

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI**  
**CRIMINAL SESSIONS CASE No. 0076 OF 2017**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

**IJJO JOHN** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**JUDGMENT**

The accused is indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is  
10 alleged that the accused on the 30<sup>th</sup> day of November, 2016 at Maaji III Refugee Settlement  
Camp in Adjumani District murdered one Iranya James.

The facts as narrated by the prosecution witnesses are briefly that the accused was part of a team  
of casual labourers that had been engaged by P.W.2 Ebele Martin to dig a number of pit latrines.  
15 Differences arose between him and the team over payment of their wages for the job, they  
claiming that he had underpaid them. They agreed to meet at the home of the accused on 30<sup>th</sup>  
November, 2016 at 7.00 pm. On his way there while riding his motorcycle, he met and offered a  
lift to the deceased who was on his way back home, since he lived in the neighbourhood of the  
accused. At the home of the accused, negotiations over the claimed outstanding payment stalled  
20 prompting the accused and his colleagues to threaten P.W.2 with confiscation of his motorcycle.  
As the accused made for the motorcycle, an altercation erupted between him and the deceased  
resulting in the deceased falling onto the ground. Whereas P.W.2 testified that the accused boxed  
the deceased onto the ground, hurting the back of his head in the process and stamped him on the  
chest as he lay on the ground, the accused stated that he simply pushed him but because he was  
25 already drunk, he stumbled onto the ground, but did not sustain any injury.

Be that as it may, early on the morning of 31<sup>st</sup> November, 2016 the deceased went to the home of  
P.W.3 Eriga Dominic, bleeding from the nose and mouth and with a visible wound at the back of  
his head. He carried him to a clinic within the camp and did so for the next few days. The

deceased initially showed signs of recovery but suddenly on 9<sup>th</sup> December, 2016 his health deteriorated and he died at his home. A post mortem examination of his body established the cause of death as “closed head injury following assault as evidenced by laceration at occiput area accompanied by presence of a depression (skull fracture).”

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In his defence, the accused only admitted having pushed the deceased but stated that this was after the deceased had attacked him by boxing him on the back of the neck as he grabbed P.W.2s motorcycle in the intended confiscation. He stated further that he was annoyed by the deceased intervening in a matter that was none of his concern but denied having boxed him or stamped  
10 him on the chest. His defence was corroborated by his wife, D.W.2 Kabang Rose who was present at the scene when the incident happened.

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  
15 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 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*).

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For the accused to be convicted 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.
- 25 3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

This standard of proof of "beyond reasonable doubt" is grounded on a fundamental societal value determination that it is far worse to convict an innocent man than to let a guilty man go free. A  
30 reasonable doubt exists when the court cannot say with moral certainty that a person is guilty or that a particular fact exists. It must be more than an imaginary doubt, and it is often defined judicially as "such a doubt as would cause a reasonable and prudent person, in one of the graver

and more important transactions of life, to pause or hesitate before or taking the represented facts as true and relying and acting thereon" (see *Clarence Victor, Petitioner 92-8894 v. Nebraska*, 511 U.S. 1 (1994); *Rex v. Summers*, (1952) 36 Cr App R 14; *Rex v. Kritz*, (1949) 33 Cr App R 169, [1950] 1 KB 82 and *R. v. Hepworth*, *R. v. Feamley*, [1955] 2 All E.R. 918).

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Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence. Proof which is so convincing that persons would not hesitate to rely and act on it in making the most important decisions in their own lives. Beyond reasonable doubt is proof that leaves the court firmly convinced the accused is guilty. Reasonable doubt is a real and substantial uncertainty about guilt which arises from the available evidence or lack of evidence, with respect to some element of the offence charged. It is the belief that one or more of the essential facts did not occur as alleged by the prosecution and consequently there is a real possibility that the accused person is not guilty of the crime. This determination is arrived at when after considering all the evidence, the court cannot state with clear conviction that the charge against the accused is true since an accused may not be found guilty based upon a mere suspicion of guilt.

20 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 there is no post mortem report. The prosecution relies on the evidence of P.W.1 Dr. Aciro Harriet, a Medical Officer of Adjumani Hospital, whose post mortem report dated 10<sup>th</sup> December, 2016 was admitted during the preliminary hearing and marked as exhibit P. Ex.1. The body was identified to him by a one Kojoki Florence as that of Iranya James. This report is corroborated by the testimony of P.W.3 Eriga Dominic, who knew the deceased, carried him to hospital daily following the injury he sustained, and was among the first people to respond to information that he was dead, he saw the body at the home of the deceased and participated in preparing it for burial, attended the burial and spent three days there. In his defence, the accused and his wife D.W.2 Kabang Rose did not adduce evidence regarding this element. Having

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considered the evidence as a whole, and in agreement with the assessors, I find that the prosecution has proved beyond reasonable doubt that Iranya James died on 30<sup>th</sup> November, 2016.

