

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0098 OF 2014**

**UGANDA** ..... **PROSECUTOR**

**VERSUS**

**AFEKU MOSES** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**JUDGMENT**

The accused is charged with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the accused on the 17<sup>th</sup> day of October 2013 at Kena village in Yumbe District murdered one Miriga Frederick.

The prosecution case is that the accused and his uncle, the deceased, lived together at the home of his grandmother where his role was to prepare food for the family. On 17<sup>th</sup> October 2013, the deceased returned home drunk and demanded for food from the accused. The accused replied there was no food since he had not been provided with cassava flour. In response the deceased pushed the head of the accused with his forefinger as a result of which the accused hit his head on the wall of the hut. The deceased entered the hut and slept. After ascertain that the deceased was asleep, the accused entered the house, picked a panga that was lying nearby and inflicted a deep cut wound on the back of the head of the deceased causing him to die instantly. The accused was later arrested and handed over to the police. In his defence, the accused admitted that he cut the deceased but only because the deceased provoked him when he banged his head against the wall accusing him of failure to prepare food. At the conclusion of the trial the State Attorney Mr. Emmanuel Pirimba submitted that the accused should be convicted since the prosecution had proved all the ingredients of the offence beyond reasonable doubt. Defence counsel on state brief Ms. Winfred Adukule was unable to make her final submissions. In their joint opinion, the assessors advised the court to acquit him of murder but instead convict him of manslaughter since he was provoked by the deceased.

In this case, the prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (See *Ssekitoleko v. Uganda [1967] EA 531*). By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove the ingredients of the offence beyond reasonable doubt. 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 are 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 a human being 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. The prosecution produced a post mortem report prepared by P.W.2, the Medical Superintendent of Yumbe Hospital, Dr. Tionzea Godfrey, which was admitted during the preliminary hearing and exhibited as P.Ex.2 dated 18<sup>th</sup> October 2013. The body was identified to him by a one Angupale Mario as that of Miriga Frederick. It is corroborated by P.W.4 No. 23595 D/Cpl Amabua Phillian who went to the scene with the investigating officer and saw the dead body. P.W.5 No. 41701 D/AIP Banduga Magid is the investigating officer who together with P.W.4 went to the scene, retrieved the body of the deceased and arranged for a post mortem. The accused on his part admitted killing the deceased. Having considered the available evidence regarding this element and in agreement with the joint opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that Miriga Frederick is dead.

As to whether Miriga Frederick's death was caused by an unlawful act, 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. In this regard, P.W.2 who conducted the autopsy established the cause of death as “Haemorrhage and brain damage. Large volume of blood-soaked cloth and deep laceration involving the brain. Brain tissue mobile in the skull” Exhibit P.Ex.2 dated 18<sup>th</sup> October 2013 contains the details of his the other findings which include “deep laceration of approximately 6 inches extending from the occipital parietal spot to the approximation of frontal parietal factum involving all the layer of the scalp and calvarias to ovate exposure of the brain tissue. 5 lacerations of the arm of approximately 1 cm and the right font right phalange of the middle finger with laceration. Blood-soaked linen.” On his part, the accused admitted killing the deceased but on provocation and by using a stick used as a hoe handle, about the length of his forearm and thickness of the circumference of his hand around the wrist region.

The prosecution attributes its theory of causation to the circumstantial evidence of the injuries found on the body and the blood-stained panga recovered from the scene. I find that in light of the depth of the cut as evident from exhibit P.E.x. 3, a series of photographs of the body taken during the post-mortem examination, and considering that the scalp and skull were lacerated rather than crushed, the injury was more likely inflicted by a sharp rather than a blunt object. It is for that reason it is exhibit P.Ex. 5 the panga that is more likely to be the murder weapon than the stick the accused claims to have used. Taking the circumstances as a whole, that the death of Miriga Frederick was a homicide can be readily inferred. The possibility that it was a natural, homicidal or accidental death having been ruled out, and there being no apparent legal justification or excuse for its occurrence, in agreement with the joint opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that Miriga Frederick’s death 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 the weapon used (in this case a panga) and the manner it was applied (one fatal injury inflicted at the back of the head) and the part of the body of the victim that was targeted (the back of the head). The

