

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
CRIMINAL SESSIONS CASE No. 0162 OF 2017

UGANDA **PROSECUTOR**

5 **VERSUS**

1.	MAYENGO HASSAN alias KASOTO MUSILAM	}	
2.	NTAMBAZI ANNEST alias MIKE	} ACCUSED
3.	MUDOOLA FAROUK alias SANSA	}	
4.	NSIIMBE MOHAMMED NKALUBO alias MEDI	}	
10 5.	KASUJJA SULA	}	

Before Hon. Justice Stephen Mubiru

JUDGMENT

Before commencement of the trial, the Indictment was amended leaving only A1 and A4 as the accused. The two of them are jointly indicted with one count of Murder c/s 188 and 189 of the
15 *Penal Code Act*. It is alleged that the accused on the 3rd day of November, 2014 at Lufuka Zone in Makindye Division, Wakiso District murdered one Nakibinge Dickson.

The prosecution case is that on the night of 3rd November, 2014, three brothers who included the deceased, a one Ssuuna Robert and P.W.6 Seguya Brian, boarded a taxi at Seguku and
20 disembarked there from at the Bata-Bata stage along Entebbe Road. There was an altercation between them and the conductor of that taxi when he demanded a fare of shs. 1,000/= from each of them as they in turn insisted on paying a fare of shs. 500/= only. They crossed the highway and hired A1 Mayengo Hassan, a boda-boda rider, to carry them to Ndejje- Kanyanya at a fare of shs. 3000/= out of which they paid shs. 2,000/= upfront. Along the way, another boda-boda
25 motorcycle came from behind and by-passed them carrying two passengers whom they recognized as the driver and conductor of the taxi from which they had just disembarked. Sensing danger, they asked A1 to stop and when he did they jumped off the motorcycle, fleeing into different directions as the taxi conductor and driver pursued them raising an alarm calling them thieves. The two brothers managed to escape but the deceased was not so lucky. The mob
30 caught up with him near a well within the vicinity and assaulted him to death.

Upon being arrested, both accused persons denied the indictment. In his defence, A1 Mayengo Hassan stated that on the fateful night, he carried three male passengers on his boda-boda motorcycle, when they asked him to carry them to Ndejje- Kanyanya at a fare of shs. 3000/= out of which they paid shs. 2,000/= upfront. Along the way, another boda-boda motorcycle came from behind and by-passed them carrying two passengers who immediately began making an alarm shouting that he and his passengers were thieves. The passengers he was carrying instructed him to stop saying those people were pursuing them. He turned round and rode away in the direction where he had come from after the passengers he was carrying had fled. The people chased him but he managed to escape and ride to the home of the Secretary for Defence. He did not find him at home. He requested for his phone number and called him telling him that some people had waylaid him and his passengers accusing them of being thieves. The Secretary for Defence told him he was already at the scene. He rode back towards the stage, picked a passenger whom he took to Kibuye through Bata-Bata stage. He later retired home to sleep at around 2.30 am.

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On his part, A4 Nsimbe Mohammed Nkalubo alias Medi stated that on the fateful night, he was at the home of his guardian Isabiti who at around 1.00 am told him there were people beating another on his land, about fifty metres away. He asked the accused to go and rescue the person. The accused could hear the noise and several boda-bodas rushing to that place. When he arrived there, he found many people had gathered at an open space near the well. He found three people trying to rescue the victim from other people who were assaulting him claiming that the victim was a thief who was trying to rob their taxi and cash. He joined the three to rescue the victim. By then the victim was bleeding profusely from the face. Many people were assaulting the victim and they were mainly boda-boda riders who numbered between 30 - 35 people in all. The victim was saying he was not a thief and that he was resident at Ndejje-Kanyanya. The accused joined the people who had formed a ring around the victim to rescue him. The accused asked the victim how many people he knew in Kanyaya and he mentioned four, three of whom the accused knew; Kiwuumi, Hajati Manvua and Haji Sendagala. He asked him to do so because he wanted to take the victim to the home of Mzee Isabiti. Kayongo Abbasi and Kamada raised the Secretary for Defence on phone. He came after about twenty minutes on foot. The victim ran to the Secretary for Defence who told the victim not smear him with blood as he attempted to embrace him.

