

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT-01-CR-SC-0193 OF 2016.**

**UGANDA.....PROSECUTOR**

**VERSUS**

**A1. KABASOMI SYLVIA**

**A2. ABIGABA PATRICK**

**A3. BYAMUKAMA TITO.....ACCUSED**

**BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE**

**RULING.**

The three accused persons, Kabasomi Sylvia, Abigaba Patrick and Byamuka Tito were indicted with the offence of murder C/S 188 and 189 of the Penal Code Act.

The particulars were that the three accused persons and other still at large on the 13/3/2016 at Kantonzi village in Kamwenge District murdered Kahungu Luka.

When the three accused persons were arraigned in this court, they pleaded not guilty. By those pleas, they set in motion all the essential ingredients of murder which had to be proved by the prosecution beyond reasonable doubt.

That is a settled principle of the law which was stated long time ago in England in the classic case of **Woolmington vs. D.P.P [1935] A.C.50.**

In the present case, the prosecution was handled by Mr. Kwesiga Michael, while Mr. Ahabwe James represented the accused on state brief.

The prosecution relied on a post mortem report in respect of Kahungu Luka which was admitted in evidence U/S 66 of the T.I.A.

The same was prepared by Kagoro Deogratious, a Senior Clinical Officer. The body of the deceased had blood stains with a fresh wound on the hind head, the whole head was swollen and the cause of death was stated to be bleeding and brain injury. The prosecution also adduced evidence of four witnesses, namely PW1, Amelia Malunga, a peasant of Katonzi parish, PW2, Ndolelire Stephen, a brother of A2 and A3, and brother-in-law to A1, PW3, Tinkamanyire Matayo, also a brother to A2 and A3 and sister-in-law to A1 and PW4, No. 18481, D/Corporal Kyalimpa Julius, the Investigating Officer attached to Kamwenge Police Station.

At the end of the prosecution evidence, Mr James Ahabwe made submissions on no case to answer.

He described the evidence of PW4, D/Corporal Kyalimpa Julius as hearsay as PW4 just stated that he was informed by the people whose names he did not state. He also added that PW4 in his concluding remarks stated that he was convinced it was one Emmanuel not in court who killed the deceased but he arrested A1, Kabasomi as she was a wife of Emmanuel; and was suspected to have had information which she concealed.

Counsel added that A2 and A3 were arrested because they were standing 50 metres away from the scene of crime and were standing a loof. Mr. Ahabwe further submitted that PW3 clearly told court that he did not know who killed the deceased, while PW2 Ndolelire Stephen just suspected his brothers, A2 and A3. Counsel added that the evidence of PW1, Amelia Malunga needed corroboration and was not reliable.

In reply, Mr. Kwesiga Michael for the state submitted that whereas the first three ingredients of the offence were not in dispute, that even the fourth ingredient of the offence, notably participation had been made out in view of the provisions of S. 19 of the Penal Code are concerned. He added that persons can be charged as principal offenders if they have aided or abetted the commission of the crime. Counsel for the state referred to evidence of PW4 to the effect that A1, Kabasomi, wife of Emmanuel went into hiding with Emmanuel and so she abetted and concealed information, hence aiding and abetting the commission of the crime. As for A2 and A3, counsel for the state relied on the testimony of PW1 that A3 had told PW1 of a plan with A2 and Emmanuel to kill the deceased. He also concluded that the conduct of the two accused, A2 and A3 of standing a loof was not normal and so they should be put on their defence.

I have not only considered the submissions on both sides, but I have also closely followed the evidence of the four prosecution witnesses on record.

The principles under which a submission of no case to answer can be upheld were stated in the classic case of **Bhatt V.R. [1957] E.A 332.**

One of the leading principles upon which a court will uphold a submission of no case to answer is where a reasonable tribunal, properly directing its mind to the evidence and the law would not proceed to convict if the accused decided to offer no evidence at the close of the prosecution case.

In the present case, whereas the three ingredients of death of Kahungu Luka, death being unlawfully caused and out of malice aforethought have been made out, the fourth ingredient of the offence, notably participation of the accused persons in the dock is in doubt. PW1, Amelia Malunga who testified that A3, Byamukama Tito told her about a plan hatched by A3 and A2 to kill the deceased did not convince this court as to why or under what circumstances A3 disclosed such serious information to her in a banana plantation. PW3 did not clarify whether A3, Byamukama was very close to her as a boyfriend so as to share such vital and dangerous information of a plan to kill a human being.

PW1 did not tell court what they were doing with Byamukama in a closed session with Byamukama in a banana plantation and so her testimony that Tito Byamukama was just a neighbour raises a lot of suspicions and needed corroboration as submitted by counsel for the accused persons.

PW1 did not even tell this court how A3 and A2 were arrested and whether it was as a result of her disclosure of the information she allegedly heard from A3. And this court wonders why PW1, Amelia failed to report such a deadly plan by A2 and A3 to the local authorities or police. As for PW2, Ndolelire Stephen, he did not know who killed the deceased but just suspected the accused persons because his deceased father loved him more than A2 and A3. Courts of law cannot rely on mere suspicions, but concrete evidence either direct or circumstantial which was missing in this case.

PW3, Tinkamanyire Matayo, testified as follows:-

**“Kahungu Luka was my father. He died but I have forgotten when he was killed. It was 2 years ago. I saw the body of the deceased.**

**It was lying in a pool of blood and radio on his shoulder. I don’t know who killed him”**

PW3 did not in any way or at all implicate the accused persons. And as for PW4, the Investigating Officer, I agree with the submissions of counsel for the accused that his evidence was based on suspicious and rumours from villagers whom he did not disclose and none of whom was brought to court as a witness. The level of D/Corporal Kyalimpa Julius ‘s investigations was very much below standard despite more than 20 years experience as he stated. I therefore reject the submissions by counsel for the state that the accused persons could be taken as aiding and abetting Emmanuel because Emmanuel has not been charged.

And as Mr. James Ahabwe submitted he is still a suspect and it has not been proved that he is the one who killed the deceased so as to hold the accused persons as aiding and abetting the commission of the offence.

In the premises, and in view of the law on no case to answer as stated in **Bhatt Vs. Republic Quoted above**, I find and hold that no reasonable tribunal, properly directing its mind on the law and evidence on record can convict the three accused.

Secondly, since all the ingredients of the offence have not been proved by the prosecution, particularly participation, then the accused persons have no case to answer.

I accordingly do hereby enter pleas of not guilty and acquit all the three accused persons Under S. 73 (1) of the Trial on Indictment Act.

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**WILSON MASALU MUSENE**  
**JUDGE.**

**4/5/2018**

Three accused present  
Mr. Kwesigwa Michael for state  
Mr. Ahabwe James for accused  
Both Assessors present  
Ikiriza, court clerk present

**Court:** Ruling read out in open court.

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**WILSON MASALU MUSENE**  
**JUDGE.**