ferocity of the strike can be determined from the impact (fractured the skull and penetrated up to the brain tissue). P.W.2 who conducted the autopsy established the cause of death as “Haemorrhage and brain damage. Large volume of blood-soaked cloth and deep laceration involving the brain. Brain tissue mobile in the skull” Exhibit P.Ex.2 dated 18<sup>th</sup> October 2013 contains the details of his other findings which include “deep laceration of approximately 6 inches extending from the occipital parietal spot to the approximation of frontal parietal factum involving all the layer of the scalp and calvarias to ovate exposure of the brain tissue. 5 lacerations of the arm of approximately 1 cm and the right font right phalange of the middle finger with laceration. Blood-soaked linen.”

On his part, the accused admitted killing the deceased but on provocation. Provocation is a defence provided for by sections 192 and 193 of *The Penal Code Act*. It is constituted by any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered. The law thus takes into account the frailty of human nature and recognises that if a man was provoked to such an extent that in the heat of passion or hot blood he was rendered deaf to the voice of reason, the act although done with the intention of causing death or with full knowledge and comprehension of the consequences, was not the result of malignity of heart, but was in fact imputable to human infirmity. In such cases because the accused has had no time to think and to control himself, the law does not exact the full penalty by punishing him as severely as if he had acted with deliberation and afore thought. The accused has no duty to prove this defence. Once there is material before court on basis of which the defence may be considered, provided there was any evidence supporting the elements of the defence of provocation, the burden lies on the prosecution to disprove the defence by adducing evidence which proves that the killing was not as a result of provocation.

It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be sudden and such as temporarily deprives the person provoked of the power of self-control, as a result of which he commits the unlawful act which causes death. In deciding the question whether this was or was not the case regard must be had to the nature of the act by which the offender causes death; to the time which elapses between the provocation

and the act which causes death; to the offender's conduct during that interval; and to all other circumstances tending to show the state of his mind.

Provocation was explained by Lord Goddard L CJ, in the case of *R v Whitfield (1976) 63 Cr App R 39* as meaning:

Some act or series of acts done or words spoken which would cause in any reasonable person and actually caused in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him for a moment not master of his mind.

The test to be applied in order to determine whether homicide would otherwise be murder or manslaughter by reason of provocation is whether the provocation was sufficient to deprive a reasonable man of his self-control, not whether it was sufficient to deprive the particular person charged with murder (e.g. a person afflicted with defective control and want of mental balance) of his self-control. The court must determine whether there is evidence that could raise a reasonable doubt about whether the accused was faced with a wrongful act or insult sufficient to deprive an ordinary person of self-control. To determine how the "ordinary" person would react to a particular insult, it is necessary to take the relevant context and circumstances into account, including the history and background of any relationship between the victim and the accused. For instance in the case of *R v. Humphreys [1995] 4 All E.R. 1008* it was held, by the Court of Appeal in England, that in a case where the provocative circumstances comprised a complex history with several distinct and cumulative strands of potentially provocative conduct which had built up over time until the final encounter, the Judge ought to give guidance to the jury in the form of careful analysis of those strands so as to enable them to understand their potential significance.

The test for the defence of provocation consists of an objective element (that the act or insult was of a nature to deprive an ordinary person of self-control) and of a subjective element (that it actually deprived the accused of self-control). From the objective perspective, the court must determine whether there is evidence that could raise a reasonable doubt about whether the accused was faced with a wrongful act or insult sufficient to deprive an ordinary person of self-control. The standard required is that the wrongful act or insult must be of such a nature as would likely to deprive an ordinary person of the class to which the accused belongs the power of self control. It is obvious from this that any individual idiosyncrasy, such as for instance as that the

accused is a person who is more readily provoked to passion than the ordinary person, is of no avail (see *Kato v. Uganda* [2002] 1 EA 101).

