

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CRIMINAL SESSIONS CASE No. 172 OF 2016

UGANDA PROSECUTOR

5 **VERSUS**

1. **ENDRIO ROSE** }
2. **OLING RUFINO** } **ACCUSED**
3. **WANI RICHARD** }
4. **BAYOA ELEVIA** }

10

Before: Hon Justice Stephen Mubiru

JUDGMENT

The four accused were jointly indicted with three counts of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that the four accused on the 11th day of August, 2015 at Bibia village, in
15 Amuru District murdered one Komakech James in Count 1; Akello Cesserina in count 2; and Atto Betty in Count 3. At the close of the prosecution case, the court found that the prosecution had not made out a case against A3 Wani Richard and A4 Bayoa Elevia and both were acquitted and set free.

20 The prosecution case against A1 Endrio Rose and A2 Oling Rufino is that the first accused is a daughter in law of the second accused. The first accused the deceased named in count 2, Akello Cesserina, were neighbours living in a refugee camp. Her house was about eight metres from that of Cesserina, and they shared the same compound. They developed a misunderstanding when A1 accused the deceased of picking her pumpkin leaves without permission. On the fateful day, A1
25 in the presence of A2 confronted the deceased and warned her that she would very soon see red soil covering a human being if she did not stop picking her pumpkin leaves. Later in the afternoon, without permission of the deceased, A2 entered into the hut of the deceased on the pretext of searching for a chair. At that time the deceased had prepared a meal ready to be served

to the family. The six persons who partook of that meal shortly after developed diarrhoea, vomiting and felt feverish. They were rushed to hospital where three of them died. Medical examination revealed that they were the victims of poisoning. The two accused were thus arrested on suspicion of having poisoned the food.

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In her defence, A.1 Endrio Rose who testified as D.W.2 stated that on 11th August, 2015 she went with her husband to get charcoal from the bush. They returned home around 5.00 pm. She left the utensils at home and returned to the bush from where she eventually returned at 8.00 pm. She cooked some fish, had supper with her husband and slept at around 9.00 pm. At around 1.00
10 am they heard people wailing. They came out and she asked the neighbours whether there were sick people around. They told her that in my absence three people had been taken to Lacor. They said Komakech died. Since the body had not been returned they all decided to go to bed. In the morning they all came out and people were mourning. She had a back problem because of carrying charcoal and she lay on a mat near the door. She placed a chair on the other side. Men
15 came and sat on the chair while the women who arrived would sit near her. People sat in small groups all over the compound. Around 10.00 am they were all asked to assemble under the tree and hear announcements. She went there and sat near A2. To her surprise the mourners said they had killed the people and so they too should be killed. She was shocked because when the indecent happened she was in the bush. A1 said they should run, she arose and began running to
20 the police together with, Wani and A2. She had no problem with Cesserina. She did not see Cesserina at all on the fateful day.

In his defence, A.2. Oling Rufino who testified as D.W.1 stated that on 11th August, 2015 he received a letter from Atiak sub-county instructing him to mobilise people within his area to go
25 for a meeting at the Parish centre. In the morning he left for the Parish headquarters. Along the way he met his uncle's son who told him his sister was sick and he should take shs. 200,000/= for her to be taken to Lacor Hospital from Bweyale. At the centre he began organising the chairs for the meeting. He then went to the home of Wani to pick one wooden, foldable chair. He did not find him home so he turned back. At the end of the meeting at 4.00 pm he returned to his son's
30 home but he had not returned yet. He planned to ask him to look after his home because he was proceeding to Bweyale. The following morning, Wednesday 12th August, 2015 he woke up to

board a bus. He went to the home of his other son in Bibia before boarding the bus. He found Wani had gone there to report the death of a child, the victim in this matter. He said since he shared a compound with the deceased it would be bad if he went. Wani left him at his brother's home. He returned to the home of Wani to find out what had happened because they are within
5 his jurisdiction. When he arrived there, he was given a chair to sit. He intended to ask whether they had sent for the police but he was told they had already reported to the police and L.C and that they should wait. He told them when the police comes he should be allowed to mobilise the committee members to find out how the incident happened because he is a leader. The in-charge and two police officers arrived later. They received information that another victim had died.

