

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0226 OF 2014

UGANDA **PROSECUTOR**

VERSUS

A1. ADIMA ANJELO	}		
A2. TUGA MAURICE alias MATUA	}		
A3. JINO ENZAMA	}		
A4. DRANI SIMON	}	ACCUSED
A5. OBARU LEVIRA	}		
A6. ENZARU ANNA	}		

Before Hon. Justice Stephen Mubiru

JUDGMENT

The six accused in this case are jointly indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the six of them and others still at large, on the 16th day of August 2013 at Dumuru village in Maracha District, murdered a one Mambo William.

The prosecution case is that the deceased was a resident of Dumuru village in Maracha District, where all the accused persons are resident too. The accused suspected the deceased to be responsible for the death of one of their relatives, the late Nyakua who died at Hospital, six days before on 10th August 2013. They suspected that the deceased had applied witchcraft to cause the death of Nyakua. According to P.W.5, Draleru Stella, a niece of the deceased who witnessed the attack on the deceased from beginning to end, the deceased was attacked on the morning of 16th August 2013 at around 6.00 am, while on his way to work. She responded to an alarm raised by A6 and found the deceased being held by the collar by a one Simiyo, being led to the home of P.W.7 Onzia Kasto. A1 removed his shirt and began assaulting the deceased. A5 held a club and a photograph of the late Nyakua while crying and declaring loudly that his killer had finally been found. A6 and A5 began hitting the door to the home of the deceased with hoes, thereby removing the lock. The deceased managed to call for help on his mobile phone but someone in the mob grabbed it and crashed it to pieces. A2, A3 together with the mob began assaulting the

deceased asking him what he had been doing by Nayakua's grave as the deceased pleaded for his life. A4 held a stone and cautioned the mob that the deceased was likely to escape using his supernatural powers as a witch. A6 joined in, assaulting the deceased with a club. A1 and A3 had no weapons in their hands but the latter boxed the deceased on the back. When the deceased fell face down, A2 began hitting him on the head with a hammer repeatedly causing a fracture of the skull and a spill of blood and brain matter. A4 dragged the body from the roadside and dumped it on top of Naykua's grave. He noted that the deceased was still breathing and said he was likely to revive himself using witchcraft. He then stamped on his chest several times to ensure he was dead. The police later came and took the body to hospital where a post mortem examination was done.

The admitted evidence of P.W.2 the Medical Superintendent of Maracha Hospital who conducted the autopsy on 17th August 2013 revealed that the cause of death was a fracture of the skull (frontal and parietal) leading to excessive bleeding. It also revealed external injuries which included cut wounds on the frontal and parietal scalp, a burnt abdomen, scrotum, penis and buttocks. The internal injury found was the fracture of the skull (frontal and parietal).

The Investigating Officer, D/IP Aria Ernest Coxtton, who testified as P.W. 4 stated that on the fateful day, he received a phone call from the O/C of Oleba Police Post that there had been a murder at Dumuru village. Together with other officers he went to the scene which was at the home of P.W.7 near a recently covered grave. He drew the sketch map of the area (exhibit P. Ex. 8). He collected a number of items of interest at the scene including stones, a pestle, and a broken flask which he recorded on an exhibit slip (exhibit P. Ex. 9). He also caused the scene to be photographed (P. ID. 1). He arranged for the body to be taken for a post mortem and recorded statements from witnesses who refused to identify a single perpetrator but only said that the deceased had been killed by a mob. There was apparent local community hostility towards the police and a conspiracy by the community not to cooperate with the police in its investigation. Later P.W.5 revealed the names of the perpetrators and this witness participated in their arrest from their respective homes before day break on 28th December 2013.

P.W.3. Godo Miriga testified that on the morning of 16th August 2013 at around 6.00 am, he received a call from the deceased who asked him to inform his wife in Oleba Trading Centre that he was in grave danger. He was surrounded at his home by a mob that wanted to lynch him and for that reason his wife should call the police urgently. He woke up the wife of the deceased who immediately ran to the police and reported. The wife of the deceased and the police rushed to the scene. Later he received information that the deceased had been killed.