Since the standard should not be adapted to accommodate a particular accused's innate lack of self-control; a necessary consequence of this is that a person of excitable temperament who is peculiarly susceptible to provocation or is unusually excitable or pugnacious could not rely on provocation which would not have led an ordinary person to act as he did. Provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The 'reasonable man' is the normal man of the same class or community as that to which the accused belongs. The man who normally leads such life in the locality and is of the same standard as others, including the accused, of the same class as the accused, with the same past personal experiences as the accused. The gravity of the provocation cannot be correctly assessed in isolation from the manner of life of the community of which the accused is a member, or in isolation from the present effect (if any) on the accused of any previous provocation which he received. This test is partly subjective, partly objective, in character. The test takes into account the nature of the provocation, its effects upon the person provoked and the probability of its producing a similar effect upon other persons of the same station in life of the community of which the accused is a member. In short it takes into account the customs, manners, way of life, traditional values, etc.; in short the cultural, social and emotional background of the society to which the accused belongs.

I have considered the fact that before he could take plea, the convict was subjected to a court directed psychiatric examination for purposes of the court satisfying itself that he was fit to plead to the indictment and to stand trial. The Senior Psychiatric Clinical Officer who prepared the report indicated;

The above mentioned person in reference is a known person with complex generalised tonic clonic seizure (epilepsy) associated with psychosis (major mental illness). He was brought to us on this date 19<sup>th</sup> December 2016 on the order of the honourable court dated 16<sup>th</sup> December 2016, dressed in yellow prisoners' uniform, he was calm during the examination.

On examination the subjective mood if the accused appeared labile (sometimes appears angry and at times appears sad), he did not express sense of remorse about

the offence committed. His speech was spontaneous but was un-coordinated. His motor (body movement) was reduced (slow). His cognitive ability is changed. Attention and concentration are reduced, his recent memory appeared okay but his long memory was impaired. On further examination no perceptual abnormalities could be ascertained. His thoughts were muddled. Above all he had partial insight into his condition.

In conclusion, his mental state appeared poor based on the above examination and in reference to his file number In-patient No. 201 and out-patient No. 10013 / 15.

On basis of that report and on further questioning done in a *voir dire* in open court, I formed the opinion that the accused was fit to plead and to stand trial despite his obvious mental health problems. This was on account of the fact that he appreciated the nature and quality of the proceedings, was capable of understanding questions put to him and give rational answers thereto and whatever his mental condition, the accused was well aware of what he was doing and saying in court. Having regard to the infinite degrees of mental health problems, I found that the accused was not suffering from such incapacity as to be devoid of rationality and understanding, or so replete with psychotic delusions, that his ability to effectively participate in his trial and of properly instructing the counsel assigned to him, had been impaired to any substantial degree. I did not find on this evidence that he was so devoid of rationality and understanding as to be unfit to plead and to stand trial.

Taking into account the mental health problems of the accused in the determination of the provocative nature of the conduct of the accused towards him would be allowing for individual idiosyncrasy in what is otherwise supposed to be an objective test. Measured by an objective standard, and with concerns for the encouragement of reasonable and non-violent behaviour, I am satisfied that the deceased's pushing the accused's head with the forefinger as a result of which he knocked his head against the wall may have been annoying, I dare say even extremely annoying, but was not of sufficient gravity to cause a loss of control. A similar conclusion was reached in *Rajabu Salum v. The Republic [1965] 1 EA 365*, where an appellant convicted of murder argued on appeal that the victim had used expressions in abusing him which constituted provocation and also hit him with a stick. The words were "Kuma nina" and "Kuma nyoko." The appellant said the deceased then butted him with his head, struck him with his fist and he fell