The Secretary for defence said that if the man was a thief he had nothing to do for him. That is when the people descended on the victim again and began beating him anew. Some used sticks while other were kicking the victim. Some of the sticks were as thick as the forearm of the accused and about a metre and a half long. The accused then left the scene, leaving the Secretary
5 for Defence in charge of the situation. After about one and a half months, while he was going about his usual business, he was arrested at Lufuka village at 8.00 am by civilians. Along the way, he got off the motorcycle and as he struggled with his captors, the motorcycle fell down. The area defence Secretary rang the police who came to the scene and took him to Kikumbi Police Post. He was subsequently charged with the offence of murder.

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The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence, (See *Ssekitoleko v. Uganda* [1967] EA 531). Proof beyond reasonable doubt though does not mean proof beyond a shadow
15 of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see *Miller v Minister of Pensions* [1947] 2 ALL ER 372).

For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

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1. Death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

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The first ingredient requires the prosecution to prove beyond reasonable doubt the death of a human being. Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. The prosecution adduced evidence of a post mortem report dated 3rd November, 2014 prepared by P.W.1 Dr. Male a Medical Officer at Kampala Capital City Mortuary, which was admitted during the preliminary hearing and marked as exhibit P. Ex.1. The body was identified to him by
30 a one Ssuuna Robert, a brother of the deceased, as that of Nakibinge Dickson. It is corroborated

by the testimony of P.W.3 ASP Kitaka Sulait, who saw the body at the scene after receiving a report of the incident. It was identified to him by the same Ssuuna Robert, a brother of the deceased, as that of Nakibinge Dickson. In their respective defences, none of the accused alluded to having seen the body of the deceased at all but acknowledged seeing him being assaulted.

5 Defence Counsel did not contest this element. Having considered all the available evidence relating to this ingredient, in agreement with the assessors, I am satisfied that it has been proved beyond reasonable doubt that Nakibinge Dickson is dead.

The next ingredient requires proof beyond reasonable doubt that the death was caused by an unlawful act. It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. P.W.1 who conducted the autopsy established the cause of death as “multiple blunt force trauma injuries.” Exhibit P. Ex.1 dated 3rd November, 2014 contains the details of his other findings which include a “multiple laceration wounds on the scalp, ranging between 1.5 cm to 5.0 cm long. Multiple abrasions on the forehead. Laceration on the left eyebrow 2.0 cm. Multiple abrasions on the left side of the face. Laceration wound right side of the face 1.5 cm long. Abrasions on nasal bridge. Hemorrhage in the left conjunctiva. Abrasions right anterior chest wall lower aspect adjoining the anterior abdominal wall 15 x 7 cm. Abrasions on the left coastal margin extending to the anterior abdominal wall 15 x 6 cm. Blood in the abdomen 300 mls. Ruptured spleen. Liver intact. Stomach full of partially digested food particles. Contused under-surface of the scalp. No intracranial hemorrhage. No skull fractures. Brain 1350g congested. Lungs unremarkable. Heart normal” These are symptoms consistent with assault.

P.W.5 Asiiimwe Frank, who lived in the neighbourhood of the scene, witnessed the circumstances in which the injuries were inflicted and it involved prolonged assault with sticks, stones and beating by a mob suspecting the deceased to have been a thief. P.W.6 Seguya Brian, a brother of the deceased, explained how it all began with a misunderstanding over a taxi fare, a chase and assault by the taxi conductor and driver in which other person joined to constitute a mob. In his defence, A1 Mayengo Hassan admitted having carried the deceased as his passenger shortly before they were accosted by the taxi conductor and driver who were joined shortly by a crowd to constitute a mob from which he fled for fear of his life. A4 Nsimbe Mohammed

Nkalubo alias Medi admitted having been at the scene and found the deceased being assaulted by a mob. This evidence establishes the fact that this death was a homicide since the possibility of a natural or accidental death has been ruled out. Defence Counsel did not contest this element. Having considered all the available evidence relating to this ingredient, in agreement with the
5 assessors, I am satisfied that it has been proved beyond reasonable doubt that the death of Nakibinge Dickson was caused by an unlawful act.

The prosecution is further required to prove beyond reasonable doubt that the unlawful act was actuated by malice aforethought. Malice aforethought is defined by section 191 of the *Penal Code Act* as either an intention to cause death of a person or knowledge that the act causing death
10 will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used, the manner it was used and the part of the body of the
15 victim that was targeted.

