

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

**CRIMINAL SESSIONS CASE No. 178 OF 2017**

**UGANDA ..... PROSECUTOR**

5 **VERSUS**

1.	<b>OCAYOTTO OKIDI SHIRAJI</b>	}	.....	<b>ACCUSED</b>
2.	<b>OLARA GEORGE</b>	}	.....	<b>ACCUSED</b>
3.	<b>O G</b>	}	.....	<b>JUVENILE OFFENDER</b>
4.	<b>O A</b>	}	.....	<b>JUVENILE OFFENDER</b>
10 5.	<b>OKOT VINCENT</b>	}	.....	<b>ACCUSED</b>

**Before: Hon Justice Stephen Mubiru**

**JUDGMENT**

The two accused and two juvenile offenders in this case were jointly indicted with one count of  
15 Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that the accused and the juvenile offenders on the 13<sup>th</sup> day of September, 2016 at Lacen Otinga East village, Akara Parish, Mucwini sub-county in Kitgum District, murdered one Oroma Patrick.

The prosecution case was that on the evening to 12<sup>th</sup> October, 2016 the deceased, the accused and  
20 the juvenile offender attended a marriage ceremony at the home of a one Opio Ensio. Later in the night, the deceased was accused of disrupting the merrymaking out of drunkenness. The accused and the juvenile offender dragged him away, assaulted him and abandoned him at the derelict house of the late grandmother of A2 Olara Gorge and A3 O G. He was found dead in that house the following day and a post mortem done on his body revealed two causes of death; upper  
25 airway obstruction leading to respiratory failure, and haemorrhage. The accused and the juvenile offenders were arrested on suspicion of having killed the deceased. At the close of the prosecution case, the court found A4 O A and A5 Okot Vincent had no case to answer. At the

close of the prosecution case, court found that the prosecution had not made out a case to answer against A4 O A and A5 Okot Vincent. Both were acquitted and set free.

In his defence, A.1 Ocayotto Okidi Shiraji who testified as D.W.3 stated that he attended the party at which the deceased began disturbing people. He grabbed the deceased's hands, slapped his on the cheek and told him he was taking him to the youth. He grabbed the deceased but he began fighting. The deceased ran away to the youth as he tried to arrest him. He went after the deceased but as he arrived he found he had already been beaten and he lay on the ground. He stopped people from beating him further. He asked him if he could go home. He said he was going to rest because he had been beaten. A4 O A kicked the deceased and said they were to take him to the house of A3 O G. He refused to go, they began pulling him from the ground. They reached the door side of the house of Sabina and A3 and his group said he had the capacity to walk but was only fooling people. The deceased went to sleep inside the house of A3 O G and they left him sleeping in the house. They returned to where the visitors were after leaving the deceased in the house of A3 O G. The following morning he took a pounding mortar to Podo village. On return they were told Oroma had died. They were advised to report to the police to avoid being arrested. They reported and were detained up to the next day.

A.2. Olara George who testified as D.W.1 stated that on 12<sup>th</sup> October, 2016 he attended a party at the home of Ensio Opio, together with many other youths. He was not among the group nominated to take charge of security at the function. He spent the following morning, 13<sup>th</sup> October, 2016 at a home sweeping the compound. He did not go anywhere. After sweeping, his paternal uncle Sisto came from the venue of the previous night's party. He came hurriedly and he told him that Oroma has been reported to have died and that A2 was one of the suspects for he had been at the party. A1 Okidi Ocayayotto then came on his way home via A2s compound. His body was wet with dew. A2 asked A1 what the problem was. A1 told him that Oroma was dead. A2 asked A1 what could have caused the death yet the previous night they had left him alive. A1 replied that he had kicked Oroma but he did not think that the kick could have caused the death. A2 asked A1 whether the people around were aware of that but he replied that he would first disappear from the area, and proceeded to his home. After learning that Ocayotto had caused the death, he decided to go to the scene. As he was going, on the way he met his paternal uncle

