

**IN THE HIGH COURT OF UGANDA AT MASINDI**

**CRIMINAL SESSION CASE NO. 161 OF 2014**

**UGANDA :::::::::::::::::::::::::::::::::::::::PROSECUTOR**

**VERSUS**

**A1. MAWA BOSCO**

**A2. ORING MICHAEL**

**A3 OBANGI EMMANUEL**

**A4 ADAKU SUNDAY::::::::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The accused persons are jointly indicted with murder c/s 188 of the penal code Act. It is alleged the four accused persons murdered Aromorach Hellen on 8<sup>th</sup> December 2013 at Nyakyanika II village, Masindi district.

The state was represented by Kukundakwe Arthurton State Attorney while accused persons were represented by Lubega Willy on state brief.

Assessors were Bagada Stephen and Atugonza Molly.

The state had a duty to prove beyond reasonable doubt the following ingredients of murder:

1. Death of deceased was unlawfully caused
2. It was intentionally caused with malice afore thought or
3. The perpetrators knew their actions would cause death and were indifferent whether death occurred.

**Proof of unlawful death.**

That the deceased died as a result of unlawful actions is not disputed. PF 48B , a post mortem report shows the body of the deceased Aromarach Hellen, aged 50 years, was examined on 9<sup>th</sup> December 2013 by Dr. Abiriga at Masindi mortuary and found with multiple

bruises on the face, back and forearms , and broken neck. Cause of death was determined as intra spinal cord injury due to fractured neck.

The existence of extensive injuries on the body is proof the deceased died as a result of unlawful actions.

### **Malice aforethought and participation**

Prosecution relied on two witnesses to prove malice aforethought.

According to PW2 Okumu Charles, on 8.12.2013, at about 10 a.m, he was picked by one Ringe to go to Nyakyanika trading centre in Masindi district where he found a gathering.

Among the people present were the LC 1 chairman, A1 Mawa, A2 Oring, A3 Obangi, and A4 Adaku. It was Okumu's testimony he knew all these people as village mates.

On arrival at the centre, he saw his mother and the mob told him and his mother, now deceased were witches. Soon after his arrival, Oring A2 accused the deceased of bewitching Mawa's son who was said to be ill at the time.

It was the testimony of Okumu that soon thereafter, someone received a telephone call that Mawa's child had died and it was then that Obangi A3 started assaulting the deceased on the head with a stick and was joined by Mawa A1, Oring A2 and Adaku A4 who all had sticks that they used to assault the deceased and himself. It was further Okumu's testimony that he was assaulted by the accused persons while both him and his mother were on the ground having been made to sit on the ground by the accused persons. At this point the LC Chairman sensing danger asked to take the witness and the deceased to police. As they moved, the assault continued, he got frightened and managed to escape through a maize garden as him and his mother were being escorted to police.

It was Okumu's evidence Oring is the father of Mawa. Okumu later learnt his mother had died.

Okumu's narrative of the events is corroborated by PW1 Ochrican Ivan who lived in the same house with the deceased, his grandmother. According to Ochrican , on 8.12.2013, he was at home at about 10 a.m when one Madimo collected his grandmother to attend a village meeting at Nyiromewo . Soon thereafter he heard noise and on approaching the gathering, he found the accused persons whose names he didn't know but who he clearly remembers, assaulting his grandmother Helen who was accused of being a witch. Although Ochrican did

not know the names of the four accused persons, he made it clear he recognised them and knew them as residents of a village called Nziromawa.

According to Ochrican, the first person he saw beat the deceased was A1 ( Mawa) while Oring(A2) was shouting ‘beat her’ . It was Ochrican’s testimony he saw A3 ( Obangi) beat the deceased with a wooden chair, while A1 Mawa and A4 Adaku beat her with sticks. He described how the group beat her all over the body and head. According to Ochrican, when he saw the beating, he ran away and at about 10.30 a.m, he learnt his grandmother had died. In answer to court, the evidence of Ochrican is he also the accused persons beat his maternal uncle Okumu. When asked why he did not say so initially, he said he was not asked by the prosecution.

In cross examination, it was suggested by the defense that Ochrican was a liar because he lied his age was 26 and yet when he made a statement to police in 2013 he had given his age as 13 .

While Ochrican is not consistent about his age, I believe his narration of event as they unfolded and how his grandmother was assaulted by Mawa, Obangi and Adaku persons whom he positively identified.

The evidence of both eye witnesses places all four accused persons at the scene of crime and as active participants in the assault on the deceased whose death was confirmed on 9.12.2018. The assault took place during broad daylight before noon and therefore the possibility of mistaken identification does not arise. The same day, both Okumu and Ochrican learnt their Aromorach had died, a fact confirmed by PF48 which showed she sustained multiple bruises all over the body and suffered a broken neck. The assault on the deceased as witnessed by Okumu and Ochrican is the cause of her death, a fact inferred from the short time span (minutes or hours according to Ochrican who placed it at 10.30 a.m when he learnt she had died) between the assault and the death of the deceased.