In the instant case, none of the weapons used were recovered but they were described by P.W.5 Asimwe Frank as having included an electric cable, stick and bricks. By their description, these were implements which when used for offensive purposes were capable of causing death.
20 Considering the manner in which they were applied, they were used to inflict fatal injuries after a prolonged beating estimated to have been over one hour. The assailants mainly targeted the head and upper part of the torso, which are vulnerable parts of the body. The ferocity with which the weapon was used can be determined from the impact which included multiple lacerations, abrasions and trauma. P.W.1 who conducted the autopsy established the cause of death as
25 “multiple blunt force trauma injuries.” A1 did not offer any evidence on this element. A4 Nsimbe Mohammed Nkalubo alias Medi stated that some of the people who assaulted the deceased had sticks as big as his forearm and about one metre long and big stones. Although there is no direct evidence of intent, it is evident that whoever assaulted the deceased in that manner, either had an intention to cause death or knowledge those acts would probably cause the
30 death of the deceased. Having considered all the available evidence relating to this ingredient, in

agreement with the assessors, I am satisfied that it has been proved beyond reasonable doubt that the death of Nakibinge Dickson was caused by an unlawful act, actuated by malice aforethought.

5 Lastly, the prosecution is required to prove beyond reasonable doubt that each of the two accused participated in causing the unlawful death. There should be credible evidence placing each of the accused at the scene of the crime as an active participant in the commission of the offence. In his defence, A1 explained that he too would have been a victim of the mob, but for his timely escape. He never returned to the scene and went about his normal duties until he retired to bed at around 3.00 am. A4 admitted being at the scene, but denied having participated in the assault.
10 He simply attempted to rescue the victim but was overpowered by the mob. None of the two accused has duty to prove lack of participation. The burden lies on the prosecution to disprove each of their defences by adducing evidence which proves that each was a participant in the commission of the offence.

15 To refute those defences, the prosecution relies entirely on identification evidence of P.W.5; Asimwe Frank, who testified that he knew both accused persons; A4 was his neighbour at Ndejje while he used to see A1 as a boda-boda rider at the Zana stage. On the fateful night while he was sleeping he heard people running while raising an alarm saying, "thief, thief, thief." He responded to the alarm and went to the well where he found three people. Among them was A1.
20 who was beating the victim with an electric cable. Another had a brick in his hands. Other people joined in the beating. One of them was A4 and Abasi and several other women. Medi A4 had a kitchen knife, he pointed it at the deceased and asked the deceased for names of four people he knew around Ndejje and he would be released.

25 This witness was one metre from them. There was an electric bulb in the shed, directly above them. It was bright enough. He saw them beating mainly the head and chest of the victim. He was beaten for about an hour. Abasi had a phone and called the defence Secretary called Sula. He came to the scene shortly and found that the deceased had been beaten badly but he was still alive. When the victim saw the Defence Secretary he told him "I am not a thief" and he tried to
30 embrace him but the Defence Secretary pulled away and the deceased fell down. The assailants tied a sack on one of the victim's arm and A1 pulled him towards the police which was about half

a kilometre way. They had dragged him for about twenty metres from the shed. He did not follow then to the police post. The victim was still screaming. He had began to lose strength and was no longer screaming loudly. Later he received a phone call telling him that the person he saw being beaten had died. Defence counsel contested this element. Evaluate all the evidence and determine whether it is the accused that caused the death of Nakibinge Dickson.

Being in the nature of visual identification by a single witness under conditions that could have been unfavourable to correct identification, the question to be determined is whether as an identifying witness he was able to recognise any of the two accused. In circumstances of this nature, the court is required to first warn itself of the likely dangers of acting on such evidence and only do so after being satisfied that correct identification was made which is free of error or mistake (see *Abdalla Bin Wendo v. R (1953) 20 EACA 106*; *Roria v. R [1967] EA 583* and *Abdalla Nabulere and two others v. Uganda [1975] HCB 77*). In doing so, the court considers; whether the witness was familiar with the accused, whether there was light to aid visual identification, the length of time taken by the witness to observe and identify the accused and the proximity of the witness to the accused at the time of observing them.