returning from the scene at around 9.00 am. His uncle insisted that he should not go there since the people appeared aggressive and he was one of the youth who attended the function. He told his uncle that Ocayotto had admitted kicking the deceased but had not told him why he had kicked the deceased. His uncle told him he was returning to the scene to tell them what A2 had told him but that A2 should go back home. He returned home until around midday when his uncle returned from the scene. Her instructed him to go to the sub-county to record a statement since Ocayotto had confessed to him. He went to the police at the sub-county that same day at around 4.00 pm. There I found one person who knew him and he pointed him out to the police as one of the suspects. He was arrested before he could record a statement.

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A3 O G who testified as D.W.2 stated that on 12<sup>th</sup> October, 2016 he was at the home of his step mother Atto Rose where he attended a party in the evening. He sat where the music system was with his brother Michael and Ocen watching the video up to 2.00 am. He then saw A1 Ocayotto and A2 Olara George come to where the deceased was. He danced next to the deceased. A quarrel broke out between A1 Ocayotto and the deceased Oroma. A1 kicked the deceased. A1 Ocayotto held Oroma but he slipped through his hands and escaped. A1 ran after him and called the team to sit down. Oroma rose and ran away and A3 went back to where the DJ was. He told Michael and Ocen that he had seen Oroma escape but he feared to go alone. He asked them to follow him to see what had happened. The three of them went but the music stopped and Michael turned back. A3 proceeded to a house of Okot Vincent where we found A1 Ocayotto and A2 Olara, the deceased and Opira Jimmy. He stopped short distance away. Oroma was seated down and Opira asked them what they wanted. A3 asked them why they were making a lot of noise when there were visitors around. They did not respond. He decided to return to the disco.

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25 In the morning, at about 7.00 am Opira inquired where the deceased was. Opira suggested that they should move around and search for the deceased. They began the search. Opira was moving ahead of him and he was following him. They walked past A2s mom's house and went to the abandoned house of his late grandmother. A3 branched to pick an orange and Opira reached the house before him. He called A3 to hurry and see. Opira asked him who lived there and he answered that it belonged to his late grandmother. Opira further asked him whose blanket it was and he answered that it belonged to his late grandmother. He said he could see Oroma. Opira

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called him, touched him and there was no response. He told A3 that Oroma was dead. Opira tried again as if waking him up but there was no response. He told A3 that they should go and report to the people. They went together where the elders were seated and they reported to Opiro Ensio who then altered other people including women. They went and confirmed Oroma was dead.  
5 when they returned, while he was eating oranges he was asked whether he knew about Oroma's death but he told answered that he had spent the night around and had not gone anywhere. He did not know about his death.

After that the elders began looking for the suspects, A1 Ocayatto and A2 Olara who were not in  
10 their houses. Ocen was found in his house and he was brought under the tree where A3 was seated. They were directed into a nearby house. He was feeling hungry and he asked Opira Jimmy for food. Immediately after eating the police came, handcuffed them and took them to the scene where they were asked to squat, their photos were taken and then they proceeded to the police station. At Kitgum CPS they were forced into the police cells. They began beating them  
15 while masking them to reveal the killers. He and Ocen told them they did not know anything. After the torture, at around 4.00 pm Okot Vincent was brought to join them in the police cell. They had been arrested on Thursday and on Sunday 17<sup>th</sup> October they were joined by Ocayotto and Olara George. On 19<sup>th</sup> October, he was called to record a statement in which he was forced to admit that the house where the body was found belonged to him but he rejected that and told  
20 them it belonged to his late grandmother. They told him the rest of the suspects had said the house belonged to him but he denied that totally. He was later examined at the hospital and then taken to court and back to the police. On the fourth appearance he was remanded.