P.W.6. Ayotaru Assumpta, widow of the deceased testified that on 15th August 2013 he was at her place of work in a restaurant at Oleba Trading Centre when she saw a group of people from her home village Dumuru at Oleba Police Post, which was very close to her place of work, carrying clubs. On the morning of 16th August 2013 at around 7.00 am, she was woken up by her neighbour P.W.5 who told her he had received a call from her husband directing her to alert the police about the danger he was facing. She immediately ran to the police post and alerted the police. The police informed her that the previous day a group of people from Dumuru village had reported a case against her husband and they had advised them to settle the matter amicably at the village. She rushed to the scene with the help of a boda boda rider only to find that her husband had already been lynched and his body had been deserted, lying on top of Nyakua's grave. The police later came to the scene and took the body away. A5 and A6 were still at the scene at the time she arrived. They were carrying clubs and threatened to beat her but when the police arrived; they threw the clubs onto the ground and ran away.

P.W.7. Onziga Kasto testified that during the evening of 15th August 2013 at around 5.00 pm, the deceased came riding a motorcycle which he parked at the home of this witness and proceeded to his own home which was about 70 metres away. Shortly thereafter, the deceased returned with a few leaflets of pumpkin and three short sticks. He made four circular movements with his hand holding the articles above his head and then threw them near Nyakua's grave. The people in that home who had witnessed the act of the deceased started crying which attracted a crowd. The deceased picked his motorcycle and rode away. The gathering decided that the matter should be reported to the authorities. The youth went to Oleba Police post to report. They wanted the police to hand over the deceased to them from his second home near the police post for him to explain his bizarre conduct. The police advised the youth to return to the village and have the

matter resolved by the elders. The following morning at around 7.00 am, he embarked on alerting the elders and had walked about half a mile when he heard the sound of wailing coming from the direction of his home. He returned home immediately only to find a crowd had gathered at his home and the deceased was lying dead at the grave of Nyakua. He saw blood on the face of the body and a flask and cup lying nearby. None of the accused was at the scene when he returned. He was one of the persons arrested by the police in the wee hours of 28th December 2013 but was later released after recording a statement.

In his defence, A1 Adima Anjelo testified that on the morning of 16th August 2013, he was digging in his garden at Minyako village about a mile away from Dumuru village. On his way back home after digging, he received information that someone had been killed at the home of P.W.7. His home is about 150 – 200 metres from the scene but he did not go to the scene at all that day nor the following day for fear of being implicated in the killing. He denied participation in the killing of the deceased.

In his defence, A2 Tuga Morris testified that he was ordinarily resident in Masindi and only returned home to Dumuru village during the month of July 2013 and then on 10th August 2013 for the burial of Nyakua but arrived after the burial had taken place. On 16th August 2013 close to 6.00 am, he set off on his bicycle for Nyarlo Market in Koboko to take his sweet potatoes for sale. He returned home at around 3.00 pm, picked an exercise book containing names of children who were due to be baptised the following Thursday. He had been nominated Chairman of the group of parents who had children being prepared for baptism. He proceeded to the Church where he had to call off the meeting since most of the parents had left before his late arrival. On his way back home at around 4.00 pm – 5.00 pm, he saw the police talking to a crowd of people gathered at the home of P.W.7. The police summoned him and asked him where he was coming from. He showed them the exercise book and explained. The police said someone had been killed at the home of P.W.7 but did not tell him who it was. He too denied participation in the killing of the deceased.

In his defence, A3 Gino Enzama testified that on 16th August 2013, he had spent the night at the funeral of Nyakua. Close to 6.00 am on that day, from a distance of about 50 – 60 metres with

the aid of moonlight, he saw what appeared to be a human being at Nyakua's grave. When he drew closer, he recognised the person as the deceased and he asked him what he was doing at Nyakua's grave yet no one had implicated him in his death. The deceased immediately attacked him. When the accused tried to pull himself away, they both fell down. The deceased hit his head on a stone and lay motionless. He had sustained a single injury on the left side of the head and was bleeding. In panic, the accused walked away and returned home. He did not tell anyone about the incident for fear of reprisals. He later realised that the deceased was dead when he heard people crying. He did not intend to kill the deceased. He was then arrested on 27th December 2013 and a statement was recorded from him on 29th December 2013.