As regards familiarity, the identifying witness knew the both accused prior to the incident. In terms of proximity, the accused was very close to the scene, only one metre away. In terms of light, there was light at the shed shining directly above the victim and when he left the shed to embrace the Secretary for Defence, it was at a distance within four meters of that light. He also testified that a number of motorcycles were parked about three metres away with their headlamps on. One of the motorcycle was used to push the deceased along as he was being dragged towards the police post. Therefore there was sufficient light from the multiple sources throughout the episode which aided visibility. As regards duration, the assault took more than an hour. That was long enough a period to aid correct identification.

I have considered the defence raised by A1 Mayengo Hassan who claimed to have escaped from the scene and from the assailants by a whisker. He also said that he was known as a resident on this village. I find that his conduct subsequent to this narrow escape does not inspire confidence as to the credibility of his defence. This was a person who alongside the victim had just been

accused of either being a thief or harbouring them. He escapes for his dear life with that suspicion hovering over his head but continues with his business, in more or less the same area as if nothing that significant had happened. He suddenly does not seem to be concerned at all with his personal safety, recovery of the balance of the agreed fare nor for the safety of his passengers. I find this to be incredible and unable to cast doubt on the strong evidence of identification of P.W.5 who provided such detail of the degree of this accused's participation in the commission of the offence. As for A4, the identification evidence of P.W.5 is corroborated by the defence of A4 who admitted having been at the scene. For that reason the defence has not cast any doubt on the evidence of correct identification. In agreement with the joint opinion of the assessors, I find that this ingredient too has been proved beyond reasonable doubt.

Having been placed at the scene, the court then has to determine whether any of the two accused was an active participant in the events which led to the death of the deceased. The prosecution evidence has proved that A1 was a direct perpetrator while A4 aided and abetted the offence. Aiding and abetting refers to any act of assistance or support in the commission of the crime. Such mode of participation may take the form of tangible assistance, or verbal statements. It includes all acts of assistance or encouragement that substantially contribute to, or have a substantial effect on, the completion of the crime.

Under section 19 of *The Penal Code Act*, there are different modes of participation in crime; direct perpetrators, joint perpetrators under a common concerted plan, accessories before the offence, etc. Each of the modes of participation may, independently, give rise to criminal responsibility. Individual criminal responsibility can be incurred where there is either aiding or abetting, but not necessarily both. Either aiding or abetting alone is sufficient to render the perpetrator criminally responsible. "Aiding" and "abetting" are not synonymous though they are so often used conjunctively and treated as a single broad legal concept. They are distinct legal concepts. Abetting implies facilitating, encouraging, instigating or advising the commission of a crime. It involves facilitating (making it easier, smoother or possible) the commission of an act by being sympathetic thereto. Aiding means assisting (usually giving material support) or helping another to commit a crime.

The prosecution's theory relies on A4 Nsimbe Mohammed Nkalubo alias Medi as having aided and abetted the offence. Aiding and abetting refers to any act of assistance or support in the commission of the crime. Such mode of participation may take the form of tangible assistance, or verbal statements. It includes all acts of assistance or encouragement that substantially contribute
5 to, or have a substantial effect on, the completion of the crime. The *actus reus* for aiding and abetting is that the accused carries out acts specifically directed to assist, encourage or lend moral support i.e. give practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. It must be proven that the alleged aider and abettor committed acts specifically aimed at assisting, encouraging, or lending moral support for
10 the perpetration of a specific crime, and that this support had a substantial effect on the perpetration of the crime.

It implies in general that, at the moment he acted, the accused knew of the assistance he was providing in the commission of the principal offence. In other words, the accused must have
15 acted knowingly. "Knowingly" in the context of murder means knowledge of the principal offender's murderous intent. He must have carried out the act with the knowledge that it would assist in the killing of the deceased. The prosecution must prove that he had knowledge that acts he performed, would assist in the commission of the crime by the principal or that the perpetration of the crime would be the possible and foreseeable result of his conduct. The
20 accomplice must have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct.

