

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CR-SC-0162 OF 2015

UGANDA-----PROSECUTOR

VERSUS

A1- MUGUME CHRISTOPHER

A2-TUHAIRWE ROBERT-----ACCUSED

RULING.

BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE.

The two accused, Mugume Christopher and Tuhairwe Robert were indicted with the offence of murder C/S 188 and 189 of the Penal Code Act. The particulars were that the two accused, and others still at large on 22/1/2015 at Miranga village, Kyenjojo District, murdered Mugume Richard alias Ismail. The two accused denied the charge when arraigned.

The prosecution therefore relied on the post mortem report in respect of Mugume Richard which was admitted in evidence U/S 66 of the T.I.A. The external marks of violence were multiple bruises, body swellings and deep cut wound. The cause of death was excessive bleeding resulting from the injuries. The prosecution also called the evidence of one witness, Alijuna Francis.

He testified that on 22/1/2015 at 9:00 p.m, he was with one Musana when he heard people talking in high voices at the deceased's home. PW1 found 2 accused persons and others quarrelling that the deceased had stolen their mattress and they left thinking that the matters were not serious.

The following day, PW1 found the dead body of the deceased stabbed in the stomach and had injuries on the hands. So they suspected Kato Emmanuel, Kansiiime Mugume Christopher and Tuhairwe because of the quarrel the previous day.

During cross- examination by counsel for the accused, PW1 stated that it was Kansiiime who was saying, **"Mugume, give us our properties"** while others were standing.

PW1 further conceded that he did not know who killed the deceased and that A1 Christopher Mugume was found at his place of work.

It is very unfortunate that the prosecution failed to secure the attendance of other witnesses. Under S. 133 of the Evidence Act, no particular number of witnesses shall be required for the proof of any fact. However, whether evidence is by a single identifying witness or circumstantial, it has to be corroborated as a matter of law.

PW1 only found the deceased and five other people including the 2 accused quarrelling over alleged stolen mattress. He added that it was Kansiiime who was shouting at the deceased to give the mattress while the 2 accused were quite. I am inclined to agree with counsel for the accused that in the absence of any other witness to have told court what exactly happened that night, then it becomes difficult to place the two accused at the scene of crime. When PW1 saw them at night it was Kansiiime quarrelling while the two accused kept quiet. PW1 did not talk of any fight

taking place by then and PW1 and Musana left since Kansime was a friend of the deceased. A1 was arrested at his place of work and while A2 was reported to have been found with a bloody jacket, the same was not exhibited in this court.

In the premises, I find and hold that the prosecution evidence of PW1 and post mortem report establish the three ingredients of death, death being unlawful and being caused out of malice aforethought.

However, the same falls short of establishing participation of the two accused persons in the murder of the deceased. And where all the ingredients of the offence have not been established, then accused persons have no case to answer. I accordingly enter pleas of not guilty and acquit both accused U/S 73 (1) of T.I.A on no case to answer.

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WILSON MASALU MUSENE
JUDGE.

31/5/2018

2 accused present
Mr. Waswa Adams for state
M/S Angella Bahenzire holding brief for Ahebwe James.
Assessors present
Ikiriza, court clerk present

Court; Ruling read in open court.

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WILSON MASALU MUSENE
JUDGE.