Since the accused and the juvenile offender pleaded not guilty, like in all criminal cases the  
25 prosecution had the burden of proving the case against each of them beyond reasonable doubt. The burden does not shift to any of them and they can only be convicted or adjudged responsible respectively on the strength of the prosecution case and not because of weaknesses in their respective defences, (see *Ssekitoleko v. Uganda* [1967] EA 531). They have no obligation to prove their innocence. By their respective pleas of not guilty, they put in issue each and every  
30 essential ingredient of the offence with which they are jointly charged and the prosecution had the onus to prove each of the ingredients beyond reasonable doubt before it could secure their

conviction. Proof beyond reasonable doubt though does not mean proof beyond a shadow 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 they are innocent, (see *Miller v. Minister of Pensions* [1947] 2 ALL ER 372).

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For any of them to be convicted or adjudged responsible respectively for the offence of Murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

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

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. In the instant case the  
15 prosecution adduced a post mortem report dated 13<sup>th</sup> October, 2016 prepared by P.W.1 Dr. Geoffrey Akena, the Medical Superintendent of Kitgum Government Hospital, which was admitted during the preliminary hearing and marked as exhibit P. Ex.1. The body was identified to him by P.W.5 Opira Jimmy, as that of Oroma Patrick. P.W.3 Akello Christine, testified that on the morning of 13<sup>th</sup> October, 2016 she saw the body abandoned in a deserted house. P.W.4 Opio  
20 Encio, an uncle of the deceased, too saw the body at the scene. P.W.5 Opira Jimmy, the brother of the deceased, testified that on the morning of 13<sup>th</sup> October, 2016 at around 8.30 am, he was led to that deserted house by A3 O G where he discovered the body.

In his defence, A.2. Olara George who testified as D.W.1 stated that it is his uncle who told him  
25 about the death. A.3. O G who testified as D.W.2 stated that he joined P.W.5 Opira Jimmy, on the morning of 13<sup>th</sup> October, 2016 in searching for the deceased only to find him dead in his grandmothers' abandoned house. A.1 Ocayotto Okidi Shiraji who testified as D.W.3 stated that when he returned from Podo village where he had gone with A.2 Olara and others to deliver a mortar, they were told Oroma had died. Defence Counsel did not contest this element in her final  
30 submissions. Having considered the evidence as a whole, and in agreement with the assessor, I

find that the prosecution has proved beyond reasonable doubt that Oroma Patrick died on 13<sup>th</sup> October, 2016.

The prosecution had to prove further that the death of Oroma Patrick was unlawfully caused. 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 (see *R v. Gusambizi s/o Wesonga (1948) 15 EACA 65*). P.W.1 who conducted the autopsy established the cause of death as “upper airway obstruction leading to respiratory failure and haemorrhage.” Exhibit P. Ex.1 dated 13<sup>th</sup> October, 2016 contains the details of his other findings which include a “oozing mucus from nose and mouth. Penetrating wound on the right cheek (0.1 x 0.2 cm) up to the right zygoma (the cheekbone). Rope mark on the neck, semi circumferential, dark, 10 cm x 2 cm. Easily moveable head” These injuries are consistent with physical assault.

P.W.3 Akello Christine, last saw the deceased healthy and dancing the previous night at a party at the home of Atto Rose. the following morning she found him dead in an abandoned house and she saw blood oozing from his nose and mouth. P.W.5 Opira Jimmy too saw blood on the nose of the deceased. In the absence of direct evidence of causation, the probability established by the available circumstantial evidence is high enough to justify an inference in favour of a finding of homicide. No co-existing facts appear which can reasonably explain the death in a manner inconsistent with a homicide. In their respective defences, the accused and the juvenile offender did not refute this element and neither did Defence Counsel contest it in her final submissions. Not having found any lawful justification for the assault on the deceased, I agree with the assessors that the prosecution has proved beyond reasonable doubt that Oroma Patrick's death was unlawfully caused.

Thirdly, the prosecution was required to prove that the cause of death 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 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. This may be deduced from circumstantial evidence (see *R v. Tubere s/o Ochen (1945) 12 EACA 63*).