down. The appellant then took his knife from his pocket and threatened the deceased with it. He later stabbed the deceased. The deceased then abused the appellant, using the expression “Kuma nyoko” and also hit him with a stick. The appellant fell down, then he stood up and stabbed the deceased again. It was submitted that the appellant was provoked by the obscene or vulgar expression used by the deceased in abusing the appellant which act was also aggravated by the deceased hitting the appellant with a stick. The court held that the expression alleged to have been used by the deceased in abusing the appellant, though obscene, did not constitute provocation in that particular community. The judge found that it was possible that the deceased did strike the deceased with a stick but that if he did so then that it was not a very serious blow. The appeal was dismissed.

A similar conclusion was reached in the case of *Sudan Government v. Barakia WaJo* (1961) *S.L.J.R.* 114 at 115 where the accused, who was extremely excitable and irritable and afflicted with defective control of his nerves because of his being an epileptic, killed his half-sister. Applying the test as laid down by Lord Reading C.J. in *R. v. Lesbini* [1914] 3 *K.B.* 1116, Court of Criminal Appeal, and following the House of Lords decision in *Mancini v. D.P.P.* [1942] *A.C.*1, Judge M.I.el Nur. J. said:

I am in full agreement with the learned trying Magistrate that the provocation of the accused which was due not to the conduct of the deceased, was not capable of provoking a reasonable man, but due to his irritability because of his being epileptic, is not such grave and sudden provocation as would bring the accused within the orbit of section 249 (1). (Similar to our sections 192 and 193 of *The Penal Code Act*).

Considering the subjective element as to whether it actually deprived the accused of self-control, this is determined by the consideration of whether in fact the accused acted in response to the provocation before his passion had time to cool, the question being whether, even assuming that the act done by the accused was provocative, the accused was acting upon such provocation suddenly and before his passion had time to cool. There are two versions; the prosecution version is that the confrontation occurred outside the house and the accused waited for the deceased to go to bed before he entered and attacked him. The accused on the other hand explained that the confrontation occurred inside the house and he immediately reacted in a fit of rage by striking the deceased. I am persuaded to believe the prosecution version on grounds that the injury inflicted on the deceased, a single cut at the back of the neck and the blood soaked beddings seen

at the scene, are more consistent with the deceased having been attacked while in his bed than suddenly while standing as contended by the accused. In that case, there was a lapse of time between the poking with a finger and the attack by the accused. There was sufficient time for the passion of the accused to cool and therefore he did not react suddenly in the heat of passion. This defence is not available to him. The defence is not available because in the circumstances taken as a whole, his deprivation of the power of self-control was rather from wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty which will instead proves that there was at that time in him the state or frame of mind termed malice.

The law is 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. The psychiatric examination report suggests the possibility of the defence of insanity. Under section 11 of *The Penal Code Act*, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in that section in reference to that act or omission. To constitute legal rather than medical insanity, it must be proved on the balance of probabilities that at the time he committed the offence, the accused

The unsoundness of mind must relate to the time of the offence and the inquiry must be in relation to an accused's mental condition as at the time of the alleged offence with which he is being tried as distinct from his mental condition at the time of trial (see *Tarino v. R.*, [1957] E.A. 553 at p. 554). In order to relieve an accused person from criminal responsibility, insanity must be such that the accused either did not know what he was doing, or did not know that what he was doing was legally wrong (see *Liundi v. Republic* [1976–1985] 1 EA 251). Therefore, it must be proved that the accused at the time he killed the deceased, through disease affecting his mind was incapable of understanding the physical nature of the act, or of knowing that he ought not to do the act he did; When insanity is advanced by the defence, the burden of proof is on the

defence, although it is not a heavy one, as Windham, J.A. (as he then was) said in *Nyinge s/o Suwatu v. R.*, [1959] E.A. 974 (C.A.):

He must show, on all the evidence, that insanity is more likely than sanity, though it may be ever so little more likely. Merely to raise a reasonable doubt might still leave the balance tilted on the side of sanity.