The prosecution had to prove further that the death of Iranya James was unlawfully caused. It is  
5 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*). In the instant case the prosecution relies on the evidence of  
P.W.1 who conducted the autopsy and established the cause of death as “closed head injury  
10 following assault as evidenced by laceration at occiput area accompanied by presence of a  
depression (skull fracture).” Exhibit P. Ex.1 dated 10<sup>th</sup> December, 2016 contains the details of  
her other findings which include a “Laceration (cut) at occiput area and scratch marks at medial  
aspect on both upper arms. Due to the cut wound at the occiput and the fresh scratch marks on  
the deceased body indicates there was a fight between the deceased and the perpetrator.” P.W.2  
Ebele Martin was present when these injuries were inflicted. He testified that the deceased was  
15 boxed directly onto the forehead and he fell backwards. He was then stamped upon on the chest  
while he lay on the ground. P.W.3 Eriga Dominic, who carried him to hospital daily following  
the injury, testified that early in the morning of 31<sup>st</sup> November, 2016 he saw the deceased  
bleeding from the nose and mouth and there was a cut wound at the back of his head. The  
deceased told him he had been assaulted.

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In his defence, the accused denied having punched the deceased in the face but admitted having  
pushed him in self defence and in a fit of rage after the deceased had punched him at the back of  
his neck. The deceased fell backwards but he did not sustain any injury as a result of that fall.  
The wife of the accused who too was present at the scene, D.W.2 Kabang Rose corroborated that  
25 version. The law is that court is required to investigate all the circumstances of the case including  
any possible defences even though they were not duly raised by the accused for as long as there  
is some evidence before the court to suggest such a defence(see *Okello Okidi v. Uganda, S. C.  
Criminal Appeal No. 3 of 1995*).

30 The version advanced by the accused presents the possibility of self defence. This defence when  
successful absolves an accused of criminal responsibility and thus excuses his or her otherwise

criminal conduct. Self defence derives from section 15 of *The Penal Code Act*. Lawful self-defence exists when (1) the accused reasonably believes that he or she is in imminent danger of an attack which causes reasonable apprehension of death or grievous hurt; (2) the accused reasonably believes that the immediate use of force is necessary to defend against that danger, 5 what is necessary is that the accused should demonstrate by his or her actions that he or she does not want to fight. He or she must demonstrate that he or she is prepared to temporise and disengage and perhaps to make some physical withdrawal; and (3) the accused uses no more force than is reasonably necessary to defend against that danger. In no case does it justify the inflicting of more harm than it is necessary to inflict for the purpose of defence. It is accepted 10 proposition of law that a person cannot avail himself of the plea of self-defence in a case of homicide when he or she was himself or herself the aggressor and wilfully brought on hint without legal excuse, the necessity of killing. An accused person raising this defence is not expected to prove, beyond reasonable doubt, the facts alleged to constitute the defence. Once some evidence is adduced as to make the defence available to the accused, it is up to the 15 prosecution to disprove it. The defence succeeds if it raises some reasonable doubt in the mind of the court as to whether there is a right of self defence.

Despite in the variation between the version presented by the prosecution from that presented by the accused as to how the altercation broke out, I have considered the circumstances in which it 20 arose from the perspective most favourable to the accused. I find that although he may have been boxed by the deceased, there is no evidence that the accused was under apprehension of death or grievous hurt from the nature of the attack mounted by the un-armed and probably then tipsy deceased. I do not find that the circumstances presented a situation in which the accused reasonably believed that the immediate use of force to repel the attack by the deceased was 25 necessary to defend himself against that danger. At no point did the accused demonstrate by his actions that he did not want to fight or that he was prepared to temporise and disengage and perhaps to make some physical withdrawal. He instead immediately went on the offensive with explosive rage and energy to the extent of using more force than was reasonably necessary to defend himself against that perceived danger. It was the testimony of the P.W.2 Ebele Martin 30 that he had never seen a person hit so hard such that it prompted him to reprimand the accused

which fact of the reprimand having been made was corroborated by D.W.2 Kabang Rose. I find therefore that this defence is not available to the accused.

Therefore in agreement with the joint opinion of the assessors, I find that the prosecution has  
5 proved that this death was a homicide. Not having found any lawful justification or excuse for the assault that inflicted the fatal injury, I find that the prosecution has proved beyond reasonable doubt Iranya James's death was unlawfully caused.