With respect to Oring, A2, he was identified by Ochrican inciting the mob to ‘beat her’ while urging the mob to beat the deceased, while Okumu saw him assault his mother and himself with a stick.

In defense, all accused persons made unsworn statements in which they denied participation in the death of the deceased.

Mawa's case is that on 8.12.2013, his child fell ill. It was Mawa's evidence his child had met Okumu in the forest who told the child he Okumu does not want to meet children and warned the child 'you will see'. According to Mawa, when the child reached home, he fell ill and on taking the child to hospital, doctors failed to diagnose the illness. Mawa's evidence is he reported the situation to the LC Chairman who called Okumu for discussions but before the discussions commenced, Mawa received a report the child had died which led him, Mawa, to become unconscious and did not know what followed.

A2 Oring's statement is that his version is the same as that of Mawa who is also Oring's son.

A3 Obangi's evidence is on 8.12.2013, he had gone to work when he heard information there would be a meeting as there were witches in the area. On joining the meeting, he found the deceased and Oakum as well as Oring A2 and Mawa A1 whose son it was alleged had been bewitched by the deceased Helen. It was Obangi's evidence the meeting was chaired by the LC1 chairman.

It was Obangi's evidence the mob that had gathered wanted the deceased Helen to answer for the child's sickness as she had relocated from village to village because of her witchcraft tendencies.

According to Obangi, soon after his arrival, news came in the child had died and that's when the mob became rowdy and family members of the child began beating the deceased but Okumu escaped although he too was to be beaten by the mob.

As for A4 Adaku, on 8.12.2013, Mawa's son died and the body of an old woman was discovered. He was later arrested and charged.

From the foregoing analysis, it is not disputed that the deceased Helen died on 8.12.2013 at the hands of a group of people three of whom by their own admission in unsworn statements placed themselves at the scene of crime before and during the assault on Aromorach. The two eye witnesses Ochrican and Okumu saw Mawa A1, Oring A2, and Obangi A3 and Adaku A4 assault the deceased and Okumu himself during broad daylight before noon.

The inconsistency in the testimonies of the two witnesses with respect to the role of Oring A2 in the beating will be resolved in favour A2. While Okumu testified Oring A2 had a long stick, Ochrican testified Oring incited the mob to beat the deceased?

The other inconsistency is to do with the name of the village where the assault on the deceased took place. While Ochrican refers to it as Nyamwero, Okumu refers to it as Nyakyanika. This is a minor inconsistency that does not affect the credibility of the prosecution case. It does not detract from the fact that the deceased was assaulted by the three accused persons Mawa, Obangi and Adaku and which injuries led to her death.

The other matter I need to reconcile is the testimony of Ochrican Obangi used a wooden chair to beat the deceased while Okumu mentioned a stick. This inconsistency is minor because the fact remains both witnesses confirm Obangi assaulted the deceased.

From the evidence of Ochrican and Okumu, and also from Mawa and Obangi, the reason the deceased was beaten to death was that she had bewitched Mawa's son whose illness prompted a gathering in the village of Nyakyanika on 8.12.2013 and whose death prompted the beating of Okumu and the deceased.

The question that needs to be answered is whether in fact the deceased bewitched Mawa's son and if so, if this amounts to a defense of provocation in law.

Section 2 of the Witchcraft Act cap 124 creates offences to do with witchcraft. Any person who directly or indirectly threatens another with death by witchcraft, or to cause harm or disease to another or to livestock or property by witchcraft or other supernatural means or practices witchcraft commits offences punishable by imprisonment.

In **Supreme Court Constitutional Appeal No. 1 of 1998 Attorney General v Salvatory Abuli (ulii)** the Supreme Court discussed the Witchcraft Act at length and held that practicing witchcraft is generally considered an offence except that witchcraft itself is not defined. The court held,

*In Section 2, we are told of what is not witchcraft. The definition is not exhaustive of what is not witchcraft. The Section is followed immediately by sub-Sections (1) and (2) of Section 3. These two sub-Sections fairly describe the conduct relating to witchcraft and which conduct is prohibited by law. The prohibited conduct is contextual.*

*It is obvious that practicing witchcraft involves abnormal or unnatural behavior, on the part of an individual, or a suspect, intended for bad motives or aimed at satisfying supernatural beliefs or wickedness.*

Apart from the testimony of Okumu and Ochrican who narrated the purpose of that meeting and the allegations of witchcraft against the deceased, there is not an iota of evidence the deceased bewitched Mawa's son.