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People began saying that they should kill the suspects, the three of them. The police advised them to wait for the L.C. they began picking stones and beating the three of them; him, Wani and his wife A1. They even took his walking stick and chair and wanted to beat him with it. The in-charge ordered the two officers to escort the other two suspects. The police officers told them to
15 run and they began running. The police began firing in the air as they ran as they ran after them up to the police. They pushed them inside the cell and it was locked. Soldiers responded on hearing gunshots and when the people saw them they dispersed. The O/c of Elegu was called and he transferred them to Elegu. He said the community would overwhelm them. They spent one week at Elegu and later brought to Gulu and then remanded. There is no reason why I was
20 suspected is that he was leader in the area. The police saved him from the community yet he does not know what happened. He did not know the victim and he just heard their names from the village. Cesserina lived in that compound but the house was not Cesserina's but her father's. He does not know who brought the poison. His home is three kilometres away. Cesserina had just come to live there after the death of her father.

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Since both accused pleaded not guilty, like in all criminal cases the prosecution had the burden of proving the case against both of them beyond reasonable doubt. The burden does not shift to the accused and they can only be convicted on the strength of the prosecution case and not because of weaknesses in their respective defences, (see *Ssekitoleko v. Uganda [1967] EA 531*).
30 The accused do not have any obligation to prove their innocence. By their respective pleas of not guilty, both accused put in issue each and every essential ingredient of the offences 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
5 probability that any of the two accused is innocent, (see *Miller v. Minister of Pensions [1947] 2 ALL ER 372*).

For the two accused to be convicted for the offence of Murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- 10 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 juvenile offender who caused the unlawful death.

15 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 prosecution adduced a post mortem report dated 14th August, 2015 prepared by P.W.1 Dr. Olwedo Onen, Principal Medical Officer, Gulu, as exhibit P. Ex.1 in respect of the body of Atoo Betty, the deceased in Count 3; another marked as exhibit P. Ex.2 in respect of the body of
20 Akello Cesserina, the deceased in Count 2. Each of the bodies was identified to him by P.W.6 D/IP Abiriga Thomas as that of Atoo Betty and Akello Cesserina respectively. Another marked as exhibit P. Ex.10 is in respect of the body of Komakech James, the deceased in Count 1, and the body was identified to him after exhumation, by the father of the deceased, Abao. Two short death certificates issued on 7th September, 2015 by P.W.2 Dr. Tony Orach, of St. Mary's Hospital
25 Lacor, were admitted during the preliminary hearing and marked as exhibit P. Ex.3 in respect of the body of Akello Cesserina, the deceased in Count 2; and another marked as exhibit P. Ex.4 in respect of the body of Atoo Betty, the deceased in Count 3.

P.W.3 Lucy Aciro, who participated in rushing the deceased to hospital, stated that Komakech
30 died at the gate of Lacor Hospital. Cesserina was placed on intensive care and died after two days. Betty survived for two days and died, and she attended the burial of Cesserina. P.W.4

Acire Denis, went straight to Lacor Hospital on being told by a one Oyat about the incident. He found Betty Atoo was still alive but in a poor condition but Cesserina was dead and they took her body home at Bibia. After the funeral he returned to Lacor to check on Betty. Thirty minutes after his arrival Betty died and they took the body home. P.W.5 Oyat Martin too participated in
5 taking the deceased to hospital and testified that as they entered Lacor Hospital, one of the patients, a child, died. P.W.6 D/IP Abiriga Thomas, the investigating Officer, testified that the deceased were Komakech James s/o Abao, Otto Betty who died after two days and the last is Atto betty.

10 In his defence, A.2 Oling Rufino who testified as D.W.1 stated that on the 12th August, 2015 when he went to the home of Wani, he found he had gone to report the death of a child, the victim in this matter. A.2 Endrio Rose who testified as D.W.2 stated that on 12th August, 2015 at around 1.00 am, while sleeping in her house she heard people wailing. She came out and asked the neighbours whether there had been sick people around. She was told that in her absence three
15 people had been taken to Lacor Hospital. They told her further that one of them, Komakech had died. Defence Counsel did not contest this element. Having considered the evidence as a whole, and in agreement with the assessor, I find that the prosecution has proved beyond reasonable doubt that Atoo Betty, Akello Cesserina, and Komakech James are dead.