In his defence, A4 Drani Simon testified that following the death of his uncle Nyakua on 10th August 2013, he went to Congo on 14th August 2013 in search of foodstuffs to feed the mourners. On 17th August 2013 while his way back on, he obtained information at Oleba Trading Centre at around 4.00 pm that someone had been killed back home and he was advised not to return home since there were many policemen and he was likely to be arrested. He nevertheless decided to return in order to find out the truth. When he arrived home, he found a newly covered grave at his doorstep. He knew the deceased as a witchdoctor who at one time during the year 2012 had offered to teach him the trade but he had declined. Before the death of the deceased, he thought a witch could not die. Since there was no one at home, he returned to Oleba Trading Centre where he spent the night. The following day he returned home and his father and other members of the home later returned too. During the night of 27th December 2013, the police knocked at his door and when he came out he was arrested. He was taken to a waiting police vehicle where he found the rest of his co-accused already under arrest. At the police station, he was made to sign a statement prepared in advance by the police and he did not know what the statement contained. He too denied participation in the killing of the deceased.

In her defence, A5 Elvira Obaru testified that on 15th August 2013 she proceeded to Oleba Catholic Parish Church for a three day residential Christian training for a religious group, "Catholic Action" of which she is a member. On 16th August 2013 at around 9.00 am while washing a piece of her clothing at the stream, she received information from passersby that the deceased had been killed. She was advised by the leaders of her religious group not to return

home for the funeral as that was likely to interrupt her instruction which was mainly about loving, forgiving and caring for one another. On 17th August 2013 she returned home only to confirm that indeed the deceased had died. She found the home deserted but there was a new grave which she identified as that of the deceased. She returned to the Church. She admitted having held Nyakua's photograph but only on 10th August 2013 the day of his funeral, showing it to a relative who had arrived late after the funeral had taken place. Thereafter, the photograph hung in the living room but under the custody of the widow of the deceased who eventually took it with her. She was arrested during the night of 27th December 2013, and she too denied participation in the killing of the deceased.

In her defence, A6 Enzaru Anna testified that on 14th August 2013 she had returned to her marital home following the funeral of her brother, the late Nyakua. She spent the day moving around the village informing women about the planned visit by her husband to the home of Nyakua to pay cultural homage to the bereaved family in his capacity as an in-law, which was planned to take place in the next few days. On 16th August 2013, the day she planned to return to the late Nyakua's home, she heard loud wailing coming from that direction. When she went there at around 9.00 am in response to the crying, she found the body of the deceased lying on the grave of the late Nyakua and there were policemen around. She started crying but the police stopped her from crying and directed her to leave the scene if she could not stop crying. She retreated to a distance of about 250 metres away at the grave of a brother of hers who had died in 2012 and continued to cry from there. She did not return to the home of P.W.7 to attend the funeral which took place later that day. The following day 17th August 2013, she returned to her marital home. On 28th December 2013, she received information that her co-accused had been arrested. She prepared food to take to them at the police station but when she got there, she too was arrested. She denied participation in the killing of the deceased.

In his final submissions, counsel for all the accused on State Brief Mr. Samuel Ondoma conceded that death and the fact that it was caused unlawfully was proved to the required standard. He however contested the element of malice aforethought. He argued that the testimony of A3 should be believed that the death was caused accidentally as a result of a fall. He also contested participation of all the accused save A3 who admitted having been involved in

an altercation with the deceased. He submitted that the alibis of the rest of the accused had not been disproved by the prosecution evidence. He prayed that all the accused should be acquitted of the offence of murder and only A3 be convicted of the offence of manslaughter.

In response, the learned State Attorney, Ms. Jamilar Faidha argued that the prosecution had proved all the ingredients of the offence beyond reasonable doubt. Concerning malice aforethought, she argued that the nature of the injuries inflicted and the parts of the body targeted indicate that death was caused intentionally. The defence advanced by A3 of death accidentally caused should be rejected. As to the participation of the accused, she argued that on basis of the evidence of identification by P.W.5 each of the accused had been properly placed at the scene of crime. A3 admitted being at the scene of the crime. The defence of alibi advanced by the rest of the accused should be rejected and all of the accused should be convicted as indicted.

The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence, (*See Ssekitoleko v. Uganda [1967] EA 531*). Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (*see Miller v Minister of Pensions [1947] 2 ALL ER 372*). For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. Death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