Even if there had been evidence, no one has the right to take the law in their own hands. For provocation by witchcraft to be available to an accused person, it must meet the standard set in section 192 and 193 of the Penal Code Act. The test is whether the threat or the belief in witchcraft would deprive an ordinary person of self control so as to kill in the heat of the moment.

There was nothing to link the deceased to the death of Mawa's son by witchcraft let alone proof that death was caused by witchcraft.

This was a pure case of premeditated and pre planned murder. The deceased was dragged to a meeting by one Madimo where the four accused person were present and Oring A2 incited people to beat the deceased. Shortly thereafter, news came in the child died and the beating intensified. Although Okumu and Ochrican had fled the mob by the time Aromorach died a few hours later in the day, the fact that her death occurred within minutes or hours after the four and were identified assaulting her with sticks is sufficient evidence they are criminally responsible for her death and did not care if she died.

I am satisfied Mawa, Obangi and adaku acted with a common intention to assault the deceased and did not care if she died.

As the alleged practice of witchcraft by Aromarach was not proved and nor is a belief she bewitched Mawa's son justification for taking away her life, the four accused person are guilty of murder.

I agree with the gentleman and lady assessor the state has proved beyond reasonable doubt the offence of murder c/s 188 of the Penal Code Act but only against A1, Mawa, A3 Obangi, and A4 Adaku.

With respect to Oring A2 because of the inconsistency between the two witnesses as to his role he will be convicted of the lesser offence of Incitement to commit an offence c/s 21 (1) of the Penal Code Act.

Before I take leave of this case, I condemn in the strongest terms the habit of Local council chairpersons calling meetings to discuss alleged breaches of the Witchcraft Act when Local councils do not have powers to investigate crime let alone jurisdiction to hear offences related to witchcraft.

Under section 10 of the Local Council Act 2006, their jurisdiction does not extend to the Witchcraft Act where the penalties are terms of imprisonment.

LC chairpersons who sanction or call such meetings ostensibly to look into witchcraft allegations but whose actual purpose is to lynch others over unfounded allegations must be held criminally liable for aiding and abetting when these meetings turn violent. Allegations of witchcraft are criminal in nature and must be reported to police who carry out the necessary investigations. Local councils do not have criminal jurisdiction whether to investigate or inquire into criminal cases including witchcraft cases.

**DATED AT KAMPALA THIS 31<sup>ST</sup> DAY OF OCTOBER 2018.**

**HON. LADY JUSTICE H. WOLAYO**

31<sup>st</sup> October 2018

Four accused persons present

Kukundakwe SA for the state

Willy Lubega for the accused persons

Kabachope: court clerk

Court: judgment delivered

State: No previous criminal record. Murder is a grave offence and life is irreplaceable. Life of an innocent woman was taken away. Murders arising from such circumstances are rampant in this area. Pray for a deterrent sentence to send a signal to the community.

Lubega: In the absence of any previous criminal record, I pray they are treated as first offenders.

Mawa is 46 years old with five children and a wife. He suffers from T.B.

Oring is 69 years old. He has been convicted of a lesser offence. He has been on remand since December 2013.

Obangi is a young man of 30 years old. He has two children and a wife.

Adadku is 26 years old. He has two children and a wife.

Mawa A1: I need help. I have a family. No one to keep it. The child I lost was 16 years old.

Oring A2: I seek forgiveness. I had just returned from Congo. I am sick. I seek mercy.

Obangi A3: I seek forgiveness. It was not of my making. This should not have happened. It's the chairman who called a meeting.

I am not a resident of Nyakyanika. It is Mawa who alleged the deceased had bewitched the child. My parents are old.

Adaku A4: I seek forgiveness. it was not of my making this happened. I have a family and two children. I am sick.

Court: for sentence on 2.11.2018.

H. Wolayo J



2.11.2018

All four accused present

Kukundakwe for the state

Lubega for the accused

Court clerk: Kabachope

Sentence

The retrogressive culture of mob violence is an aggravating factor that must be condemned. No one has the right to judge another person a witch so that she can be a candidate for mob violence.

If a person is suspected of being a witch, the police are there to carry out the necessary investigations.

That Mawa, Obangi and Adaku are young men and capable of reform are mitigating factors.

Appropriate sentence is 25 years imprisonment. As the three have been on remand since December 2013, each is sentenced 20 ( twenty) years imprisonment.

As for Oring, he is of advanced age and has been convicted of Inciting commission of an offence c/s 21 ( 1) of the Penal Code. Appropriate sentence is five years imprisonment. As he has been on remand since December 2013, he is sentenced to community service of 75 hours at the nearest health centre to his place of residence.

**DATED AT MASINDI THIS 2ND DAY OF NOVEMBER 2018.**

**HON. LADY JUSTICE H. WOLAYO**