

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT TORORO**

**HCT – 04 - CR – SC – 042/2014**

**UGANDA** ===== **PROSECUTION**  
**VERSUS**  
**MANGENI WICLIFF** ===== **ACCUSED**

**BEFORE: HON JUSTICE KAWESA I. HENRY**

**JUDGMENT**

The accused was charged of murder contrary to section 188 and 189 of the Penal Code Act. Accused denied the charge.

The prosecution has the burden to prove beyond all reasonable doubt that:

1. There was death.
2. The death was unlawful.
3. There was malice afore thought.
4. Accused participated in the crime.

Prosecution in a bid to prove its case led evidence of 5 witnesses and PE.1 (PF48).

Accused denied the charge and put up a defence of alibi.

At the close of the case both state and defence made written submissions. Court guided and warned the assessors, on the evidence before court.

The evidence is basically circumstantial.

This evidence has been held to be the best evidence subject to caution.

The Court of Appeal in **AKBAR HUSSEIN GODI VERSUS UGANDA CACA 62/2011** guided that:

*“Circumstantial evidence is a series of circumstances leading to the interference or conclusion of guilt when direct evidence is not available. It is evidence which although not directly establishing the existence of facts required to be proved, is admissible as making the facts required to be proved, is admissible as making the facts in issue probable by reason of its connection with or in relation to them, it is evidence, at times regarded to be a higher probative value than direct evidence which may be perjured or mistaken.”*

With this caution in mind I now examine the evidence as here below:

**PW1 Erifasani Samaya** told court that when deceased's wife informed him that he had last seen him with accused (**Mangeni**) who took him to the forest ; he mounted a search. He went with his son to Busitema University area, where a boy (man) tipped them where to find **Mangeni**. They went into Busitema forest and found **Mangeni**.

**Mangeni** on interrogation led them to a tree where the deceased's body was found.

PW1 left the said **Mangeni** to keep the body as he went to inform police but on return **Mangeni** and his colleague had disappeared. **Mangeni** was later arrested.

**PW2 Wanyama Norris** said his father (PW1) called him and informed him accused was missing. They therefore mounted a search. They found a boy who led them to the forest in Busitema, and found **Mangeni** who led them to a tree where deceased 's body was found. They went to report to police and on return found accused had run away. They later arrested him trying to run away trying to cross the river.

**PW3 Wejuli Jackson**, said he overheard the wife of the deceased and **Mangeni** (accused) discussing the whereabouts of the deceased. He heard **Mangeni** telling her "*go and get another husband if your husband does not come back*"

He also saw **Mangeni** the following day talking with the deceased's wife. Later he learnt that the said **Bogere** had died. He went to the scene and found the deceased's body under a tree. Accused was found at Budda being beaten by a mob and was then rescued by police.

**PW4 Wandera Peter** said he had been told by **Mangeni** (accused) of a deal he wanted to share with him but never revealed the details.

Later on information of **Levi Bogere**'s death was received and the search for **Mangeni** ensued.

This was after the wife began crying and revealing that **Mangeni** had informed her to look for another husband.

The accused was arrested at Buyada.

**PW5 Lukwago Charles** said he was at Busia Police station when he received a complaint from **PW1 Samanya** that his son had died in Busitema.

He went to the scene and recovered the body. At the scene they got information that the mob was beating the accused at Budda. He went and rescued accused (**Mangeni**) from the mob; took him to Busia Police station and obtained statements from accused and other witnesses.

In defence the accused put up a defence of alibi, and denied the charges.

The state and defence each filed submissions in support of their respective cases. I now determine the issues as follows:

**(1) Whether there was death**

The prosecution led evidence in proof of death through PW1, PW2, PW3, PW4, PW5 who all were at the scene when the body of **Bogere** was removed and taken to post-mortem.

Prosecution also submitted PE1 (PF48) the post mortem report which conclusively established that indeed the body was of **Bogere Levi**.

The fact of death was accordingly proved.

**(2) Whether the death was unlawful accused.**

The law is that all homicides are unlawful unless excused by law or accidental. The evidence on record shows that deceased died of open head injuries resulting from assault using a blunt object.

This shows that the death was unlawful.

**(3) Whether there was malice aforethought.**

The law is that malice aforethought is established from the weapon used, part of the body targeted, the number of body targeted the number of wounds afflicted.

In this case was shown from PE1 and evidence of PW1, PW2 ,PW3 and PW4 that the deceased had bruises over the left temporal aspect of the head. The body had a fractural base of the skull with bleeding from the ears and nostrils, which was classified as death due to open head injury by assault using blunt object.

The above injuries targeting the head/skull a vulnerable part, using a blunt object shows malice by the assailant.

There was an intention to kill to death by whoever assaulted the deceased. This ingredient was according proved.

