

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT NAKASONGOLA  
HCT-00-CR-SC-0035-2016**

**(ARISING FROM NAKASONGOLA COURT CR. CASE NO. AA.0019-2012)**

**UGANDA :::::::::::::::::::: PROSECUTION**

**VERSUS**

- 1. SENTONGO ROBERT (A1)**
  - 2. SENTONGO STANLEY (A2)**
  - 3. KAGGWA ENOCK (A3)**
  - 4. MUJJABI ASANASIO (A4)**
  - 5. SERUNGA EDRISA SENJOBÉ (A5)**
  - 6. WASSWA ROBERT (A6)**
  - 7. KIGAYAZA ERDADI (A7)**
  - 8. KIZZA STEPHEN (A8)**
  - 9. SEMATALO SENTONGO GODFREY (A9)**
  - 10. BOGEERE SENTONGO (10)**
- :::::::::ACCUSED**

**JUDGMENT**

**BEFORE, HON. MR. JUSTICE WILSON MASALU MUSENE**

Ten accused persons, Sentongo Robert, Sentongo Stanley, Kaggwa Enock, Mujjabi Asanasio, Serunga Edrisa Senjobe, Wasswa Robert, Kigayaza Eridadi, Kiiza Stephen, Sematalo Sentongo Godfrey and Bogeere Sentongo were indicted with the offence of Murder Contrary to Sections 188 and 189 of the Penal Code Act.

The particulars were that all the ten accused persons and others still at large, on the 29<sup>th</sup> day of March 2012 at Kyandaga village in Nakasongola District, murdered Kalanzi Carlos Kallisa.

One of the accused Sentongo Stanley died while the case was pending and, so the case proceeded against the accused who all denied committing the offence.

By virtue of those pleas of *not guilty*, it was incumbent upon the prosecution to prove all the ingredients of murder beyond reasonable doubt before securing a conviction. This is because it is now settled law that accused persons are presumed innocent till proved guilty. **Article 28(3) of the constitution refers.**

The ingredients of the offence of Murder are:-

- (1) Death of a human being;
- (2) That the death was unlawfully caused;
- (3) That the death was as a result of Malice aforethought;
- (4) That the accused persons participated in causing the death of the deceased.

It is the duty of the Prosecution to prove each and every ingredient of the offence beyond reasonable doubt (**see Woolmington -Vs- DPP[1935] A.C. 462**). This principle has been reaffirmed in Uganda in the case of **Richard Oketcho -Vs- Uganda, SCCA No. 26/1995**.

As far as the first ingredient of the offence is concerned, this court, without much ado, finds and holds that there is no dispute that Kalanzi Carlos Kallisa is dead. The post mortem report was

admitted in evidence at the beginning of the trial under section 66 of the Trial on Indictment Act (T I A).

It confirmed the death of deceased and cause of death as shock and excessive bleeding. All the Prosecution witnesses alluded to the fact of death of deceased. Even the accused persons in their defences did not deny that Kalanzi Carlos Kallisa is no more. In the premises, I find and hold that the Prosecution has proved the first ingredient of the offence beyond reasonable doubt.

As regards the second ingredient of the offence, it is now settled law that all homicides are presumed to be unlawfully caused unless caused by accident or an act of God or in defence of a person or property.

In the present case and according to the testimony of PW1, Kimera Umar, the deceased was cut on the head in pieces, in the ears and hot water was poured on him. So without further elaboration and in view of the post-mortem, I find and hold that the cause of death was unlawful. The Prosecution has therefore proved the second ingredient of the offence beyond reasonable doubt.

I now turn to the third ingredient of malice aforethought. It is defined under Section 191 of the Penal Code Act as an intention to cause death of any person, whether such person is the one actually killed or not, or knowledge that some Act or omission causing death will probably cause death of a person, whether that person is the one killed or not.

Malice aforethought is therefore a mental element of the offence of Murder which is difficult to prove by direct evidence. It can be inferred from the surrounding circumstances of the offence, such as:-

- (a) The Nature of the weapon used (lethal or not);
- (b) The part of the body targeted;
- (c) The manner in which the weapon was used;
- (d) The conduct of the assailant before during and after the attack. **See RV. Tubere s/o Ochen [1954] EACA 63.**

In the present case, the prosecution adduced evidence through PW1, Kimera Umar, PW2, Muhanguzi Musa and PW3, Kasule Robert that the killer weapons were pangas, clubs and sticks which were applied on the vulnerable parts of the body such as head, ears, etc. All those were vulnerable parts of the body which were targeted. The conclusion of this court therefore is that the prosecution has proved the 3<sup>rd</sup> ingredient of malice aforethought beyond reasonable doubt.