20 The prosecution had to prove further that the death of Atoo Betty, Akello Cesserina, and Komakech James 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 Dr. Olwedo Onen who conducted the autopsy established the cause of death of each of the three deceased as
25 “multiple internal organ failure.” He took samples of each of the deceased's; vitreous humour, blood, liver, kidney, lung, gastric content and lung for toxicological examination by the Government Chemist.

P.W.3 Lucy Aciro who was present as the post mortem was being done on the body of Cesserina
30 Akello observed that the hair and teeth of the deceased were falling off during the post mortem examination at Bibia as the doctor was taking samples of body parts for further examination. The

toxicological examination reports by the Government Chemist, exhibits P. Ex. 11, 12, 13, 14 and 15 indicate that the Flour, bread, and cabbage contained Bendiocarb. Each of the deceased's stomach content / stomach wash was found to contain Bendiocarb which is described as "a carbamate insecticide used as a public health insecticide as well as in industry and agriculture for control of vectors and pests. It has a WHO toxicity rating of II (moderately hazardous) and may kill once ingested. Consider whether homicide has been proved. Do so after ruling out suicide, natural or accidental death. P.W.3 Lucy Aciro, testified that the deceased began vomiting after eating food. When they got to the hospital at Bibia Health Centre III, three of them collapsed. She took the child to the hospital and on return found Atoo had collapsed. Atoo had initially taken Komakech on her back to the hospital. She said she felt very cold and we should get her a sweater. She was vomiting and had diarrhoea. She went back home and found Cesserina and her children were not in a good condition. She was vomiting and had diarrhoea and so did the children and she raised an alarm. The neighbours came and carried the young children, two of us them carried Cesserina.

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P.W.5 Oyat Martin testified that when he went to the home of Cesserina at 3.00 pm, he found her lying on the ground saying that she felt cold. He went to find her some medicine. When he returned, the condition of Komakech had worsened and he had been taken to hospital. Cesserina's condition too was not good. A total of six people in her home were not well. He asked her what she had eaten that day. On his part, the investigating Officer P.W.6 D/IP Abiriga Thomas testified that he examined the leftover of greens, cabbage, posho and cassava bread at the scene. They had an abnormal smell and the colour had changed. To him, it was the sauce that appeared to have been poisoned. Samples of each item were collected and submitted for forensic examination. In their respective defences, the accused did not refute this element and neither did Defence Counsel contest it in her final submissions.

The evidence has established that the cause of death of each of the three deceased was poisoning following ingestion of food contaminated with poison. The question that remains is whether that poisoning was deliberate or only accidental. Children, because of curiosity and a tendency to explore, are particularly vulnerable to accidental poisoning in the home, as are older people, often due to confusion about the contents of containers kept in the home. However, P.W.6 D/IP

Abiriga Thomas, the investigating Officer, testified that he searched the interior of the residence and only found and checked a metallic box which contained clothes. He also checked some empty plastic containers, and behind a pot. He was as a result of that search sure that there were no poisonous substance kept inside the house. This rules out the possibility of accidental poisoning due to confusion about the contents of containers kept in the home or the curiosity and tendency of children to explore. Although the investigating officer did not trace the source of the food item to their source so as to rule out accidental contamination at source, for example by use of herbicides on the vegetables or accidental contamination in the market of shop, the fact that no other person outside the home of Cesserina suffered similar symptoms rules out these possibilities. Cesserina could not have been the only person who obtained the food items from those sources during that period. On the other hand, that poison was found in the flour, the bread and cabbage, all of which were procured from different sources, points to deliberate poisoning of the food items from inside the house rather than from the source.