Death of the victim may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. In the instant case, prosecution adduced in evidence the admitted post mortem report prepared by P.W.2, the Medical Superintendent of Maracha Hospital, which was tendered as exhibit P.Ex.7 dated 7th August 2013. The body was identified to him by a one Adriko Stephen. Furthermore,

there is the testimony of the widow of the deceased P.W.6 Ayotaru Assumpta, who saw the body of her late husband and attended his funeral. P.W.4 Aria Ernest Coxton, the investigating Officer, as well saw the body of the deceased at the scene. P.W.5 Draleru Stella, a niece of the deceased saw his body at the scene and she too attended his funeral. D.W.1 Adima Anjelo in his defence did not contest this element when he testified that he was told that Mambo William had been killed although he did not get close the scene. D.W.2 Tuga Morris too testified that he saw people and the police gathered at Kasto's home (P.W.7) and heard that someone had been killed although he did not know who had been killed. D.W.3 Gino Enzama admitted having fought with the deceased and that the deceased accidentally fell and died instantly in his presence. D.W.4 Drani Simon too did not contest this element when he testified that he returned after the funeral and was told that Mambo William had been killed. D.W.5 Elvira Obaru similarly did not contest this element when she testified that she heard about the death and found the grave in front of Kasto's house upon her return. D.W.6 Enzaru Anna testified that when she responded to loud crying at the home of Kasto, she found the body of Mambo William lying at the grave of the late Nyakua. On basis of all that evidence I am satisfied that the prosecution has it was proved beyond reasonable doubt that Mambo William died on 16th August 2013.

It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. P.W.2 the Medical Superintendent of Maracha Hospital who conducted the autopsy established the cause of death as "fracture of the skull (frontal and parietal) leading to excessive bleeding" (where "frontal and parietal" means; towards the front and top of the head). Exhibit P.Ex.7 dated 7th August 2013 contains the details of these findings. All accused apart from A3 did not address this element in their defences since they relied on alibis.

In his defence D.W.3 Gino Enzama admitted having fought with the deceased who then accidentally fell and died instantly in his presence. His description is that the deceased fell and hit the left side of his head onto a stone used to mark the grave of Nyakua. P.W.4 Aria Ernest Coxton the investigating Officer testified that he saw stones at the scene. Although the stones were not visible in P.ID.1, the photographs taken at the scene, which instead show a deformed head of the deceased, a pool of blood, a blood-stained pestle, jungle boots and pebbles, counsel

for the accused argued the photographs were taken after the scene had been tampered with. Considering that these photographs were not tendered in evidence, no reliance whatsoever shall be placed on them.

However, the description of the injury the deceased sustained when he fell down as made by D.W.3 is inconsistent with the medical evidence admitted during the preliminary hearing. D.W.3 said it was a single injury to the left of the head yet exhibit P.Ex.7 indicates multiple injuries found on the body of the deceased which included cut wounds on the frontal and parietal scalp, a burnt abdomen, scrotum, penis and buttocks and a fracture of the skull (frontal and parietal). The location of head injury is inconsistent with the version of D.W.3 while rest of the injuries cannot have been sustained in the manner explained by this accused. For that reason his version is rejected and there not being any lawful excuse advanced by any of the accused, on account of the death of Mambo William having been a homicide, I apply the legal presumption and find that the prosecution has proved beyond reasonable doubt that the death of Mambo William on 16th August 2013 was unlawfully caused.

Malice aforethought is defined by section 191 of the *Penal Code Act* as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used (in this case a hammer, big sticks, pestle, stones and stamping) and the manner it was applied (the number of fatal injuries inflicted) and the part of the body of the victim that was targeted (the upper torso and head area). Ferocity can be determined from the impact (the skull was crashed). All accused apart from A3 did not address this element in their defences since they relied on alibis.

It is trite law that court is required to investigate all the circumstances of the case including any possible defences even though they were not duly raised by the accused for as long as there is some evidence before the court to suggest such a defence. In this case consider I have considered the possibility of provocation, the question being whether the deceased could have provoked

D.W.3. I however have not found any evidence of conduct or utterances by the deceased such as would make a reasonable member of the community of the accused to lose self control. For an act or insult to constitute provocation in the legal sense, it must have been of a nature capable of causing temporary loss of self control and the reaction must have been in the heat of passion without any lapse of a period sufficient enough to allow the accused to regain his self control.

The other possible defence is that of self defence. A person is not guilty of an offence if (a) he or she believed on reasonable grounds that force is being used against him or her or another person or that a threat of force is being made against him or her or another person; (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and (c) the act committed is reasonable in the circumstances. The accused only needs to adduce evidence of reasonable perception of force or a threat of force against the accused or other person (the accused's subjective perception that is objectively verified). There must be a defensive purpose associated with the accused's actions (the accused's subjective state of mind) i.e. that the accused believed that he or she needed to take the action he or she did, and the accused's actions must be reasonable in the circumstances (objectively assessed).

