

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI
CRIMINAL SESSIONS CASE No. 0014 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

1.	UJIGA DOMINIC	}	
2.	VUKONI CHARLES	}	
3.	KINYA HENRY	}	
4.	LEJIKO PASKAL	}	
10 5.	MALI AUGUSTINE	} ACCUSED
6.	AMAMARU CHRISTOPHER	}	
7.	DRALAGHU CHRISTOPHER	}	
8.	AMBAYO PAUL	}	
9.	OBULEJO PATRICK	}	

15 **Before Hon. Justice Stephen Mubiru**

JUDGMENT

The accused in this case were jointly indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that all the accused and others at large, on the 6th day of October, 2016 at Opiro village in Moyo District murdered one Dramari Francis.

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The events leading to the prosecution of the accused as narrated by the prosecution witnesses are briefly that the deceased, a resident of Opiro village in Moyo District, was restless having heard rumours going round the village that he was suspected of practicing witchcraft and was in possession of a charm called "Abiba" (a fire coming from the anus just like lightening that can be sent to harm others). He sought the intervention of the cultural leaders of the Moyo Rendike Chiefdom who included P.W.5 Obiku Joseph, the Minister of Culture and Chiefdom Affairs. It was agreed that a meeting would be convened on 6th October, 2016 at the home of a one Kocho of Opiro village, in order to put those rumours to rest. Members of the extended family of the deceased from Nyerebi village were invited to attend that meeting as well as the cultural leaders.

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On the morning of 6th October, 2016, the venue had been arranged at the home of Kocho and a sizeable number of people had gathered when the local leaders decided to re-locate it to a place under a big tree where the village meetings are ordinarily convened. Just after the welcome remarks had been made by the village L.C.1 Chairman A1 Ujiga Dominic, a group of youths became rowdy and stopped P.W.5 Obiku Joseph from addressing the meeting. They slapped two elderly women, one of whom was the mother of the deceased, for rebuking them for disrespecting the elders and cultural leaders. Due to the ensuing commotion, P.W.5 and the rest of the cultural leaders in attendance decided to leave the venue and asked the deceased to go with them.

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They had barely covered 500 metres when a group of about twenty youths led by A2 Vukoni Charles (alias Jurugo), intercepted them and directed the deceased to walk back to the venue. They immediately began to assault him with sticks, kicks, and punches as they led him back to the venue from where the physical assault intensified. Under intensive physical assault from a mob which included the accused, he was eventually forced to walk to his home, about twenty meters from the venue, from where he was finally cut on the head with an axe, dry grass pulled from the thatching of his houses nearby was then piled on his body and set alight. Three of his houses were then set on fire while his body burnt to cinders. In the meantime, P.W.5 had rushed to Moyo Police Station to secure a rescue team from the police but by the time they arrived at the scene, they found the houses and the body of the deceased already on fire. The accused were arrested at divers dates and time thereafter.

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When the case came up for hearing on 26th February, 2018 A5 Mali Augustine and A9 Obulejo Patrick were convicted on their own plea of guilty. When the prosecution closed its case on 28th February, 2018, the court found that A1 Ujiga Dominic and A3 Kinya Henry had no case to answer. With regard to A3 Kinya Henry, there was absolutely no evidence implicating him in the commission of the crime. Instead, P.W.6 Jane Baatio the wife of the deceased, P.W.7 Vudiga Henry a cousin of the deceased, and P.W.8 Josephine Baati a niece of the deceased categorically exonerated him as not having attended the meeting and that hence he did not participate in the killing. It is only P.W.9, No. 19344 D/CPL Oboko Amuron who testified that he arrested A3 Kinya Henry soon after arriving at the scene because he had been pointed out to them by the

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widow and one of the sons of the deceased as having been a participant in the commission of the offence. This was a mere scintilla of evidence and was thus insufficient to sustain a *prima facie* case against him. He was acquitted as having no case to answer.

5 As regards A1 Ujiga Dominic, the only evidence against him was that of P.W.5 Obiku Joseph who testified that he was present at the meeting and made the welcome remarks and that of P.W.6 Jane Baatio the wife of the deceased who stated that when the youth began running after the retreating cultural elders, he too followed them but stopped after a short while. When the youths turned round forcing the deceased back to the venue of the meeting, he got puzzled and
10 moved backwards making way for them but did not say anything. This evidence did not implicate A1 as a participant in the commission of the offence. It only showed that he was present at the scene but under section 19 of *The Penal Code Act*, mere presence at a scene of crime is not a basis for criminal liability. The law requires evidence of participation as a direct perpetrator or an accessory, and he was neither. In any event, P.W.6 categorically stated that she
15 did not see him participate in the crime. There was no evidence to sustain a *prima facie* case against him. He too was acquitted as having no case to answer.

