

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0071 OF 2014.

UGANDA.....PROSECUTOR

VERSUS

A1-KYOMUKAMA JUSTUS

A2-OLISHABA SIMSON.....ACCUSED

RULING.

BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE.

The two accused were indicted with the offence of murder C/S 188 and 189 of the Penal Code Act. The particulars were that the two accused on 3/10/2013 at Karubongoya village in Kyenjojo District murdered Kyomugisha Sitibiya. The two accused denied the charges and the prosecution relied on a post mortem report and called two witnesses.

At the end of the prosecution case, Mr. Kateeba Cosma for accused made submissions on no case to answer. He stated that whereas the ingredients of death of the deceased and death being unlawfully caused were established, the rest of the ingredients were not proved. Counsel added that both PW1 and PW2 were not at home but were informed that Kyomugisha was missing. And when a search was conducted, the dead person was recovered. He also added that the two accused were among the search party.

Counsel concluded that there is no evidence of participation of the accused persons in the alleged murder.

In reply, M/S Aihimbisibwe Alice for state submitted that PW1 testified that A2, who is her son had always threatened to kill Kyomugisha Sitibiya and had abandoned the child.

She added that A1 had a knife on the fateful day and that the two accused had a common intention of killing the deceased.

I have considered the submissions on both sides. In the case of **[Bhatt V R [1957] EA 332]**. It was held that a submission of no case to answer be upheld where a reasonable tribunal properly directing its mind to the evidence and the law would not proceed to convict if accused decided to offer no evidence at the close of the case for the prosecution.

In the present case, none of the two prosecution witnesses saw the accused persons killing or taking away the deceased to be killed. PW2, Twesigomwe Warrieni's testimony was that when he returned from grazing at 2:00 p.m, he found Sitibiya Kyomugisha had disappeared.

PW1 was specific that she did not know who killed the deceased. So where prosecution witnesses are non committal as to whether the two accused participated in the murder or not, then no reasonable tribunal can proceed to convict them on mere suspicion, I agree with counsel for accused that the presence of the knife with A2 was explained by the fact that he was a blacksmith making knives and pangas and was going to the market to sell the same.

The circumstantial evidence on record does not irresistably point to the guilt of the two accused persons. In the premises, I enter pleas of Not guilty and acquit both accused persons U/S 73 (1) of the T.I.A. on no case to answer.

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Wilson Masalu Musene
Judge.

31/5/2018
Two accused present
M/S Alice Aihimbisibwe for State
Mr. Clauda Arinaitwe holding brief for Cosma Kateeba
Assessors present
Ikiriza, court clerk present

Signed; (Wilson Masalu Musene)
Judge.

Court: Ruling read out in open court.

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Wilson Masalu Musene
Judge.