In determining whether the act committed is reasonable in the circumstances, the court may consider the relevant circumstances such as the persons involved, the other parties and the act, including, but not limited to, the following factors: the nature of the force or threat, the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force, each person's role in the incident, whether any party to the incident used or threatened to use a weapon, the size, age, gender and physical capabilities of the parties to the incident, the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat, any history of interaction or communication between the parties to the incident, the nature and proportionality of the accused's response to the use or threat of force, and whether the act committed was in response to a use or threat of force that the person knew was lawful.

In the instant case, having rejected D.W.3's version of the events, I find that this defence too is not available to him. I find that the death of Mambo William was caused by a deliberate attack that targeted vulnerable parts of his body including the head, chest and scrotum rather than an accidental fall. The weapons used were described by P.W.5 as having included a hammer and big sticks. Some of these weapons were found at the scene by P.W.4 including stones, a pestle, and a broken flask which he recorded on an exhibit slip and are listed in exhibit P. Ex. 9. Some of these weapons were used ferociously on the head of the victim causing a "fracture of the skull (frontal and parietal) leading to excessive bleeding." For the foregoing reasons, I find that the prosecution has proved beyond reasonable doubt that the death of Mambo William on 16th August 2013 was caused with malice aforethought.

Lastly, the prosecution was required to prove that it is the accused that caused the unlawful death of the deceased. All other accused apart from D.W.3 raised the defence of alibi. An accused that puts up such a defence has no duty to prove it. The burden lies on the prosecution to disprove it. This is done by adducing credible direct or circumstantial evidence placing each of the accused at the scene of the crime as an active participant in the commission of the offence. The only identifying witness in this case is P.W.5 Draleru Stella, a niece of the deceased who testified that she saw the attack on the deceased from beginning to end. Evidence of visual identification should be considered with caution. An identifying witness may be honestly mistaken. Courts ordinarily need to find other independent evidence to prove not only that the offences were committed but also that they were perpetrated by the accused. Corroboration could be provided by circumstantial evidence of relevant events and observations by other persons that occurred around the time, the conduct of the accused around the time of the incident, etc.

In this case, I have considered familiarity of this witness with the accused. The witness knew all the accused as residents in her neighbourhood. I have also considered the condition of lighting at the time of the incident. The attack began after 6.00 am and continued up to 7.00 am. Considering that it was at the break of dawn, the condition of lighting was getting brighter with each passing minute and this must have aided proper identification. I have also considered the proximity of this witness to the scene. From her testimony, she was very close to the active participants in the attack and both saw what they did and also heard what they said throughout

the attack. I have as well considered the duration of the visual observation which was estimated at about an hour, the period it took to finally kill the deceased and this must have aided correct identification. Finally, I saw this witness in the dock and I have no reason from her demeanour to doubt her truthfulness. She satisfactorily explained her initial inability to cooperate with the police for reasons of personal safety living within a community hostile to any police investigation of this case. The community's hostility was corroborated by P.W.4. She even had to relocate to Kampala after participating in the identification and arrest of the accused as the perpetrators of the offence. In a country without formal structures of witness protection, her conduct is perfectly understandable and does not detract from her veracity. Even in absence of corroboration, I am satisfied that her identification of each of the accused is free from the possibility of error.

According to this witness, A1 removed his shirt and began assaulting the deceased. A2 and A3 participated in assaulting the deceased asking him what he had been doing by Nyakua's grave as the deceased pleaded for his life. When the deceased fell, face down, A2 began hitting him on the head with a hammer repeatedly causing a fracture of the skull and a spill of blood and brain matter. A3 boxed the deceased on the back. A4 held a stone and cautioned the mob that the deceased was likely to escape using his supernatural powers as a witch. He dragged the body from the roadside and dumped it on top of Nyakua's grave. He noted that the deceased was still breathing and said he was likely to revive himself using witchcraft. He then stamped on his chest several times to ensure he was dead. A5 held a club and a photograph of the late Nyakua while crying and declaring loudly that his killer had finally been found. A6 and A5 began hitting the door to the home of the deceased with hoes, thereby removing the lock. A6 later joined in, assaulting the deceased with a club.

I have considered the doctrine of common intention provided for by section 20 of *The Penal Code Act*. Under that section, 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. The accused before me set out in conjunction with one another to assault the deceased on suspicion that he

was practicing witchcraft and possibly was responsible for the death of Nyakua. The death of the victim was a probable and foreseeable consequence of the prosecution of that unlawful purpose considering the nature of weapons they openly used to assault the deceased. Consequently, each of them is deemed to have committed the offence proved by evidence to have been committed during that unlawful transaction.