The burden of proving insanity is settled, in that it must be proved on a balance of probabilities. An accused person raising a defence of insanity must not merely raise a reasonable doubt; his burden, as in a civil case, is to prove insanity upon a balance of probability; that is to say he must show, on all the evidence, that insanity is more likely than sanity. The same standard of proof must be applied where the issue of insanity has been raised by the court (see *Mbeluke v. Republic* [1971] 1 EA 479). I have considered all the evidence available to court. I find that the behaviour of the accused at the time of the offence, when he fled the scene and went into hiding, the contents of the psychiatric examination report and his behaviour while in court, did no more than raise a doubt as to the sanity of the accused at the time of the act, but it fell far short of establishing a margin of probability on the side of insanity to the degree required in law. From his conduct immediately after committing the offence and from his narration of the events during his defence, I am satisfied that at the time he committed the offence, he knew what he was doing and that it was wrong. The defence of insanity therefore is not available to him.

Under section 194 of *The Penal Code Act*, the court may also consider the defence of diminished responsibility where it is satisfied that the accused was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind, or any inherent causes or induced by disease or injury, as substantially impaired his or her mental responsibility for his or her acts and omissions in doing or being a party to the murder. In the instant case, the cause and onset of the accused's "complex generalised tonic clonic seizure (epilepsy) associated with psychosis (major mental illness)" diagnosed by the Senior Psychiatric Clinical Officer is unexplained, yet the inquiry that must be made by the court about this defence is the accused's mental condition as at the time of the alleged offence, as distinct from his mental condition at the time of trial. I am therefore unable, on basis of the limited evidence available, to find that the accused was labouring under a substantially impaired mental capacity at the time of the offence, arising from abnormality of mind, from a condition of arrested or retarded development of mind,

or any inherent causes or induced by disease or injury, such as would make the defence of diminished responsibility available to him.

Having considered all the possible defences available to the accused on the facts of this case, and in disagreement with the joint opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that whether Miriga Frederick's death was caused with malice aforethought.

Lastly, the prosecution had to prove that it is the accused that caused the unlawful death. For this ingredient, 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 his defence, the accused admitted killing the deceased but only as a result of provocation. Defence counsel did not contest this element. By his own admission, he is the perpetrator of the act which caused the death of the deceased. He therefore has not only placed himself at the scene of the crime but also implicated himself in its commission. His admission is corroborated by circumstantial evidence of the fact that he was left alone at home by his grandmother; after the act, he went into hiding; and upon his arrest, a charge and caution statement was recorded from him, exhibit P.E.x 9A, in which he admitted having committed the offence. Therefore, in agreement with the joint opinion of the assessors, I find that the prosecution has proved beyond reasonable doubt that Miriga Frederick's death was caused by the accused.

In the final result, I find the accused guilty and hereby convict him of the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Arua this 3<sup>rd</sup> day of February, 2017.

.....

Stephen Mubiru  
Judge.

10<sup>th</sup> February 2017

9.10 am

Attendance

Ms. Mary Ayaru, Court Clerk.

Ms. Jamilar Faidha, State Attorney, for the prosecution is absent.

Mr. Samuel Ondoma for the convict on State Brief is present.

The convict is present in Court.

**SENTENCE AND REASONS FOR SENTENCE**

The convict was 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 the maximum penalty of death. Life is sacred and should be respected by all; once it is lost it can never be restored. The convict took the law into his own hands and killed the deceased in his sleep without a chance to defend himself. The deceased was a bread winner for his family. The convict is not remorseful and maintains it is the deceased who came to him looking for trouble. She suggested a deterrent sentence of twenty years' imprisonment.