The last ingredient of the offence is whether it was the accused persons who killed the deceased. This was a contentious issue as can be discerned from the submissions of Counsel for Accused and Counsel for State.

Mr. Moses Imuran for the Accused submitted that in the first instance, the person killed on the 29.03.2012 was not a resident of the area and was not known to the accused persons. He added that accused persons have a land dispute with one Kaddala

Mustapha who ferried over 20 people to the farm on 29.03.2012 that resulted into the scuffles thereon.

Counsel challenged the testimony of PW1 as far as identification of accused persons was concerned. He submitted that whereas PW1 testified about the visit of the O.C./C in-charge Katuugo police with 10 people not known to PW1, that it was a different set of people who attacked them at 6.30p.m after the O.C. Katuugo had left. He added that PW1 was not a resident of the area and wondered how PW1 allegedly saw Kigayaza raise the panga to cut Kalanzi Carlos. Counsel for accused further raised the issue of correct identification when the alleged attack was between 6.30 – 7.00p.m and when PW1 stated during cross examination that he ran and hid in the bush for safety. Counsel for accused also made reference to the testimony of PW4, Olupot John, the O.C. Katuugo who testified that A7, Kigayaza reported to police that unknown people had entered to police that unknown people had entered his farm and PW4 advised Kigayaza to remain behind at police as PW4 advised Kigayaza to remain behind at police as PW4 went to verify what was on the farm, with a boy and not 10 people as PW1 had testified.

Counsel added that by the time PW4 returned to the police station at 8.00p.m Kigayaza was still at the police station and so he could not have been at the farm to attack the deceased as PW1 had stated. Counsel for accused wondered how Kigayaza could be in two places at the same time. Counsel for the accused also attacked the identification of accused persons at a parade by

PW6, Mugenyi who was the farm manager and knew all accused persons before. He quoted the case of **Stephen Mugume -Vs- Uganda SCCA No. 20 of 1995** to support his submissions.

Counsel for the accused also wondered why there was a lapse of time between 29.03.2012 when deceased was killed and about 19.08.2012 when accused persons were arrested. Counsel also wondered why PW6 ran to Kampala to record various statements at Kibuli C.I.D. Headquarters on 30.07.2012.

Counsel submitted that the conduct of PW6, the alleged key witness and why it took long to have accused persons arrested. Counsel for the accused also raised the Defence of *Alibi* on the part of the accused persons and wondered why a police officer, selected at identification parade by PW6 was not charged.

Counsel for the accused concluded that in view of the contradictions in the prosecution case and on the basis of single identification evidence of PW1 which was not corroborated, then the prosecution had not proved the ingredient of participation of accused persons beyond reasonable doubt.

Counsel for the state on the other hand submitted that the accused persons had been properly identified by the prosecution witnesses and had a common intention or purpose to kill the deceased. He made reference to the testimonies of PW1 whom he added knew accused persons by appearance and since they had gone to the farm twice first in company of PW4, O.C. station, Katuugo and later at 6.30p.m to attack. Counsel for state also

referred to the testimony of PW2, Muhanguzi Musa as another key identifying witness and so was PW3, Kasule Robert.

Counsel for state concluded that the eye witness accounts of prosecution witnesses including PW6 proved the participation of the accused persons in the killing of Kalanzi Carlos.

Counsel for state also explained that it took long to arrest accused persons due to political interference, otherwise, he prayed for conviction of accused as charged.

I have very carefully considered the submissions on both sides and the evidence on record, as far as the fourth ingredient of alleged participation of accused persons is concerned.