Malice aforethought being a mental element is difficult to prove by direct evidence. Courts usually consider first; the nature of the weapon used. In this case the suspected hoe found at the scene was not produced in court. Nevertheless, it has been held before that there is no burden on the prosecution to prove the nature of the weapon used in inflicting the harm which caused death nor is there an obligation to prove how the instrument was obtained or applied in inflicting the harm (see *S. Mungai v. Republic* [1965] EA 782 at p 787 and *Kooky Sharma and another v. Uganda S. C. Criminal Appeal No.44 of 2000*).

In determining the existence or otherwise of malice aforethought, Courts usually consider the weapon used (in this case a sharp edged object to inflict the wound on the cheek bone and a rope to inflict the semi circumferential, dark mark around the neck, are suspected) and the manner they were applied (a stab wound to the cheek and strangulation) and the part of the body of the victim that was targeted (the neck and head). The ferocity with which the weapons were used can be determined from the impact (a cut up to the cheek bone and obstructed upper airway leading to respiratory failure). P.W.1 Dr. Geoffrey Akena who conducted the autopsy established the cause of death as “upper airway obstruction leading to respiratory failure and haemorrhage.”

None of the accused or the juvenile offender offered any evidence on this element. There is equally no direct evidence of intention. The intention of the perpetrator(s) is based only on circumstantial evidence of the injuries. A.1 Odayotto Okidi Shiraji who testified as D.W.3 stated that he only slapped the deceased once on the cheek. A.2. Olara George who testified as D.W.1 stated that A.I confided in him that he had killed the deceased. He last saw the deceased alive at the party on the night of 12<sup>th</sup> October, 2016. A.3. O G who testified as D.W.2 stated that while at the party on the night of 12<sup>th</sup> October, 2016, he saw A1 kick the deceased amidst a quarrel. He then saw A1 run after the deceased and they disappeared into the night. On basis of the circumstantial evidence, I find, in agreement with the assessor that malice aforethought can be inferred. The prosecution has consequently proved beyond reasonable doubt that Oroma Patrick’s death was caused with malice aforethought.

Lastly, there should be credible direct or circumstantial evidence placing each of the accused and the juvenile offender at the scene of the crime as the perpetrator(s) of the offence. In their respective defences, each of the accused and the juvenile offender denied having committed the offence.

- 5 To refute these defences, the prosecution relies entirely on circumstantial evidence. In a case depending exclusively upon circumstantial evidence, the court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the juvenile offender and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable
- 10 doubt. It is necessary before drawing the inference of the juvenile offender's responsibility for the offence from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference (see *Simon Musoke v. R* [1958] EA 715, *Mwangi v. Republic* [1983] KLR 327, *R v. Kipkering Arap Koske and another* (16) EACA 135 and *Sharma Kooky and another v. Uganda* [2002] 2 EA 589 (SCU) 589 at 609).
- 15 Circumstantial evidence must always be narrowly examined.

The circumstantial evidence is woven together by the following strands; the deceased was dancing at the party; A1 and A2 were seen carrying the deceased away against his will; later they were seen evincing hostility towards him; A1 admitted having slapped him; A1 confessed to A2

20 having kicked him; A1 admitted the three of them were the last persons with the deceased and abandoned him at the derelict house that belonged to the late grandmother of A3; A3 led P.W.5 Opira to that place; A1 and A2 went into hiding. A3 implicated only by A1 as having been part of the group that dragged the deceased to the derelict house. This is evidence of surrounding circumstances which, by undesigned coincidence, is capable of proving a proposition with the

25 accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial," (see *Taylor Weaver and Donovan v. R* 21 Cr App R 20 at 21).