In the final result, in agreement with the opinion of the single assessor, I find that the prosecution has proved beyond reasonable doubt, the guilt of each of the accused and I hereby convict all the accused persons of the offence Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Arua this 2nd day of February, 2017.

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Stephen Mubiru
Judge.

6th February 2017

4.45 pm

Attendance

Ms. Ayaru Mary, Court Clerk.

Mr. Emmanuel Pirimba, State Attorney, for the prosecution.

Mr. R. Onencan holding brief for Mr. S. Ondoma for the convicts on State Brief.

The six convicts are present in Court.

SENTENCE AND REASONS FOR SENTENCE

The convicts were found guilty of the offence of murder c/s 188 and 189 of the *Penal Code Act* after a full trial. In her submissions on sentencing, the learned State attorney prayed for a deterrent sentence on the following grounds; the offence carries a maximum penalty of death. Life is sacred and ought to be respected because once taken it cannot be restored. The convicts took the law into their own hands and killed the deceased in a very gruesome manner in the presence of his niece who is still traumatised by the experience. The convicts are not remorseful and deserve long custodial sentences in order to deter mob justice in the region.

Counsel for the convicts prayed for a lenient custodial sentence on the following grounds; all convicts are first offenders and come from the same homestead. Each of them participated differently as part of the mob which killed the deceased. A1, A5 and A6 did not physically attack the deceased. A2 and A3 are biological brothers. A1 is 58 years old; A2 is 35 years old; A3 is 54 years old; A4 is 29 years old; A5 is 62 years old; and A6 is 43 years old. A1 has two wives one of whom is sickly, and ten children. A2 is asthmatic, lost his wife while in South Sudan, has a sickly mother and five school-going children. A3 has an eye problem, underwent surgery for hernia, has a sickly mother, three wives, four dependants and seventeen children many of whom have dropped out of school as a result of his incarceration. A4 suffers from periodic mental problems, underwent surgery in his abdomen, has a sickly father, two wives and six children, three of whom are in nursery school. A5 is a widow, has an eye problem and was looking after two children and four dependants. A6 had a caesarean birth that left her weak, has seven children all in school yet her husband was involved in an accident and is now an invalid. All the convicts have been on remand since December 2012. In their *allocutus*, each of the convicts prayed for a lenient sentence.

Sentencing is a reflection of more than just the seriousness of the offence. The court at this stage, in sentencing multiple convicts at the same trial where the facts permit, may take into account the degree of culpability of each of the convicts. As counsel for the convicts argued in mitigation, each of them participated differently as part of the mob which killed the deceased. Degree of culpability refers to factors of intent, motivation, and circumstance that bear on the convict's blameworthiness. Under the widely accepted modern hierarchy of mental states, an offender is most culpable for causing harm purposely and progressively less culpable for doing so knowingly, recklessly, or negligently.

During trial, court considers legal culpability of the convict including the convict's intentions, motives, and attitudes. At sentencing, the court should look beyond the cognitive dimensions of the convict's culpability and should consider the affective and volitional dimension as well. It may as a result consider extenuating circumstances, which are; those factors reflecting on the moral blameworthiness, as opposed to the legal culpability of the convict. It is for that reason that the principle of proportionality operates to prohibit punishment that exceeds the seriousness

of the offending behaviour for which the offender is being sentenced. It requires that the punishment must fit both the crime and the offender and operates as a restraint on excessive punishment as well as a prohibition against punishment that is too lenient. The principle of parsimony on the other hand requires that the court should select the least severe sentencing option available to achieve the purpose or purposes of sentencing for which the sentence is imposed in the particular case before the court.

Murder is one of the most serious and most severely punished of all commonly committed crimes. The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence especially where the offence involved use of deadly weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life. This maximum sentence is therefore usually reserved for the most egregious cases of Murder committed in a brutal, gruesome, callous manner. However, failed defences at trial are relevant to finding extenuating circumstances and for that reason murders involving ordinary provocation not amounting to legal provocation, self induced intoxication, mental disorder, emotional disturbance, medical insanity not amounting to legal insanity and accomplice liability may reduce moral blameworthiness and provide grounds for not imposing a death sentence . Although this case is more or less in that category of the most egregious cases of murder committed in a brutal, callous manner, I have for those reasons discounted the death sentence.

