable and that therefore, there was no possibility of mistaken identity. Besides, these witnesses stated that there were other participants in the commission of this offence but that they managed to identify the accused who was well known to them. In addition, I hasten to state that the prosecution evidence is not evidence of a single identifying witness of

the accused. This was the evidence of PW1, PW3 and PW4 who properly identified the accused. The factors for proper identification of an accused person by a single identifying witness was well laid down in the case of **Abdallah Nabulere & 2 Others Vs Uganda, Criminal Appeal No. 9 of 1978.**

Owing to that authority and the evidence of PW1, PW3, and PW4 the accused was positively put at the scene of crime. Then the accused's defence that he was not at the scene of crime at the time the offence was committed does not create a doubt in the prosecution case. In the case of **Alfred Bumbo & Others Vs Uganda, Supreme Court Criminal Appeal No. 28 of 1994**, it was held that;

**“The law is that once the accused person has been positively identified during the commission of a crime, then his/ her claim that he was elsewhere must fail.”**

In this instant case the accused's defence of alibi fails.

Counsel for the accused raised a pertinent issue in relation to the post mortem report; EXH P1. According to him, the cause of death was burning. I perused that EXH P1 and according to the general observation on that post mortem report, the body had clothing's which were burnt on the body of the victim and the body had severe deep burns. The body was decomposing.

PW1, PW3 and PW4 who are the eye witnesses gave evidence that the victim was first beaten at Kyampisi and started bleeding. When they reached Ekitangala junction stage, the people continued hitting the victim using stones. And after realizing that he had died, the accused and other participants who were not identified by the prosecution witnesses burnt the body using fuel and old tyres. This evidence is even corroborated by the evidence of the defence witnesses that the victim was set on fire after the beating by people. The evidence of DW2 and DW3 who were at the scene of crime from the beginning up to the end clearly testified to that.

I therefore make a finding that the burning of the victim was subsequent to the beating. And that in my considered view, the burning of the victim was intended to extinguish the evidence of the injuries that had been inflicted on the victim

It is further the evidence of the accused in cross examination that:-

**“-At that time I talked to the people to cool down,**

**-As a leader of the area, I went to the people at the scene of crime to find out what was taking place,**

**- I talked to the people to cool down as their leader, they respect me.”**

Then DW4 in cross examination, she stated among other things that,

“– We hurried to the scene to see the one who had killed Muzafalu, we were angry because of the death of Muzafalu.

-When we reached the scene, we moved to the drainage where the thief was lying

-I was following the accused who was hurrying and we were closely following him.

- We reached where the victim was lying, I saw the body and the accused was there in front of me.

-The body was lying-in the drainage and the accused saw the body and I was there.

- I saw the accused conducting himself as a traffic police officer at the scene of crime.

- I saw the accused pushing the stones from the road with his feet. He was the only one I saw doing it.

-I heard from the rumors in the place that it was Semanda (accused) who killed the deceased.

- I heard that information three days after the incident.”

In re-examination, DW4 confirmed her above quoted statements. It is still clear that even the evidence adduced from the defence witnesses put the accused at the scene of crime. Furthermore,

I saw the prosecution and defence witnesses testify, noted their demeanor and in the result I found PW1, PW3 and PW4 the eye witnesses in this case more credible.

My finding is supported by the case of **Nankya Vs Uganda, Supreme Court Criminal Appeal No. 24 of 1995** whereby it was held that:-

**“Whether a court believes one witness and disbelieves another is a question of credibility after the court has considered all the evidence and demeanor of the witnesses.”**

In the instant case the demeanor of the defence witnesses was wanting. I therefore, hold that the prosecution proved the 4<sup>th</sup> ingredient of the charged offence beyond reasonable doubt.

#### **6. Conclusion**

In closing, and in consideration of the whole evidence on court record, the submissions by counsel for the parties, the law applicable to this case and the gentlemen assessor’s joint opinion, I am in agreement with arguments by counsel for the prosecution. I, therefore, find that the prosecution has proved this charge of murder against the accused beyond reasonable doubt. There is no doubt in my mind that the accused participated in the murder of the victim, Kyendo Ali. The accused is thus found guilty and convicted of the offence of murder, contrary to Section 188 and 189 of the Penal Code Act (Supra).

Dated at Luweero this 21<sup>st</sup> day of April 2016

.....  
**JOSEPH MURANGIRA**  
**JUDGE**

**21/4/2016**

Ms Nabasitu Daisy, P/S/A for the state.