**(4) Whether accused participated.**

This was challenged by the defence. Counsel argued that the evidence had a high speculative value, but fall short of the required standard of proof in criminal trials.

The prosecution counsel on the other hand pointed to the fact that though the evidence is purely circumstantial it establishes that accused did kill the deceased.

I have already pointed out that for circumstantial evidence to be relied upon, it should be incapable of any other explanation save the guilt of the accused. I will therefore caution myself that this evidence must be truthful, reliable consistent, cogent, and corroborated.

The thesis proposed by the prosecution's evidence and challenged by defence is that the accused collected the deceased from his home, and went with him to Busitema forest but deceased did not return.

The prosecution proposes that accused returned alone to the deceased's home and informed his wife to get another husband.

This conversation was over heard by **PW3 Wejuli Jackson**.

PW3 also had heard accused the night before talk to deceased's wife.

Also prosecution alleged through **PW4 Wandera Peter** that accused talked to him about a deal he had wanted to handle with him but fell short of telling him what it were.

Prosecution further proposed that later upon tip off PW1 and PW2 caught up with accused PW1 and PW2 caught up with accused in the forest and he led them to where deceased's boy was laying under a big tree.

Later accused ran away and was apprehended again upon tip off and search efforts by PW1, PW2 and PW3.

The prosecution argued that the conduct of the accused before and after committing the crime was conduct of a "guilty" mind.

They argued that on the authority of decided cases, the evidence on record be found sufficient to find accused liable.

On the other hand defence relied on decided cases and argued that mere suspicion is not enough as per **UGANDA VERSUS MIKAIRI NYANDEGE (1975) HCB115**.

The evidence when taken as a whole in my opinion reveals that the accused and the deceased were good friends. (See evidence of PW1 and PW2).

Accused in his defence said upon arrest **PW4 Wandera** was insisting “*that I would tell him and he beat me twice...*”. Accused therefore confirms by his defence that indeed he was arrested as testified by PW4 in his evidence in chief.

The fact of accused being known to the witnesses herein is hence not in issue.

The next revelation is that on the fateful day the accused and the deceased torched base. This is contained in evidence as led through PW1, and PW3.

The evidence of PW1 proposed that when he talked to the wife of deceased she referred to a conversation between herself and the accused, who told him “*to find another husband to marry if deceased does not come back...*”

This piece of evidence is corroborated by evidence of **PW3 Wandera Jackson** who told court he overheard accused utter the said words, and also saw him talk to deceased’s wife the following day.

This thesis is further built on the evidence of PW4, the alleged best friend of the accused who claimed that accused wanted to connect with him to carry out “a deal” which to him ended up being the fact of murdering **Bogere Levi**.

Accused denied these episodes and set up an alibi.

When an accused puts up such a defence, it is the duty of the state to destroy it and to place accused at the scene.

Counsel for defence faulted PW3 and PW4’s evidence of motive as lacking clarity. I however find that PW1 testified and told court that deceased’s wife confided to him that accused told her “*if he does not come back find another man and marry. Am a man and an animal what I have done I have finished.*”

This statement’s relevancy is made admissible on corroboration from PW3 who “*heard and saw*” accused talk to deceased’s wife, and particularly got further confirmation of those words from her next morning. These words if put in context of the case, tend to suggest that in uttering them the accused’s motive was either to hurt the feelings of this woman “*or to inform her the deceased is no more and so it is ok for her to Marry*”.

Either way motive is established.

Defence further attacked evidence of **PW4 Peter** who denied this police statement in court (DEI). I did not find much relevancy in DE1. Apart from PW4 denying having put the signature thereon this statement, is in most of its content consistent with evidence in chief of PW4.

The few discrepancies therein in my view were not fatal.

PW4 in any case gave sworn evidence in court, and was cross examined.

It is sworn evidence therefore bears much more weight than DEI a mere plain police statement. This therefore means that PW4's evidence is relevant and admissible as such.

Defence counsel argued that the evidence of the state is inconsistent regarding the point of arrest. He points at inconsistencies in the evidence of PW1, PW2, PW3 and PW4 regarding point of arrest of accused. I have examined; the evidence above and do find that the said inconsistencies are minor.

This is so because, PW1 explained that he was bereaved and unsteady to recount exactly what happened.

True PW1 said he went with PW2 to police PW2 confirmed so. In cross examination PW2 confirmed that the names referred to were interchangeably used by them and said "*the trading centre is between Busitema and Tila its Buda, and the river was in the village not on main road*"

PW3 said they met the mob at Budha with accused and PW4 said the arresting of accused and PW4 said the arresting of accused was it was "*towards Busitema*" at Buyada but he ran from Bumbi. What I gather from the above is that all witness gave evidence of a series of movements detailing contact points at which they got accused. While PW2 was the first to apprehend, made a call, and then PW1 and the group comprising PW3 and PW4 followed and met PW2, the mob and accused at Buda (Buyada). The contradictions are therefore explainable from the evidence and are not fatal.