In the instant case, in an attempt to determine the moral blameworthiness of the convicts, I have been guided by the nature of the weapons each of the convicts used in assaulting the deceased, and the manner in which it was used as an indication of the degree of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life manifested by each of them, and have come up with three categories.

In the least blameworthy category is A1 Adima Anjelo and A3 Jino Enzama who P.W.5 said had no weapons in their hands but the latter boxed the deceased on the back. I consider their participation in the commission of the offence to have been more at the accessory rather than the

principal level. Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment.

I have taken into account the current sentencing practices in relation to cases of this nature, I have considered the case of *Bukenya v Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22nd December 2014, the Court of Appeal upheld a sentence of life imprisonment for a 36 year old man convicted of murder. He had used a knife and a spear to stab the deceased, who was his brother, to death after an earlier fight. Similarly in *Sunday v Uganda C.A Crim. Appeal No. 103 of 2006*, the Court of Appeal upheld a sentence of life imprisonment for a 35 year old convict who was part of a mob which, armed with pangas, spears and sticks, attacked a defenceless elderly woman until they killed her. In *Byaruhanga v. Uganda, C.A Crim. Appeal No. 144 of 2007*, where in its judgment of 18th December 2014, the Court of Appeal considered a sentence of 20 years' imprisonment reformatory for a 29 year old convict who drowned his seven months old baby. The convict had failed to live up to his responsibility as a father to the deceased who was victimized for the broken relationship between him and the mother of the deceased.

In light of the aggravating factors outlined by the learned State Attorney, I consider a starting point of twenty years' imprisonment for this category of blameworthiness. Against this, I have considered the submissions made in mitigation of sentence and in the *allocutus* of both convicts and thereby reduce the sentence to seventeen years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that both convicts have been in custody since 27th December 2013. I hereby take into account and set off a period of three years and one month as the period the convicts have already spent on remand. I therefore sentence each of the convicts A.1 Adima Anjelo and A. 3 Jino Enzama to a term of imprisonment of thirteen (13) years and eleven (11) months, to be served starting today.

In the second category of blameworthiness are accused persons who did not use weapons adapted to cutting or stabbing. These are convicts who according to P.W.5 used only sticks and clubs in assaulting the deceased. These included A.5 Obaru Levira and A.6 Enzaru Anna. For this category, in light of the aggravating factors outlined by the learned State Attorney, I consider a starting point of forty years' imprisonment. Against this, I have considered the submissions made in mitigation of sentence and in the *allocutus* of both convicts and thereby reduce the sentence to thirty five years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that both convicts have been in custody since 27th December 2013. I hereby take into account and set off a period of three years and one month as the period the convicts have already spent on remand. I therefore sentence each of the convicts A.5 Obaru Levira and A.6 Enzaru Anna to a term of imprisonment of thirty one (31) years and eleven (11) months, to be served starting today

In the last category of blameworthiness are accused persons who either used deadly weapons, in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life, or even without such weapons, their conduct towards the deceased manifested such a frame of mind. In this category is A.2 Tuga Maurice who used a hammer to repeatedly hit the head of the deceased and A.4 Drani Moses who stamped on the chest of the then helpless and almost dead victim, to ensure that he was dead, lest he used his supernatural powers to revive himself.

In respect of A.4 Drani Moses, he appeared to have nursed a suspicion of witchcraft against the deceased and genuinely believed, almost to the level of hallucination, in the supernatural power of the deceased. In light of the aggravating factors outlined by the learned State Attorney, I consider a starting point of forty years' imprisonment. Against this, I have considered the submissions made in mitigation of sentence and in his *allocutus*, more especially his relatively youthful age and thereby reduce the sentence to thirty years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court

should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that he has been in custody since 27th December 2013. I hereby take into account and set off a period of three years and one month as the period the convict has already spent on remand. I therefore sentence the convict A.4 Drani Moses to a term of imprisonment of twenty six (26) years and eleven (11) months, to be served starting today.

Lastly, A.2 Tuga Maurice used a hammer to repeatedly hit the head of the deceased. He used a deadly weapon, in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life, different from all the other participants in the commission of this offence. He deserves to spend the rest of his natural life in prison. He is hereby sentenced to life imprisonment.

The convicts are advised that they have a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Arua this 6th day of February, 2017.

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Stephen Mubiru
Judge.