Thirdly, the prosecution was required to prove that the cause of death was actuated by malice  
10 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*).

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Malice aforethought being a mental element is difficult to prove by direct evidence. In situations where no weapon is used, for a court to infer that an accused killed with malice aforethought, it must consider if death was a natural consequence of the act that caused the death and whether the accused foresaw death as a natural consequence of the act. The court should consider; (i) whether  
20 the relevant consequence which must be proved (death), was a natural consequence of the voluntary act of another and (ii) whether the perpetrator foresaw that it would be a natural consequence of his or her act, and if so, then it is proper for court to draw the inference that the perpetrator intended that consequence (see *R v. Moloney [1985] 1 All ER 1025; Nanyonjo Harriet and another v. Uganda S.C. Cr. Appeal No.24 of 2002*).

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The prosecution evidence against the accused intended to establish Malice aforethought is entirely circumstantial. For a finding depending exclusively upon circumstantial evidence, 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  
30 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

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 *Shubadin Merali and another v. Uganda* [1963] EA 647; *Simon Musoke v. R* [1958] EA 715; *Teper v. R* [1952] AC 480 and *Onyango v. Uganda* [1967] EA 328 at page 331).

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I have examined the two versions; that of the prosecution that the injury was as a result of the accused boxing the deceased onto the ground and that of the defence that it was a mere push. Considering that the accused says it was in response of an attack on him by the deceased, taking that within the context of the fact that immediately thereafter he attacked and slapped P.W.2 Ebele Martin merely for reprimanding him, he had to be physically restrained to prevent him from assaulting P.W.2 further, and he thereafter rejected the payment made by P.W.2 on ground that he had to be coerced first into honouring his obligation, I find that the accused was an extremely annoyed man at the material time. I am therefore inclined to believe the testimony of P.W.2 that he boxed rather than pushed the deceased and that it was such a mighty punch that it shocked P.W.2 in reprimanding him. This reprimand is corroborated by his wife, D.W.2 Rose Kabang. An ordinary push, stumble and fall would not have drawn such a reaction.

Nevertheless, the facts reveal the possibility of the accused having acted under a spate of explosive anger, thus triggering consideration of the defence of provocation. Provocation is a defence provided for by sections 192 and 193 of *The Penal Code Act*. It is constituted by any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered. It is constituted by some act or series of acts done or words spoken which would cause on any reasonable person and actually caused in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him for a moment not master of his mind (see *R v Whitfield* (1976) 63 Cr App R 39).

The test for the defence of provocation consists of an objective element (that the act or insult was of a nature to deprive an ordinary person of self-control) and of a subjective element (that it actually deprived the accused of self-control). The subjective element is as to whether it actually

deprived the accused of self-control, this is determined by the consideration of whether in fact the accused acted in response to the provocation before his passion had time to cool, the question being whether, even assuming that the act done by the accused was provocative, the accused was acting upon such provocation suddenly and before his passion had time to cool.

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From the objective perspective, the court must determine whether there is evidence that could raise a reasonable doubt about whether the accused was faced with a wrongful act or insult sufficient to deprive an ordinary person of self-control. The standard required is that the wrongful act or insult must be of such a nature as would likely to deprive an ordinary person of the class to which the accused belongs the power of self control. The 'reasonable man' is the normal man of the same class or community as that to which the accused belongs. The man who normally leads such life in the locality and is of the same standard as others, including the accused, of the same class as the accused, with the same past personal experiences as the accused. The gravity of the provocation cannot be correctly assessed in isolation from the manner of life of the community of which the accused is a member, or in isolation from the present effect (if any) on the accused of any previous provocation which he received.

Taking into account the state of mind of the accused at the time; already having been agitated by the reluctance of P.W.2 to pay him what he considered to be his dues to the extent of prompting him to attempt to confiscate his motorcycle, coupled with the unwelcome intervention of the deceased in what the accused considered to be a matter he should not have concerned himself with at all, the accused was in a heightened state of annoyance. In the determination of the provocative nature of the conduct of the accused when he soon thereafter suddenly boxed him on the back of the neck, considered with an objective standard in mind of an ordinary refugee in a settlement camp in similar circumstances, though with concerns for the encouragement of reasonable and non-violent behaviour, I am satisfied that the deceased's act of suddenly punching the accused on the back of his head, was a provocative act of sufficient gravity to cause loss of self control. From all accounts, the accused immediately snapped and reacted with explosive anger in the heat of passion. I find that this defence is available to the accused and it has not been disproved by the prosecution. The element of malice aforethought therefore has not been proved.