The accused placed himself away from the scene explaining that he was arrested when he went to check on his bicycle. This evidence is not supported by all other evidence on record especially when tested with evidence of PW1, PW2, PW3 and PW4.

The evidence of the prosecution sufficiently places the accused on the scene, basing on the principle of the criminal law principle of “*motive, preparation and conduct.*”

I have already found that evidence of PW1 and PW3 establishes that in collecting the deceased from his home, and then coming back to the home to relay a message to the wife “*to find another husband*” motive was duly established.

The evidence of PW1, PW2, PW3 and PW4 establishes a clear chain of causation, showing that accused took time to prepare, ponder and execute his mission. PW4 testified how accused confided in him that he had a mission to do. His conduct showed that he was intent on accomplishing the same.

The evidence of PW3 and PW1 is then linked to PW4 when they show that accused after the fact of disappearance of deceased with accused, again accused reappeared and uttered the words attributed to him by PW1 and PW3. The evidence of PW1, PW2 and PW5, shows a link to the fact that the accused was found where deceased’s body was, and it was him who showed PW1 and PW2 where this body was.

It is notable that though accused said in defence that he knew nothing about this, he accepts in his evidence that upon arrest PW4 talked to him to reveal the contents of his deal. Moreover PW5 had informed court that accused upon arrest confided that it was true he picked the deceased from his home, they went to the forest, but when rain came, the deceased took shelter in the fateful tree and he never resurfaced again. Though defence counsel calls it speculative to infer that the subsequent death is blanket on accused. How was his conduct? Was it conduct of an innocent person?

Questions do arise here which could help us determine if accused had a guilty mind or not.

- 1) Why did he not report the disappearance of accused either to police or to his relatives? (Wife)?
- 2) Why did he go back to the wife and announce that she should get another husband?
- 3) Why did he ran away from the scene of crime after showing PW1 and PW2 the deceased’s body.
- 4) Why did he talk to PW4 about a conceived deal, but refused to divulge its details even after arrest?

Any innocent person who had nothing to do with the alleged death would have been expected to report to police or relatives, not to have run away, and not to have kept silent about his intentions as stated by PW4.

Decided cases have held that accused's behaviour before and after a crime, can be taken into account while assessing his guilt.

The Court of Appeal in *Twehamye Abdul Versus Uganda Criminal Appeal 49 of (1999) (2000) UGCA 7*, upheld a High court decision where it was held that:

*“the circumstances under which accused was traced locked inside somebody else's house, was indicative of an attempt to avoid arrest and affords a cogent presumption of guilt”.*

The court considers the accused's conduct of hiding in order to avoid arrest as relevant presumption of guilt.

In this case before it was shown by evidence of all witnesses that accused ran away from the scene, and yet PW1 and PW2 entrusted him with the body. He was arrested trying to cross to another village. This evidence is not consistent with innocent behaviour. Similarly in *Uganda versus Luluja CC. 113/2011* (unreported), the trial Judge considered evidence of conduct and held that:

*“the accused's conduct after the event and his subsequent conduct convince me beyond reasonable doubt that accused is guilty”.*

I have reached similar conclusions in this case.

Having regard to all the circumstances of the case, I do find the accused's conduct both before (as narrated by PW1, PW3, and PW4 and after (as narrated by PW1, PW2, PW3, PW4 and PW5) especially of informing the deceased's wife to go and look for another husband, informing PW4 of a deal, and later showing PW1 and PW2 the deceased's body near where he was found carrying on business (unbothered), and thereafter running away when PW1 and PW2 went to collect police, and being arrested while on the run all behaviours and conduct inconsistent with innocence. I do not find any other thesis capable of explaining this behaviour save guilt of the accused.

Did deceased die of rain or thunder? PE1 (PF48) shows that the death was from fatally inflicted wounds sustained upon assault. This evidence rules out death from other sources. No other people are shown by evidence to have come into contact with the deceased save the accused. The accused was the one who was last seen with the deceased, he volunteered information to the wife in the hearing of PW3 when he said that “the deceased is gone.” She should “look for another husband.”



He was at the scene where the body was found; He is the one who led to its discovery, yet all along PW1 and PW2 had been suspecting him due to prior information gathered from the wife of the deceased.

All these pieces of circumstantial evidence add up sufficiently and consistently to lead me to one conclusion that the accused person participated in the causation of this crime.

I find that participation has been proved.

I advised the assessors to exercise caution while assessing the evidence.

It is the assessors' opinion that this accused person is liable. They have advised this court to convict the accused. I do agree with their opinion.

All in all I find that the prosecution has proved the charge beyond all doubt. Accused is found guilty of murder and is accordingly convicted.

**Henry I. Kawesa**

**JUDGE**

**25/05/2017**