PW1, Kimera Umar testified that he knew A1 by appearance and not by name and the same applied to A2, A3, A5 and A8. He did not know A4, A6 and A7. PW1 went on to testify that on 29.03.2012, he was with late Kalanzi Carlos on the farm of Kadala when the O/C police came with 10 people whose names he did not know. However, he stated that he knew A9, A2, A3, A5 and A8 by appearance. According to PW1, O.C police was satisfied with what they were doing and ordered the people he came with to go away. PW1 added that after 30 minutes, the same people returned and started beating them with sticks as some had pangas. PW1 added whereas he was the chief target, he and Muhanguzi Musa escaped and hid in the bush. He was later told that deceased was missing. PW1 did not see who cut the deceased or who beat or assaulted him as he was in hiding.

During cross examination by Defence Counsel, he confirmed he had not been in the area before and that after he escaped, he did not know what happened behind.

PW2, Muhanguzi Musa was even more confused because at the beginning of his testimony, he stated that he knew all the accused by appearance except A7 whom he did not see. Then he turned to state that he later saw A7 come with the O.C. Katuugo and A1, A8, A2 and A6.

So where the same witness in the same testimony say he did not see A7, Kigayaza all of a sudden changes like a chameleon to state that he saw A7 coming O.C Katuugo leaves a lot to be desired. Either PW2 saw A7. Kigayaza on the fateful day or he did not. It cannot be both. In any case, the O.C Katuugo police, who testified as PW4 told court that he left A7 at the police station. In any case, PW2 added that when they were attacked at around 6.45 p.m, armed with spears and pangas, he ran for his dear life and found Kalanzi Carlos dead afterwards.

So like PW1, PW2 did not see who inflicted cut wounds on the deceased and/or who assaulted him and on what parts of the body. During cross-examination, PW2 confirmed that he had never been to Nakasongola District before 29.3.2012. Similar testimony was given by PW3, Kasule Robert. He also escaped in the bush and hid himself as it was becoming dark. He did also not see who particularly assaulted the deceased. More contradictions in the prosecution case came to light with the evidence of PW6,



Mugenyi George, who alleged he was a farm manager on Kadala Nsubuga's farm.

According to PW6, people led by Kigayaza and armed with stones, sticks and panga attacked and started beating and cutting Carlos. PW6 added that he managed to run away and the following day learnt of the death of Carlos. As submitted by counsel for the accused the evidence of PW6 was contradictory with that of PW4, the O.C. Katuugo whose testimony was that he left Kigayaza at the police station; and to make matters worse, both PW1 and PW2, alleged eye witnesses, stated that PW6 was not at the scene of crime during the attack. The other question hanging is why it took PW6 long to record statements and to arrest the accused persons, five months after the murder.

PW6 also testified that a police officer was identified during the parade but this court wondered why he was not charged. And on going to the scene of crime twice, PW4 the O.C. Police did not testify that he went with the accused persons to the farm.

In view of what I have outlined above, I find and hold that the prosecution evidence has been punctuated by lies and inconsistencies so much so that the same cannot be relied upon.

Also on record are the defences of Alibi raised by many of the accused persons such as being aware of Arua and Bullisa. The Prosecution did not adduce any evidence to disapprove the Alibi and pin them at the scene of the crime. And given such uncoordinated and contradictory testimonies of the prosecution witnesses, then there is no way this court can infer that there was

common intention on the part of accused persons to commit the offence in question.

Common intention is defined under section 20 of the Penal Code Act as:- ***“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 nature that its commission was a probable consequence each of them is deemed to have committed the offence”.***

In this case, there was no evidence from prosecution that accused persons were seen in a meeting or gathered together at one point with intention of attacking the deceased and others.

There was none at all. And so what could have applied in this case could have been circumstantial evidence. In **Musinguzi Jonas -Vs- Uganda [2008] HCB 11**, the court of Appeal of Uganda held as follows:-

***“To legally rely on circumstantial evidence, it must point irresistibly to the guilt of the accused. In order to justify a conviction and the inference of guilt, the circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt”.***

In the present case, the prosecution evidence revealed the recovery of the dead body of Kalanzi Carlos Kallisa cut on several parts in the bush did not satisfy the standard of proof required for cases which depend on circumstantial evidence. There was no

evidence pointing irresistibly to the accused persons as the ones who committed the offence of Murder of Kallisa Carlos.

In the circumstances, I agree with the unanimous opinion of the Assessors that the prosecution has failed to prove the last ingredient of the offence of Murder, notably participation of accused persons and set them free.

**Judge.**

Judgment on 17.01.2018 at 9.30a.m.

**Judge.**