

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KASESE
HCT – 01 – CR – CS – 0140 OF 2014

UGANDA.....PROSECUTOR

VERSUS

KULE YOLAM.....ACCUSED

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgment

The accused was indicted with two Counts of Murder Contrary to **Sections 188 and 189** of the Penal Code Act. It was alleged that the accused and others still at large on 19th April 2014 at Lake Edward, Kasese District murdered Baluku Saul and Sere Kiyonga.

The accused denied committing both counts.

The deceased people were alleged to have died of Asphyxias hypoxia due to strangulation and fracture of the neck bone as per the post mortem reports PF 48b.

The prosecution produced 5 witnesses to prove its case and the accused did not bring any witnesses.

Kwesiga Michael State Attorney appeared for the State and Counsel Accellam Collins for the accused on State Brief.

It is the duty of the court to evaluate both the evidence of the prosecution and that of the defence and determine whether the burden and standard of proof have been discharged by the prosecution.

Prosecution must prove all the ingredients of the Offence of Murder in order to sustain a conviction thereof.

In the case of **Uganda versus Bosco Okello [1992-93] HCB 68, Uganda versus Muzamiru Bakubye & Anor, High Court Criminal Session, No.399/2010**, it was held that Prosecution must prove the following ingredients beyond reasonable doubt;

1. That the deceased is dead;
2. That the death was caused unlawfully;
3. That there was malice aforethought; and
4. That the Accused person directly or indirectly participated in the commission of the alleged Offence.

Whether the deceased died:

The prosecution witnesses all testified to the fact that the deceased persons died however, there was no evidence corroborating this evidence such as Post mortem reports. However, I believe that it is true that the deceased persons died.

Whether the death was caused unlawfully:

All homicides in Uganda are presumed by law to be unlawful except where such deaths are excusable by law itself. Such excuses consist of the following;

1. Death caused accidentally
2. Death occasioned in defence of life or property
3. Death which is carried out in the execution of a lawful sentence
4. Death that is occasioned as a result of extreme and immediate provocation. (See: **Gusambizi Wesonga versus R [1948]15 EACA 65** and **Uganda versus Okello [1992-93] HCB 68.**)

In the case of **Wanda Alex and 2 others versus 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 the killing was unlawful, since it was not accidental or authorized by law.”

In the instant case it was alleged that the deceased persons had died due to strangulation and in the circumstances that would amount to unlawful death.

Whether there was malice aforethought:

Section 191 of the Penal Code Act lays out circumstances under which malice aforethought is deemed to be established. These are:

1. An intention to cause the death of any person, whether such person is the one actually killed or not.
2. Knowledge that the act or omission will probably cause death of same person, although such knowledge is accompanied by indifference whether death is caused or not or by a wish that it may not be caused. (See: **R versus Tubere (1945)2 EACA 63; Mugao & Another versus Republic [1972]1 EA 543 (CAN) and Bukenya & Others versus Uganda [1972]1 EA 549 (CAK).**)

All the prosecution witnesses told Court that the accused and Baluku one of the deceased persons had had a severe argument prior to the deceased’s disappearance and that the accused had threatened him for embarrassing him publically. With this background the evidence points to the existence of malice aforethought.

Whether the Accused person directly or indirectly participated in the commission of the alleged Offence:

The prosecution evidence was mainly based on hearsay and speculation which is inadmissible. None of the witnesses actually saw the accused kill the deceased persons. Their testimonies were based on circumstantial evidence which in the instant case I do not find as the best evidence because it is not corroborated by at least medical proof in this regard Post mortem reports of the deceased persons to enable Court ascertain that indeed the deceased persons died of strangulation and not accidental drowning since their death was on water.

There was no eyewitness that testified in Court, no medical personal that shows that a medical personnel examined the bodies of the deceased persons. There are major loopholes that the prosecution left gaping.

In the case of **Kooky Sharma & Another versus Uganda Supreme Court Criminal Appeal No. 44 of 2000**, it was held that the fact and cause of death can be established even in the absence of medical evidence, the witnesses can be relied on to establish it. However, in accordance with the facts neither the Post mortem report nor any of the eye witness was called as witnesses.

I find that the prosecution failed to prove this ingredient to the satisfaction of this court.

I agree with the assessors opinion, the prosecution did not prove the ingredients of this case beyond reasonable doubt against the accused on both Counts of murder Contrary to Sections 188 and 189 of the Penal Code Act.

I accordingly find the accused, not guilty and he is accordingly acquitted and set free unless liable to be held in custody on other charges.

Right of appeal explained.

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OYUKO ANTHONY OJOK
JUDGE
03/04/2017

Judgment read and delivered in open court in the presence of;

1. Kwesiga Michael State Attorney
2. Counsel Edgar Tukahaabwa holding brief for Counsel Accellam Collins on State Brief.
3. The accused.
4. Ndobyia – Court Clerk

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OYUKO ANTHONY OJOK
JUDGE
03/04/2017