A distinction is to be made between aiding and abetting and participation in pursuance of a common purpose or design to commit a crime. In crimes requiring specific intent like murder, it
25 is not necessary to prove that the aider and abettor shared the *mens rea* of the principal, but that he must have known of the principal perpetrator's specific intent. With respect to aiding and abetting murder, the only mental element required is proof that the Accused knew of the murderous intent of the actual perpetrator, but he need not share this specific intent. If the accused was only aware of the criminal intent of the mob and he gave it substantial assistance or
30 encouragement in the commission of the crime then he was only an aider and abettor but if he shared the intent of the mob, then he is criminally responsible both as a co-perpetrator and as an

aider and abettor. The Prosecution is required to demonstrate that the accused carried out an act of substantial practical assistance, encouragement, or moral support to the principal offender, culminating in the latter's actual commission of the crime. The assistance must have a substantial effect on the commission of the crime. It must be shown that his participation substantially contributed to, or had a substantial effect on the consummation of the crime, but does not necessarily constitute an indispensable element, i.e. a *conditio sine qua non*, of the crime. It is not necessary to prove that he had authority over that other person.

Although A4 Nsimbe Mohammed Nkalubo alias Medi denied having brandished a knife at the deceased P.W.5 Asiimwe Frank testified that he saw this accused point a knife at the accused while asking him to name at least four persons resident on the village where he claimed to originate from. A4 indeed admitted conducting such an interrogation. I do not see any reason why P.W.5 would fabricate that detail. I am therefore inclined to reject the version of the accused as it is self-serving and accept that of a P.W.5 who was a mere curious by-stander. I find that A4 brandished a knife at the deceased as he was being assaulted by another person. Pointing a deadly weapon at another is an act indicative of hostility towards the victim. By that act, A4 identified and associated himself with the rest of the mob. I find that the act of the accused had a substantial effect or constituted a substantial contribution to the commission of the offence. Therefore in disagreement with the opinion of the assessors as regard A4 Nsimbe Mohammed Nkalubo alias Medi but in agreement with the opinion of the assessors as regards A1 Mayengo Hassan, I find that each of the two accused participated in the commission of the offence and therefore that this ingredient has been proved beyond reasonable doubt.

Having found so, in the final result each of the two accused, A1 Mayengo Hassan and A4 Nsimbe Mohammed Nkalubo alias Medi is hereby found guilty and convicted of the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Kampala this 12th day of July, 2018.

.....
Stephen Mubiru
Judge.
12th July, 2018.

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13th July, 2018

9.36 am

Attendance

Mr. Kato Ssonko, Court Clerk.

5 Ms. Adongo Harriet, State Attorney, for the Prosecution.

Mr. Kumbuga Richard, Counsel for the accused persons on state brief is present in court

A1 and A4 are present in court.

Both assessors are in court.

10 **SENTENCE AND REASONS FOR SENTENCE**

The two convicts were found guilty of the offence of murder c/s 188 and 189 of the *Penal Code Act* after a full trial. In her submissions on sentencing, the learned State attorney prayed for a deterrent sentence on the following grounds; although she had no record of previous conviction of any of the convicts, a life was lost and the deceased had a child. The deceased was still a very
15 young man who was working in Owino Market for survival and his only son was in P.2 and would attain education and now the elder brother of the deceased was present in court has to carry the responsibility. The offence carries a maximum punishment of death, but even a death sentence cannot bring the victim back to life. The convicts are not remorseful from the rime they were arrested, detained and produced before this court for plea. They also intimidated
20 prosecution witnesses preventing them from coming to court. The manner in which the deceased was killed was brutal and painful. It was just for shs. 500/= He was beaten, pushed, tied and this has caused psychological torture to the brothers. She prayed for a deterrent sentence such as will make the country a peaceful one to live in. The convicts should learn not to solve problems with violence by taking the law into their hands. She proposed a sentence in the range of 28 years and
25 thirty five years.

Counsel for the convicts prayed for a lenient custodial sentence on the following grounds; life is indeed sacred and no one should take the life of another by whatever means. The convicts are first offenders. They remained on the village and were picked later. They had never been
30 involved in any form of criminality. The circumstances of the offence were so unique. A1 was a car washer and drove a boda-boda. He was an innocent participant in that the offence was not pre-meditated. He was a law abiding person and was looking for survival. He left his parents at a young age and moved on to live on his own. The deceased and the taxi guys were the root cause

of the problem. The convicts deserve mercy. A4 was at home and was encouraged by another person to intervene. He had the knife in the hands and he talked while having or swinging it. He is not a violent person. The culpability of an abettor is lower. They were misled as young people and are capable of reforming. They have learnt a lot from prison. They were useful at that time.

