

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL SESSIONS CASE No. 0056 OF 2014

UGANDA **PROSECUTOR**

VERSUS

MUNDUNI PATRICK **ACCUSED**

Before Hon. Justice Stephen Mubiru

RULING

The accused in this case is indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the accused on the 8th day of January 2013 at Mangambili Trading Centre in Arua District, murdered Odama Isaka. The accused pleaded not guilty to the indictment. In a bid to prove the indictment against the accused, evidence of one witness was admitted during the preliminary hearing and the prosecution called one additional witness then closed its case.

At the close of the prosecution case, section 73 of *The Trial on Indictments Act*, requires this court to determine whether or not the evidence adduced has established a *prima facie* case against the accused. It is only if a *prima facie* case has been made out against the accused that he should be put to his defence (see section 73 (2) of *The Trial on Indictments Act*). Where at the close of the prosecution case a *prima facie* case has not been made out, the accused would be entitled to an acquittal (See *Wabiro alias Musa v. R [1960] E.A. 184 and Kadiri Kyanju and Others v. Uganda [1974] HCB 215*).

A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence (See *Rananlal T. Bhatt v. R. [1957] EA 332*). The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted. It is the reason why in that case it was decided by the Eastern Africa Court of Appeal that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence. The prosecution though at this stage is not required to have proved the case beyond reasonable

doubt since such a determination can only be made after hearing both the prosecution and the defence.

There are mainly two considerations justifying a finding that there is no *prima facie* case made out as stated in the Practice Note of Lord Parker which was published and reported in [1962] *ALL E.R 448* and also applied in *Uganda v. Alfred Ateu [1974] HCB 179*, as follows:-

- a) When there has been no evidence to prove an essential ingredient in the alleged offence, or
- b) When the evidence adduced by prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it.

It was the submission of the learned defence counsel, Mr. Owiny Gerald, argued that although the other elements of the offence were established by the evidence led by the prosecution, they had failed to adduce sufficient evidence in relation to the identification of the accused as the perpetrator of the offence and had therefore failed to establish a *prima facie* case against him. Consequently, he argued that the accused should be acquitted.

At this stage, I have to determine whether the prosecution has led sufficient evidence capable of proving each of the ingredients of the offence of Murder, if the accused chose not to say anything in his defence, and whether such evidence has not been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it. For the accused to be required to defend himself, the prosecution must have led evidence of such a quality or standard on each of the following essential ingredients;

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 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. There is the post mortem report dated 9th January 2013 prepared by P.W.1 Dr. Ambayo Richard of the Arua Police Clinic, which was admitted during the preliminary hearing and marked as exhibit P.Ex.1. The body was identified to him by a James Dradu, a brother of the deceased as that of Isaka Odama.

P.W.2 D.AIP Alionzi Phillian Samuel went to the scene and found the body lying on its back, burnt with grass and there were plastic objects on the body. In exhibit P.Ex.1, P.W.1 indicated that he conducted the post mortem examination at the scene and found the body lying on its back on the roadside, surrounded by remains of burnt plastic plates, books and burnt grass. I therefore find that the prosecution led sufficient evidence capable of supporting a finding that, Isaka Odama is dead, if the accused chose not to say anything in his defence.

The second ingredient requires evidence that the death was unlawfully caused. It is the law that any homicide is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. P.W.1 who conducted the autopsy established the cause of death as "Asphyxia following flame burns." His other observations as stated in exhibit P.Ex.1 dated 9th January 2013 are that the body was "lying on the back on the side of the road, surrounded by remains of burnt plastic plates, books, burnt grass, dressed in multiple clothes that were partially burnt.. roasted patches of skin, singeing of hair, deposit of carbonaceous material on skin..abrasion, contusion on sides of the head...bilateral abrasion / contusion of the ears with the areas around, deep burn of face, burn surface area 9%" On the trunk he observed "deep burns total surface area 18%, contused intercostal muscles, 5th, 6th and 7th left anterior ribs." On the limbs he observed "Deep burns with total surface of 30%", In the viscera he found "soot in the airway". These injuries are consistent with a homicide rather than a suicide. I therefore find that the prosecution led sufficient evidence capable of supporting a finding that, Isaka Odama's death was unlawfully caused, if the accused chose not to say anything in his defence.

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 circumstantial. The evidence led by the prosecution suggests that the deceased was burnt alive. Any person who sets fire to another clearly has the knowledge that the act will probably cause the death of the victim. I therefore find that the prosecution led sufficient evidence capable of

supporting a finding that, Isaka Odama's death was caused with malice aforethought, if the accused chose not to say anything in his defence.

Lastly, there should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. In the instant case, the only evidence adduced was of items and objects recovered from the scene, including old black saucepan, stones, a stick and the sandals which were not demonstrated to have any connection to the accused. The prosecution attempted to lead evidence of a charge and caution statement recorded from the accused but it turned out that D/CPL Adomati, who acted as an interpreter for P.W.3 D/ASP Vuata Evans Onigo, had participated in the investigation as part of the team that went together with the Investigating Officer P.W.2 to the scene of crime. It was therefore not proper to have him act as an interpreter during the recording of a charge and caution statement. By reason of this flaw in procedure the charge and caution statement may be rendered inadmissible. That witness was withdrawn, the charge and caution statement was not tendered in evidence and the prosecution having failed to find any of its other witnesses, closed its case.

In the circumstances, there is no direct, circumstantial or other cogent evidence implicating or showing that the accused participated in committing the offence. I have formed the opinion that if the accused chose to remain silent, this court would not have evidence sufficient to convict him for the murder of the victim. I therefore find that no prima facie case has been made out requiring the accused to be put on his defence. I accordingly, find the accused not guilty and hereby acquit him of the offence of Murder c/s 188 and 189 of the *Penal Code Act*. He should be set free forthwith unless he is lawfully held on other charges.

Dated at Arua this 1st day of August, 2017.

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Stephen Mubiru
Judge.
1st August, 2017