In a case depending exclusively upon circumstantial evidence, the court is concerned with probabilities, not with possibilities. Something is "probable" when it is verifiable and more likely

30 to have happened than not, whereas something is "possible" where it could happen in similar situations, some form of acknowledgement that although it is not impossible, yet it is unlikely to



have happened in the circumstances of the case. Just because something is possible does not mean it is probable. There should be material upon which it can be found that there is such probability in favour of the explanation or hypothesis presented by the prosecution that the contrary one must be rejected. This means that, according to the common course of human affairs, the degree of probability that the occurrence of the facts proved would be accompanied by the fact to be proved is so high that the contrary cannot reasonably be supposed. The burden of proof lies upon the prosecution, and if the juvenile offender has been able by additional facts which he has adduced through cross-examination or his defence to bring the mind of the Court to a real state of doubt, the prosecution has failed to satisfy the burden of proof which lies upon it.

I have scrutinised the evidence and part of it being in the nature of visual identification, court has to determine whether or not these identifying witnesses were able to recognise the offenders. 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 witnesses were familiar with the juvenile offender, whether there was light to aid visual identification, the length of time taken by the witnesses to observe and identify the juvenile offender and the proximity of the witnesses to the juvenile offender at the time of observing him.

As regards familiarity, the identifying witnesses knew the offenders prior to the incident. In terms of proximity, they were very close to the offenders. In terms of light, it was during the night but their vision was aided by light at the dancing area and moonlight away from it. As regards duration, all those interactions took a reasonable period of time, that was long enough to aid correct identification. None of the witnesses was motivated by malice or grudge to implicate any of the accused, since none was advanced in their respective defences. I find that the accused were properly recognised. their respective alibis have therefore been disproved.

It is essential to inquire with the most scrupulous attention what other hypotheses there may be which may agree wholly or partially with the facts in evidence. I have considered the

explanations and hypotheses advanced by the accused and juvenile offender to explain away the various incriminating elements in the prosecution circumstantial evidence. 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  
5 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. Section 19 (1) (b) and (c) of the *Penal Code Act*, lists persons who are deemed to have taken part in committing an offence and to be guilty of the offence and who may as a consequence be charged with actually committing it. This includes every person who does or  
10 omits to do any act for the purpose of enabling or aiding another person to commit the offence and every person who aids or abets another person in committing the offence. Furthermore, according to section 20 of *The Penal Code Act*, 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 a nature that its commission was a  
15 probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.

There is no evidence indicating what role A3 O G played in the demise of the deceased. Apart from being seen around where the deceased was assaulted from, there is no evidence that he  
20 directly or indirectly participated in assaulting the deceased. In agreement with the opinion of the assessor, I find that the prosecution has not proved the case against him beyond reasonable doubt. He is accordingly acquitted of the offence of Murder c/s 188 and 189 of *The Penal Code Act* and should be set free forthwith unless he is being held in custody for some other lawful reason.

25 As regards A.1 Ocayotto Okidi Shiraji and A.2. Olara George, the circumstances exclude every exculpatory hypothesis leaving only one rational conclusion to be drawn, of the responsibility of the two accused. I find that there is no material upon which it can be found that there is such probability in favour of the explanation or hypothesis presented by the two accused. Instead, the  
30 material available supports the theory advanced by the prosecution. A.1 does not deny being at the scene and having assaulted the deceased at one point. He only denied having delivered the

fatal blow. A.2. Olara George participated in the kidnap of the deceased and was seen participating in the assault thereafter. Each of the two accused, together with others, participated in unlawfully assaulting the deceased and it does not matter who of them delivered the fatal blows. Death was a probable and foreseeable consequence of the prosecution of those unlawful acts committed in concert with others. Not having found any reasonable hypothesis consistent with the innocence of the two accused, in agreement with the opinion of the assessor, I find that this element too been proved beyond reasonable doubt that the two accused; A.1 Ocayotto Okidi Shiraji and A.2. Olara George participated in the perpetration of the offence for which they stand indicted.

In the final result I find that the prosecution has proved all the essential ingredients of the offence against A.1 Ocayotto Okidi Shiraji and A.2. Olara George, beyond reasonable doubt and I hereby find each of them guilty and accordingly convict each of them for the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Gulu this 15<sup>th</sup> day of October, 2018.