Poisoning may also be a deliberate attempt to commit murder or suicide. In the instant case there is no evidence that Cesserina or any other person within that home had exhibited suicidal tendencies on that day or shortly before. To the contrary, when the symptoms manifested themselves, she made a frantic attempt to save her own life and the lives of the rest of the victims by rushing them to hospital. When the quarrel broke out a few hours before with A1, she immediately notified P.W.5 and summoned him to intervene and quell A1s anger. This is not conduct of a person in a suicidal mood. Having evaluated all the evidence, I find that Atoo Betty, Akello Cesserina, and James Komakech's death was not natural, was not suicidal or accidental but a homicide. Not having found any lawful justification for their poisoning, I agree with the assessor that the prosecution has proved beyond reasonable doubt that the death of each of the three named deceased 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 poisoned the food items intended to

cause death or knew that the act 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. In
5 determining the existence or otherwise of malice aforethought, Courts usually consider weapon
used (in this a poisonous substance) and the manner they were applied (administered to food
items about to be eaten) and the part of the body of the victim that was targeted (ingested into the
stomach). The impact (multiple internal organ failure). Neither accused offered any evidence on
this element. Any perpetrator who administers a poisonous substance in food items about to be
10 served, with knowledge that the food will be eaten by a human being, must have foreseen that
death would be a natural consequence of his or her act. The accused did not adduce any evidence
capable of casting doubt on this conclusion and neither did Defence Counsel contest this element
in her final submissions. On basis of the circumstantial evidence, I find, in agreement with the
assessors that malice aforethought can be inferred. The prosecution has consequently proved
15 beyond reasonable doubt that Atoo Betty, Akello Cesserina, and Komakech James' death was
caused with malice aforethought.

Lastly, there should be credible direct or circumstantial evidence placing the juvenile offender at
the scene of the crime as the perpetrator of the offence. Both accused put up defences of alibi, A1
20 claiming to have spent that day in the bush burning charcoal while A2 spent it organising a local
administration meeting.

To refute these defences, the prosecution relies partly on identification evidence and a dying
declaration but mostly on circumstantial evidence. In terms of identification evidence, the
25 evidence of P.W.3 Lucy Aciro is to the effect that on 10th August, 2015 at around 2.00 pm she
was at the home of the late Cesserina when a quarrel broke out between the deceased and A1.
The latter threatened the deceased with death if she did not stop the habit of picking her pumpkin
leaves without permission. A2 was present at the home of A1 during that quarrel but did not
intervene.

30

The evidence of P.W.3 Lucy Aciro being in the nature of visual identification, court has to determine whether or not she was able to recognise both 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
5 (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 witnesses to the accused at the time of observing the accused.

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As regards familiarity, this witness knew both accused prior to the incident. She was one of the immediate neighbours of A1 and A2 was a frequent visitor to the home of A1. In terms of proximity, the two accused were close to the P.W.2 in so far as she was at the home of Cesserina when the quarrel broke out. In terms of light, it was during day time and her vision was not
15 obstructed. As regards duration, the quarrel took a reasonable period of time, that was long enough to aid correct identification. She was not motivated by malice or grudge to implicate any of the two accused, since none was advanced in the respective defences of both accused. I find that both accused were properly recognised and were at the scene at the material time and not in the bush, as claimed by A1, or organising a meeting, as claimed by A2. Their respective alibis
20 have been disproved by the prosecution evidence.

With regard to the dying declaration P.W.5 Oyat Martin testified that when he responded to Cesserina's invitation to intervene as a result of that quarrel, he arrived at around 3.00 pm, and Cesserina Akello told him that A2 Oling Rufino had entered into her house and took long in the
25 house where she had left her food on the fire. When asked what he was doing that he said he was looking for a chair. After eating the food they immediately became sick. Section 30 of *The Evidence Act* defines it as a statement made by a person who believes he is about to die in reference to the manner in which he or she sustained the injuries of which he or she is dying, or other immediate cause of his or her death, and in reference to the person who inflicted such
30 injuries or the connection with such injuries of a person who is charged or suspected of having caused them. Dying declarations however, must always be received with caution, because the

test of cross examination may be wanting and particulars of violence may have occurred circumstances of confusion and surprise. Although corroboration of such statements is not necessary as a matter of law, judicial practice requires that corroboration must always be sought for.