Counsel for the convict prayed for a lenient custodial sentence the following grounds; the convict is a first offender. He is a young man at the age of 23 years. He has been on remand for three years and six months. He is epileptic and for that reason is sometimes moody. Prison conditions are not ideal for his health since he needs constant medical care. He suggested a custodial sentence of not more than two years, imprisonment. In his *allocutus*, the convict stated that he will never kill again and in case of any future confrontations he will fight with bare hands, without weapons. He prayed for a sentence of one year or one month's imprisonment.

The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. On the other hand, failed defences at trial are relevant as extenuating circumstances at sentencing 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. The convict raised a defence of provocation which failed because the law imposes an objective test in the determination of that defence. There is nothing to preclude the court at the stage of sentencing from considering as mitigating factors, any aspect of a convict's antecedents on record and any of the circumstances of the offense that the convict proffers as a basis for a sentence less than death. In the instant case, the convict has a medically established I have for that reason discounted the death sentence.

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 22<sup>nd</sup> 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 18<sup>th</sup> 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.

Where there is a deliberate, pre-meditated killing of a victim, courts are inclined to impose life imprisonment especially where the offence involved use of deadly weapons. In this case, there is circumstantial evidence that the convict used such a weapon, since the injuries inflicted on the deceased tend to suggest so. I have nevertheless excluded the sentence of life imprisonment on ground of his mental health condition.

The overriding purposes of sentencing a person convicted of a capital offence are to protect the public from future crime by the convict and others and to punish the offender. To achieve those

purposes, the sentencing court has to consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. Bearing those purposes in mind, have considered the aggravating factors in this case being; it was a vicious strike at the head of the deceased, while he lay in his bed. Accordingly, in light of those aggravating factors, I have adopted a starting point of thirty years' imprisonment.

Mitigating factors are facts about the convict's character, background, or record, or the circumstances of the offence, which may call for a less severe penalty. I have considered the fact that before he could take plea, the convict was subjected to a court directed psychiatric examination for purposes of the court satisfying itself that he was fit to plead to the indictment and to stand trial. The Senior Psychiatric Clinical Officer who prepared the report indicated; "the above mentioned person in reference is a known person with complex generalised tonic clonic seizure (epilepsy) associated with psychosis (major mental illness)....appeared labile (sometimes appears angry and at times appears sad)." Although the court's interpretation of the contents of the report was that he did not suffer from legal insanity and was fit to plead and to stand trial, the report disclosed behavioural indicators that the convict was experiencing neurological or neuropsychological impairment which suggested that his violent outburst may not be a sign of antisocial personality disorder but rather impulsivity as a result of emotional imbalances in the nature of an untreated bipolar disorder. The existence of mental disease or defect not amounting to legal insanity cannot be entirely ruled out. The report though does not indicate whether he might have had this condition at the time he committed the offence but I will give him the benefit of the doubt. What is not in doubt is that he suffers from mental-health problems that have created a significant diminished capacity that was discernible, even from a lay man's point of view, throughout the trial and especially as he testified in his defence and this reduces his blameworthiness considerably.

I have as well considered the fact that the convict is a first offender and a young man as well as his acceptance of responsibility in his defence. It cannot be entirely ruled out that the victim in his drunken state may have contributed to the convict's anger outburst. I conclude that the mitigating circumstances in this case outweigh the aggravating factors. I consider a reformatory sentence to be appropriate for the convict. I for that reason deem a period of five (5) years'

imprisonment to be appropriate as the minimum sanction necessary to sufficiently punish the convict without imposing an unnecessary burden on public resources. 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 the convict was charged on 22<sup>nd</sup> October 2013 and been in custody since then. I hereby take into account and set off a period of three years and three months as the period the convict has already spent on remand. I therefore sentence him to a term of imprisonment of one (1) year and nine (9) months, to be served starting today.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Arua this 10<sup>th</sup> day of February, 2017.

.....  
Stephen Mubiru,  
Judge.