In their respective defences, the rest of the accused denied having participated in committing the offence. A2 Vukoni Charles stated that he spent that day working at a site in Idera village in
20 Erendereya Parish in Moyo Town Council where he reported at 7.00 am and never left the site until 5.00 pm only to be arrested as he was returning home in the evening. A4 Lejigo Pascal stated that he spent the day at Moyo Hospital where he had gone to check on his medical form which had been retained for recording the results of a cough examination only to be arrested on
7th October, 2016 when he was at the location where a cow had been slaughtered. A7 Dralaghu
25 Christopher stated that he attended the meeting but left before any violence had erupted. A8 Ambayo Paul stated that he arrived at the meeting as it was being adjourned but left before any violence had erupted.

The prosecution has the burden of proving the case against each of the accused beyond
30 reasonable doubt. The burden does not shift and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in their respective defences,

(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.
- 10 3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

The first ingredient requires the prosecution to prove beyond reasonable doubt the death of a human being. Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body.

15 The prosecution adduced evidence of a post mortem report dated 7th October, 2016 prepared by P.W.4 Dr. Alier Joseph a Medical Officer of Moyo General Hospital, which was admitted during the preliminary hearing and marked as exhibit P. Ex.1. The body was identified to him by a one Ebele Amos as that of Dramari Francis.

20 This report is corroborated by the testimony of P.W.5 Obiku Joseph, a cultural leader who knew and had been invited by the deceased to Opiro village that day, who saw the body at the scene under a pile of burning dry grass. He attended the funeral P.W.6 Jane Baatio, the wife of the deceased, stated that her husband is dead, she saw the body at the scene but was stopped from getting close because of her medical condition. She too attended the funeral and has never seen
25 her husband since then. P.W.7 Vudiga Henry, a cousin of the deceased too saw the body at the scene. P.W.8 Josephine Baatio a niece of the deceased too saw the body at the scene. In their respective defences, none of the accused offered any evidence regarding this element. Having considered all the available evidence relating to this ingredient, in agreement with the assessors, I am satisfied that it has been proved beyond reasonable doubt that Dramari Francis is dead.

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The next ingredient requires proof beyond reasonable doubt that the death was caused by an unlawful act. It is the law that any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. P.W.4 who conducted the autopsy established the cause of death as “severe head injury and
5 damage to major blood vessel of the neck leading to severe bleeding.” Exhibit P. Ex.1 dated 7th October, 2016 contains the details of his other findings which include a “Internal bleeding and severe extensive burns.” He further noted that he saw was a "body burnt, is black and some body parts already eaten by dogs. Burnt black body with missing body parts. cracked scalp and burnt body. Burnt tongue out, cracked scalp. burnt right body internal organs exposed (eaten by dogs)
10 left leg missing up to the knee joint and tight missing up to below knee. Intestines, liver seen and burnt."

This evidence is supported by four still photographs of the body taken at the scene which were exhibited as P.Ex.11 A - D showing the remains of a burnt human body. P.W.5 Obiku Joseph, a
15 cultural leader, P.W.6 Jane Baatio, the wife of the deceased, P.W.7 Vudiga Henry, a cousin of the deceased, and P.W.8 Josephine Baati a niece of the deceased attested to the circumstances leading to the death of the deceased. They all stated that he was assaulted to death by a mob where after his body was set on fire. This therefore was neither an accidental death, a suicide nor a natural death but rather a homicide. The available evidence does not suggest any legal
20 justification or excuse for that attack. Having considered all the available evidence relating to this ingredient, in agreement with the assessors, I am satisfied that it has been proved beyond reasonable doubt that the death of Dramari Francis was caused by an unlawful act.

The prosecution is further required to prove beyond reasonable doubt that the unlawful act was
25 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.

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Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used (in this case sticks about the size of the wrist in width and a meter long, an axe and fire were used), and the manner in which they were used (multiple injuries inflicted) and the parts of the body of the victim that was targeted (the head initially and subsequently the entire body). The ferocity with which the weapon was used can be determined from the impact (the skull was cracked and body burnt to the extent of exposing the internal organs). P.W.4 who conducted the autopsy established the cause of death as "severe head injury and damage to major blood vessel of the neck leading to severe bleeding." None of the accused offered any evidence on this element.