5

Corroboration of that dying declaration is not only to be found in the visual identification evidence of P.W.3 Lucy Aciro but also the existence of circumstantial evidence against each of the accused. The latter is evidence of surrounding circumstances which, by undesigned coincidence, is capable of proving a proposition with the 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 largely or exclusively upon circumstantial evidence, the court is concerned with probabilities, not with possibilities. Something is "probable" when it is verifiable and more likely 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 accused 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.

The court must find before deciding upon conviction that the exculpatory facts are incompatible with the innocence of the accused 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 doubt. It is necessary before drawing the inference of the accused's guilt 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). Circumstantial evidence must always be narrowly examined.

5 The prosecution relies on circumstantial evidence woven together by the following strands; A1 bore a grudge against Cesserina over pumpkin leaves; on the fateful day, A1 warned Cesserina in the presence of A2, of death if she did not stop the habit; shortly after A2 entered into the house of Cesserina without her permission; A2 claimed to be searching for a chair although he was told there was none; Cesserina's food was inside the house by the fireplace; whoever partook of that
10 food shortly thereafter developed symptoms of poisoning, and there of the eventually died; the three of them were seen attempting to stealthily escape from the area; on arrest A1 confessed that A2 had asked her to administer the poison but she declined; A2 nevertheless went ahead to do it anyway.

15 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 two accused to explain away the various incriminating elements in the prosecution circumstantial evidence. I find that there are no other co-existing circumstances which would weaken or destroy the inference of guilt. There is no
20 material upon which it can be found that there is such probability in favour of the explanation or hypotheses presented by the accused. Instead, the material available supports the theory advanced by the persecution.

Although not directly raised by A1 but she not being the direct perpetrator, I have considered the
25 possibility that she may not have taken an active role in the commission of the crime. I have considered the availability of the defence of abandonment of the criminal design between her and A2, i.e. whether A1, after conspiring to commit the crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of her criminal intent. Such abandonment is presumed if neither the accused nor anyone with whom she
30 conspired does any overt act in pursuance of the conspiracy; since where an individual abandons the agreement, the conspiracy is terminated as to her only if and when she advises those with

whom she conspired of her abandonment or she informs the law enforcement authorities of the existence of the conspiracy and of her participation therein.

As against A1, the prosecution had to show more than a mere association. It's very important to
5 keep in mind that mere association or presence at the scene of the crime is insufficient to establish conspiracy. The best type of evidence, therefore, is a confession by one or more of the accused. If such a confession isn't produced, the court may infer agreement from the circumstances. A Court can find conspiracy inferentially through the accused's relation, conduct, or circumstances of the parties. The first inference is one of vested interest: if the accused has an
10 interest in seeing the crime committed, then the court could infer that the accused could agree to commit the crime. The second inference is if the accused had no legitimate reason for aiding the criminals beyond being involved in the crime. an inference usually made in cases where one conspirator supplies the other conspirator(s) with the materials needed to commit the crime.

15 In the instant case, although A1 did not provide A2 with the materials needed to commit the crime (the poison), she had a vested interest in seeing the crime committed. She had expressed that interest in the threat she uttered shortly before the poison was administered. Her conduct before, during and after the poison was administered and ingested, does not manifest a voluntary renunciation of her criminal intent. Under section 20 of *The Penal Code Act*, when two or more
20 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 probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence. Where an offence is alleged to have been committed by two or more people, there is no need to prove that each of them participated in each of the
25 ingredients. It is enough if they are proved to have shared a common intention.

The hypothesis advanced by both accused of a possible third party intruder although not impossible, yet is unlikely to have happened in the circumstances of this case. Its probability is low enough so as to not bear mention in a rational, reasonable argument. The hypothesis
30 advanced by the accused being improbable, the degree of probability attained in favour of the explanation by the prosecution has produced moral certainty, to the exclusion of every

reasonable doubt, such that the contrary hypothesis must be rejected. The circumstances exclude every exculpatory hypothesis leaving only one rational conclusion to be drawn, of the responsibility of the two accused for the deaths. Not having found any reasonable hypothesis consistent with the innocence of the juvenile offender, in disagreement with the opinion of the
5 assessor, I find that this element too has been proved beyond reasonable doubt that the two accused before court are the perpetrators of the offences for which they stand jointly indicted.