5 A1 was a car washer and motorcycle rider and trusted by people who lent motorcycles to him. There is a high level of violence in society. A1 was too young and he was 17 at the time. He should be treated as a minor and be sentenced as a minor who has been 3 years and nine months on remand. The participation of A4 was too minimal. Had he been charged of abetting the offence, the punishment would be low. The alleged intimidation of witnesses by relatives did not
10 involve the convicts and it was not proved. A1 should be sentenced as a minor and A4 should be sentenced to five years' imprisonment.

In their respective *allocutus*, each of the convicts prayed for a lenient sentence. AI Mayengo Hassan alias Kasoto Musilamu apologized to the relatives of the deceased. He explained that
15 during the period he has been on remand, he has developed a back pain for two years now. No one will support his life. He did not have a meaningful education. He has learnt skills at the prison. He was arrested as a child but has now grown up and is much wiser. This was his first time to be arrested. He came to town to work in order to support his mother who now has no one to support her. He is called a councilor in prison and will never offend again. He has received
20 wise council from elders while in prison. On the other hand, A4 Nsimbe Mohammed Nkalubo alias Medi stated that he has never known his mother and his efforts to trace her have been futile. He grew up with a guardian. He has tried to avoid trouble all his life. He was newly married only the previous two months preceding his arrest. His wife was pregnant but he does not know where she is. He was told she gave birth to twins. He has been on remand for three years and seven
25 months and that should be enough punishment. He has received religious instruction while in Luzira and he is guiding fellow inmates.

Before sentencing the accused, I need to determine whether or not A1 Mayengo Hassan alias Kasoto Musilamu was an adult at the time he committed the offence as this has a bearing on the
30 sentencing. According to section 107 (1) of *The Children Act*, the Court is empowered, on its own motion, to make an inquiry as to the age of a person appearing before it as an accused or

one who is brought before it otherwise than for the purpose of giving evidence, when it appears to the court that he or she is under eighteen years of age. This determination has not been necessitated by the physical appearance of A1 before court for he is manifestly an adult, but rather the argument of defence counsel that based on the testimony of his mother D.W.3 Nantongo Harriet who testified that A1 was born at "Legacy Medical Centre-Buyoga" in Bukomansimbi District on 9th January, 1997 implying that by the date of the offence, 3rd November, 2014, he was only seventeen (17) years old. She exhibited some form of birth certificate (exhibit D. Ex.2) issued by that clinic, dated 10th January, 1997. The learned prosecutor disputed the authenticity of the evidence during cross-examination and in her submissions on sentencing.

According to section 107 (2) of *The Children Act*, in making the inquiry for purposes of age determination, the court may take any evidence, including medical evidence, which it may require. I observed D.W.3 Nantongo Harriet as she testified regarding the date of birth of her son, A1 and it appeared to me that she could only recall the date with great effort, such as is characteristic of one who has crammed it for a purpose. The date did not readily come to her recollection and she kept on referring to it repeatedly as 1979, and later correcting it repeatedly to 1997. Scrutiny of the document itself reveals that the piece of paper is much older than the writing on it. Whereas the standard print in black ink is faded, the pink colour of the paper too is faded and stained, the handwritten insertions of particulars look fresh in blue ball point ink and so does the purple ink of the stamp impression. The probability that it was prepared specifically for this case is palpable. This evidence is rejected as misleading and unreliable. On the other hand, at the time of the offence, A1 was a boda-boda rider and by the nature of his job at the time it is doubtful. At the time he was charged on 24th November, 2014, his declared age in the charge sheet is 19 years. I therefore find that the accused, A1 Mayengo Hassan, was an adult at the time he committed the offence and he will be sentenced as such.

Sentencing is a reflection of more than just the seriousness of the offence. The court at this stage, in sentencing multiple convicts at the same trial where the facts permit, may take into account the degree of culpability of each of the convicts. Each of the accused participated differently as part of the mob which killed the deceased. Degree of culpability refers to factors of intent,

motivation, and circumstance that bear on the convict's blameworthiness. Under the widely accepted modern hierarchy of mental states, an offender is most culpable for causing harm purposely and progressively less culpable for doing so knowingly, recklessly, or negligently.