Lastly, there should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. In his defence, the accused denied having punched the deceased in the face but admitted having pushed him in self defence and in a fit of rage after the deceased had punched him at the back of his neck. The deceased fell  
5 backwards but he did not sustain any injury as a result of that fall. The wife of the accused who too was present at the scene, D.W.2 Kabang Rose corroborated that version. I therefore found that on basis of the direct evidence of P.W.2, the dying declaration made to P.W.3, the testimony of the accused in his defence and that of his wife, P.W.2 in support thereof, this element has been proved beyond reasonable doubt.

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Having determined that the death of the deceased was caused by the accused in a state of sudden and extreme provocation, therefore in disagreement with the joint opinion of the assessors I find that the accused is not guilty and acquit him of the offence of Murder c/s 188 and 189 of the *Penal Code Act*. I instead find him guilty of the offence of Manslaughter c/s. 187 and 190 of the  
15 *Penal Code Act* and accordingly convict him for that offence.

Dated at Adjumani this 26<sup>th</sup> day of February, 2018

.....  
Stephen Mubiru  
Judge,  
26<sup>th</sup> February, 2018.

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27<sup>th</sup> February, 2018  
10.15 am

Attendance

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- Ms. Baako Frances, Court Clerk.
- Mr. Bako Jacqueline, Principal State Attorney, for the Prosecution.
- Mr. Jurugo Isaac holding brief for Mr. Arinda Herbert, Counsel for the accused person on private brief is present
- The accused is present in court.
- Both assessors are present in court.

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**SENTENCE AND REASONS FOR SENTENCE**

The convict was found guilty of the offence of Manslaughter c/s. 187 and 190 of the *Penal Code Act* after a full trial. In her submissions on sentencing, the learned Resident State attorney prayed for a deterrent sentence on the following grounds; although he has no previous record, the

offence is rampant and it has to be punished with a deterrent custodial sentence to curb its re-occurrence. She proposed ten years' imprisonment.

5 In his *allocutus*, the convict prayed for lenience on grounds that it is true he had no intention of killing the deceased. He is a refugee with three children and three women. His brother died and his children are under his care. He proposed four years' imprisonment so that he can find his wives around after serving sentence. He runs the danger of losing touch with his children and those of his brother if he serves a longer sentence.

10 Under section 190 of the *Penal Code Act*, the offence of manslaughter is punishable by the maximum penalty of life imprisonment. However, this represents the maximum sentence which is usually reserved for the worst of such cases. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon and I do not consider this to be a case falling in the category  
15 of the most extreme cases of manslaughter. I have for that reason discounted life imprisonment.

The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as  
20 15 years' imprisonment. The sentencing guidelines however have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial (see *Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010*).

I have for that reason taken into account the current sentencing practices in relation to cases of  
25 this nature, I have considered the case of *Livingstone Kakooza v. Uganda, S.C. Crim. Appeal No. 17 of 1993*, where the Supreme Court considered a sentence of 18 years' imprisonment to have been excessive for a convict for the offence of manslaughter who had spent two years on remand. It reduced the sentence to 10 years' imprisonment. In another case of *Ainobushobozi v. Uganda, C.A. Crim. Appeal No. 242 of 2014*, the Court of Appeal considered a sentence of 18  
30 years' imprisonment to have been excessive for a 21 year old convict for the offence of manslaughter who had spent three years on remand prior to his trial and conviction and was

remorseful. It reduced the sentence to 12 years' imprisonment. Finally in the case of *Uganda v. Berustya Steven H.C. Crim. Sessions Case No. 46 of 2001*, where a sentence of 8 years' imprisonment was meted out to a 31 year old man convicted of manslaughter that had spent three years on remand. He hit the deceased with a piece of firewood on the head during a fight. I have considered the fact that the convict acted with explosive anger and extreme violence in causing the death. He has issues of anger management. Accordingly, in light of that aggravating factor, I have adopted a starting point of fifteen years' imprisonment.

I have considered the fact that the convict is a first offender, a relatively young man at the age of 35 years, a refugee with family responsibilities. A reformatory sentence would be appropriate in the circumstances. On that account, I reduce the sentence to a period of eight (8) years' imprisonment as suiting the purposes of a reformatory sentence in light of the mitigating factors. 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 note that the convict was charged on 16<sup>th</sup> December, 2016 and been in custody since then. I hereby take into account and set off a period of one year and two months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of six (6) years and ten (10) months, to be served starting today.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Adjumani this 27<sup>th</sup> day of February, 2018

.....  
Stephen Mubiru  
Judge,  
27<sup>th</sup> February, 2018.