In the final result I find that the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt and I hereby convict A1 Endrio Rose and A2 Oling Rufino for the
10 offence of Murder c/s 188 and 189 of the *Penal Code Act* in counts 1, 2 and 3 respectively.

Dated at Gulu this 15th day of October, 2018.

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Stephen Mubiru

Judge.

15th October, 2018.

15 Later.

4.00 pm

Attendance

Court is assembled as before.

20 **SENTENCE AND REASONS FOR SENTENCE**

The two convicts have been found guilty of three counts of murder c/s 188 and 189 of the *Penal Code Act* after a full trial. In his submissions regarding the appropriate sentence, the learned Resident State attorney has prayed for a deterrent order on the following grounds; the two have
25 been convicted of murder of three people. It of an offence of a serious nature. Life once lost cannot be restored. The two convicts intended to wipe out the entire family but by God's grace three people survived. This is an act which must be condemned by court. The disagreement was over a simple growing plant, pumpkin leaves. No one deserved to have life lost over such an issue. The two are father in law and daughter in law. A1 was the closest neighbour to Cesserina
30 Okello. For her to have connived with the father in law to commit an offence of this nature deserves a heavy punishment. The community in that area almost took the law into their hands.

The convicts deserve a very severe sentence which will restore public confidence in our system. They have been on pre-trial remand since 21st August, 2015; i.e. 3 years, one month and 24 days. Under the sentencing guidelines, the starting point in the matter is 35 years. Looking at the magnitude of malice with which the two committed the offence and the intention they had, he
5 prayed for imprisonment for the entire remaining life of the two convicts. That will go a long way in instilling confidence in the public and to restrain whoever would have wished to commit a similar crime and to keep them away from civilised people.

In mitigation, counsel for the convicts sought lenience on grounds that; A1 is a first offender at
10 43 years of age. She has no criminal record. She has spent three years, one month and days on remand. She is a mother with six children she has left for all these years. She has become saved while in prison and if given an opportunity to go back home she will improve on her life and relate well with all her neighbours and will never do the same gain. Sentencing her to life imprisonment will not help, she should be able to come out a useful person. A2 too is a first
15 offender without a criminal record and has been on remand for a similar period. He is 75 years old. He will die before he completes the sentence. She prayed for lenience.

In her *allocutus*, A1 prayed for lenience because she has no one to look after her six children. She prayed to be assisted for she had nothing to say. I could not do such a thing. She is really
20 innocent and even God knows, the father of her children is dead. She begged the court to allow her look after the children. In his *allocutus*, A2 stated that he has seven children who he wants to assist. His land was taken away and house burnt. He needs to go and organise his home. He will be starting from scratch. Those who brought him to court are liars. He did not do anything. It is a land matter / dispute with Oyat. Even the land Cesserina occupied is his land.

25

Each of the offences for which the two have been convicted is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. Murder is one of the most serious and most severely punished of all commonly committed crimes. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence
30 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

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. This case comes very close to that category of the most egregious cases of murder committed in a callous manner, but being first offenders at such relatively advanced ages, I have for that reason
5 discounted the death sentence.

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. I
10 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 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.*
15 *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
20 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.

Where there is a deliberate, pre-meditated killing of a victim, but in circumstances not justifying
25 the death penalty, courts are inclined to impose life imprisonment. In light of the fact that the convicts indiscriminately murdered three members of one family, including a toddler, and considering the rest of the aggravating factors outlined by the learned Resident State Attorney, each of the convicts deserves to spend the rest of his or her natural life in prison. Each of the two convicts A1 Endrio Rose and A2 Oling Rufino is hereby sentenced to Life imprisonment on
30 count 1; Life imprisonment on count 2; and Life imprisonment on count 3. The three sentences are to run concurrently.

Each of the convicts is advised that he or she has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Gulu this 15th day of October, 2018.

5 Stephen Mubiru
Judge.