5 During trial, court considers legal culpability of the convict including the convict's intentions, motives, and attitudes. At sentencing, the court should look beyond the cognitive dimensions of the convict's culpability and should consider the affective and volitional dimension as well. It may as a result consider extenuating circumstances, which are; those factors reflecting on the moral blameworthiness, as opposed to the legal culpability of the convict. It is for that reason
10 that the principle of proportionality operates to prohibit punishment that exceeds the seriousness of the offending behaviour for which the offender is being sentenced. It requires that the punishment must fit both the crime and the offender and operates as a restraint on excessive punishment as well as a prohibition against punishment that is too lenient. The principle of parsimony on the other hand requires that the court should select the least severe sentencing
15 option available to achieve the purpose or purposes of sentencing for which the sentence is imposed in the particular case before the court.

Murder is one of the most serious and most severely punished of all commonly committed crimes. The offence of murder is punishable by the maximum penalty of death as provided for
20 under section 189 of the *Penal Code Act*. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence especially where the offence involved use of deadly weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life. This maximum sentence is therefore usually reserved for the most egregious cases of Murder
25 committed in a brutal, gruesome, callous manner. However, accomplice liability may reduce moral blameworthiness and provide grounds for not imposing a death sentence . Although this case is more or less in that category of the most egregious cases of murder committed in a brutal, callous manner, I have for those reasons discounted the death sentence.

30 In the instant case, in an attempt to determine the moral blameworthiness of the convicts, I have been guided by the nature of the weapons each of the convicts used in assaulting the deceased,

and the manner in which it was used as an indication of the degree of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life manifested by each of them.

5 I have also taken into account the current sentencing practices in relation to cases of this nature, and considered the case of *Bukenya v. Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22nd December 2014, the Court of Appeal upheld a sentence of life imprisonment for a 36 year old man convicted of murder. He had used a knife and a spear to stab the deceased, who was his brother, to death after an earlier fight. Similarly in *Sunday v. Uganda C.A Crim.*
10 *Appeal No. 103 of 2006*, the Court of Appeal upheld a sentence of life imprisonment for a 35 year old convict who was part of a mob which, armed with pangas, spears and sticks, attacked a defenceless elderly woman until they killed her. In *Byaruhanga v. Uganda, C.A Crim. Appeal No. 144 of 2007*, where in its judgment of 18th December 2014, the Court of Appeal considered a sentence of 20 years' imprisonment reformatory for a 29 year old convict who drowned his
15 seven months old baby. The convict had failed to live up to his responsibility as a father to the deceased who was victimized for the broken relationship between him and the mother of the deceased.

In the higher category of blameworthiness is AI Mayengo Hassan alias Kasoto Musilamu, who
20 despite not having used a weapon adapted to cutting or stabbing in assaulting the deceased, he was seen mercilessly dragging him even when it was clear that he was weak and helpless. This is conduct reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life. Even without extremely deadly weapons, his conduct towards the deceased manifested such a frame of mind. In light of
25 those aggravating factors, I consider a starting point of forty years' imprisonment.

Against this, I have considered the submissions made in mitigation of sentence and in his *allocutus*, more especially his relatively youthful age, and thereby reduce the sentence to thirty years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2)
30 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence

considered appropriate, after all factors have been taken into account, I observe that A1 have been in custody since 24th November, 2014. I hereby take into account and set off a period of three years and eight months as the period A4 have already spent on remand. I therefore sentence AI Mayengo Hassan alias Kasoto Musilamu to a term of imprisonment of twenty six (26) years and four (4) months, to be served starting today.

In the lesser blameworthy category is A4 Nsimbe Mohammed Nkalubo alias Medi. I consider his participation in the commission of the offence to have been more at the accessory rather than the direct perpetrator level. Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. In light of the aggravating factors outlined by the learned State Attorney, I consider a starting point of fifteen years' imprisonment for this category of blameworthiness.

Against this, I have considered the submissions made in mitigation of sentence and in the *allocutus* of A4 and thereby reduce the sentence to ten years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict has been in custody since 24th November, 2014. I hereby take into account and set off a period of three years and eight months as the period A4 have already spent on remand. I therefore sentence A4 Nsimbe Mohammed Nkalubo alias Medi to a term of imprisonment of six (6) years and four (4) months, to be served starting today.

The convicts are advised that they have a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Kampala this 13th day of July, 2018.

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Stephen Mubiru
Judge.
13th July, 2018.

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