Stephen Mubiru  
Judge.

Later.

4.00 pm

Attendance

Court is assembled as before.

### **SENTENCE AND REASONS FOR SENTENCE**

The convicts have been found guilty of the offence of murder c/s 188 and 189 of the *Penal Code Act* after a full trial. In his submissions on sentencing, the learned Resident Senior State attorney

prayed for a deterrent sentence on the following grounds; the two are convicted of the offence of murder which is a serious offence attracting a maximum of death. The offence is rampant within the jurisdiction. They took away the life of one Oroma Patrick, under no justification. The evidence shows that they violently picked him from the dance and ended his life. The two are violent young men, who still pose a serious danger to society should they be left to return to the community in a short time. The manner in which they killed Oroma was gruesome and the method by which they disposed of the body showed an intention to conceal their action and to confuse members of the community. They had pre-meditation. They disappeared from the village which shows they are not remorseful. They have been on remand since 25<sup>th</sup> October, 2016; i.e. One year, eleven months and twenty days. In the circumstances he proposed that the two convicts be sentenced to life imprisonment. That will go a long way in removing violent people from among law abiding members of the community.

Counsel for the convicts prayed for a lenient custodial sentence on the following grounds; A1 has no criminal record, has been on remand for a year and 11 months. He has left six children at home. He is 23 years old and hence a young person. If given a moderate sentence he can reform and come back as a useful person. While in prison he is a good person. She prayed for lenience. A2 is also a first offender, has spent the same time on remand. He is 18 years old, thus a young person. He can reform and become a useful citizen. He is an orphan without both parents. He has six siblings he was taking care of. She prayed that the court is lenient. He needs a reformative sentence.

In his *allocutus*, A1 prayed for a lenient sentence on the following grounds; he is an orphan. Both his parents are deceased. He left behind three children and one dependant. He was taking care of them. His future is dark. In his *allocutus*, A2 prayed for a lenient sentence on the following grounds; he is an orphan and he takes care of four young siblings. He prayed for an opportunity to rerun and take care of them. In prison he is losing his sight and in the evening he cannot see.

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. Where each of them participated differently as part of the mob, the court may have to determine the degree of culpability of each by considering such factors as intent, motivation, and circumstance that bear on each convict's blameworthiness.

- 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. In this case, the nature of the facts do not allow for a distinction in the moral culpability of each of the convicts. They therefore have been  
10 taken as sharing the same degree of culpability.

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 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  
15 deadly weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of the sanctity of life. This maximum sentence is therefore usually reserved for the most egregious cases of Murder committed in a brutal, gruesome, callous manner. Although the one in this case was committed in a brutal, callous manner, I have not found it to have been so egregious as to deserve a death  
20 sentence. For those reasons the death sentence is discounted.

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*  
25 *Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment.

I have taken into account the current sentencing practices in relation to cases of this nature, I have considered the case of *Bukenya v. Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22<sup>nd</sup> December 2014, the Court of Appeal upheld a sentence of life imprisonment for  
30 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.*

*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 18<sup>th</sup> December 2014, the Court of Appeal considered a sentence of 20 years' imprisonment reformatory for a 29 year old convict who drowned his 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 light of the aggravating factors outlined by the learned State Attorney, I consider a starting point of thirty five years' imprisonment. Against this, I have considered the submissions made in mitigation of sentence and in the *allocutus* of the two convicts and thereby reduce the period to twenty eight 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 three convicts have been in custody since 25<sup>th</sup> October, 2016; i.e. one year, eleven months and twenty days. I hereby take into account and set off a period of one year and eleven months as the period the convicts have already spent on remand. I therefore sentence each of the convicts A.1 Odayotto Okidi Shiraji and A.2. Olara George, to a term of imprisonment of twenty six (26) years and one (1) month, 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 Gulu this 15<sup>th</sup> day of October, 2018.

Stephen Mubiru  
Judge.