Mr. Richard Kiwanuka for the accused is in court.

The accused is in court.

The two assessors are in court.

The case is for judgment.

Mr. Nekusa Amos the clerk is in court.

**Court:** Judgment is delivered in open court to the parties. The accused`s bail is accordingly canceled.

**Alloctus**

- The accused/ convict is a first offender.
- However the convict is a councilor at the LC5 level who is well knowledgeable of the law as per the law of evidence and therefore he was expected to be an example to the people.
- His action was a bad example to his people since it happened among his people in broad-day light.



- This was an incident of a mob justice which incidents are very rampant in this jurisdiction and have led to the loss of many lives.
- The dead in the case lost his life based on suspicion, depriving his relatives of their enjoyment of his life and depriving the deceased of enjoyment of his own life.
- Throughout this trial, the accused was not remorseful.
- Since the maximum sentence of this offence is death whereas this offence does not fall in the rare of the rarest cases, in the circumstances I pray for a deterrent sentence which can deter the convict and other intending offenders in cases of mob justice. So I pray.

**Counsel for the accused in mitigation for the sentence;**

- The convict is a first offender.
- The participation as per the judgment was very minimal.
- The sentencing guide-lines part 4 item 5 in regard to murder, the sentencing range from 30-death with a presumed sentence of 35 years subject to aggravating and mitigating factors.
- Secondly, the court may impose a life imprisonment if it concludes that the circumstances of the case do not warrant a death sentence.

**Factors:-**

**Aggravating factors;**

- A degree of premeditation, use and nature of weapon, the vulnerability of the victim.

- As per these guide-lines, death sentence can be imposed where the offence it was premeditated. On the part of this particular convict, there was no premeditation.
- The victim was not a law enforcement officer for one to impose a death penalty nor was the deceased person a public servant who was on duty nor was he a state witness.
- The deceased person was not sacrificed so the death penalty does not arise in this case.
- The convict still has a lot to offer to this country since he is a councilor representing Kakooze sub /county so he is a person of responsibility to his community.
- The convict has a tender family of 5 kids- the oldest is 6 years. All these depend and have their future in the hands of the convict.
- In the premises we pray to this court that it exercises leniency to the convict when considering a sentence to be imposed on him.
- According to me, throughout the trial the convict has been obedient to the etiquette of the court-room. There was no way he would have confessed to the crime yet he had pleaded not guilty.
- He had a good demeanor. It is the remorsefulness of a person who is guilty.
- We reiterate our earlier prayer that a lenient sentence be handed to the convict in consideration of all the above factors.

So I pray.

**Court:** Sentence shall be delivered on the 22/4/2016 at 10:00am. In the circumstances, the convict's bail is canceled. He shall be remanded to Butuntumula Prison till tomorrow.

**JOSEPH MURANGIRA**

**JUDGE**

**21/4/2016**

**SENTENCE AND REASONS FOR THE SENTENCE:**

In passing the sentence the following considerations shall be taken into account:

1. All the mitigating factors that were advanced by both counsel for the parties.
2. The incidents of innocent people losing their dear lives in the name of mob justice are on the increase in this jurisdiction and in Uganda in general.
3. The convict in finishing the victim with hitting him with a stone and burning the deceased to death clearly shows he took the law into his hands.
4. As justice in this country demands as per the Constitution of the Republic of Uganda, 1995 the courts cannot accept lawlessness to flourish in Uganda. The offender of the law must be punished.
5. At the scene of crime the convict from the evidence on record took charge of the scene despite the presence of many police officers.
6. The deceased lost his life at the hands of the convict and others still at large.

7. I note that the maximum sentence in this offence of murder is death.
8. The convict is a first offender.
9. I also consider the level and extent of the convict's participation in this murder of the deceased.
10. This case is not a rare of the rarest cases to attract the maximum sentence.
11. The convict has all along been on bail.

Therefore, considering all the above stated factors, I do sentence the convict to 10(ten) years imprisonment.

Dated at Luweero this 22<sup>nd</sup> day of April, 2016.

**MURANGIRA JOSEPH**

**JUDGE**

**22/4/2016**

Ms Nabasitu Daisy Principal State Attorney for the state.

Mr. Richard Kiwanuka for the accused.

The accused/convict is in court.

The two assessors are in court.

Mr Nekusa Amos the clerk is in court.

**Court:** Sentence is delivered to the parties in open court. Right of appeal is explained.

**JOSEPH MURANGIRA**

**JUDGE**

**22/4/2016**