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Any person who used such weapons to beat and cut the head of the deceased, fracturing the skull and eventually piling dry grass on the body and set it alight, must have foreseen that death was a probable consequence of his or her act. All these actions targeted vulnerable parts of the body and are capable of supporting an inference of malice aforethought. Although there is no direct evidence of intention, based only on the circumstantial evidence of the injuries inflicted and the weapons involved, it can be readily inferred. Having considered all the available evidence relating to this ingredient, in agreement with the assessors, I am satisfied that it has been proved beyond reasonable doubt that the death of Dramari Francis was caused by unlawful acts, actuated by malice aforethought.

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Lastly, the prosecution is required to prove beyond reasonable doubt that each of the accused participated in causing the unlawful death. There should be credible evidence placing each of the accused at the scene of the crime as an active participant in the commission of the offence. Each of the accused denied any participation. A2 Vukoni Charles stated that he spent that day working at a site in Idera village in Erendereya Parish in Moyo Town Council where he reported at 7.00 am and never left the site until 5.00 pm only to be arrested as he was returning home in the evening. A4 Lejigo Pascal stated that he spent the day at Moyo Hospital where he had gone to check on his medical form which had been retained for recording the results of a cough examination only to be arrested on 7th October, 2016 when he was at the location where a cow had been slaughtered. A7 Dralaghu Christopher stated that he attended the meeting but left before any violence had erupted. A8 Ambayo Paul stated that he arrived at the meeting as it was

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being adjourned but left before any violence had erupted. None of the accused have any obligation to prove their respective defences of alibi and bare denial. None of them can be convicted on the basis of any weakness in his defence but rather on the strength of the prosecution evidence.

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To refute those defences, the prosecution relies on the testimony of P.W.6 Jane Baatio the widow of the deceased who saw Obulejo instruct the youths to leave the old women and instead run after Dramadri. All the accused ran after the deceased. They brought back Dramari while beating him. A4 Lejigo Pascal picked a stick from a Teak Tree and hit him on the head, A6 Amamaru Christopher (alias Konvu) picked a stick and beat him on the head. A7 Dralaghu boxed him at the cheek repeatedly and kicked him on the back. He would jump and stamp on the back. A8 Ambayo Paul picked a big dry stick and hit him at the back of the neck and he fell face down onto the ground. She was about 25 metres away when she saw this.

15 P.W.7 Vudiga Henry saw A2 Vukoni Charles (alias Jurugo) use a stick to beat the deceased on the head as the mob led him home. P.W.8 Josephine Baati saw A2 Vukoni Charles (alias Jurugo), A8 Ambayo Paul, A6 Amamaru Christopher (alias Konvu) and A7 Dralaghu lead the deceased to his home and along the way, Vukoni Charles (alias Jurugo) was hitting him with a stick on the chest. A8 Ambayo Paul picked an axe and cut him on the head. A7 Dralaghu and the rest pulled grass from one of the houses and piled it on the body of the deceased. A6 Amamaru Christopher (alias Konvu) then collected fire using a tray (picked embers) and set the body of the deceased on fire. She too was about 25 metres away when she saw this.

25 It is evident that in her police statement, P.W.8 Josephine Baati did not name any of the accused now before court and that she identified the person who using a tray picked embers and set the body of the deceased on fire as having been a one Ijjo who is still on the run, while in court she stated it was A6 Amamaru Christopher (alias Konvu). This demonstrated an inconsistency. Statements made by the prosecution witnesses before the investigating officer being the earliest formal statements made by them with reference to the facts of the occurrence are valuable material for testing the veracity of the witnesses examined in Court, with particular reference to

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those statements, which happen to be at variance with their earlier statements. But the statements made during police investigation are not substantive evidence.

5 According to section 40 (1) of *The Trial on Indictments Act*, every witness in a criminal case before the High Court is to be examined upon oath. It follows that a statement recorded by the police during the investigation cannot be considered as substantive evidence, i.e., as evidence of facts stated therein as such statements are not made during trial, not given on oath, nor they are tested by cross-examination. However, according to section 154 (c) of *The Evidence Act*, the credit of a witness may be impeached by proof of former statements inconsistent with any part of
10 his or her evidence which is liable to be contradicted. It follows therefore that although a witness' statement to the police is inadmissible as substantive evidence, it may be used to confront the witness with contradictions when such witness is examined regarding those contradictions. The prosecution also can, with the permission of the Court, use such statements to contradict or confront hostile witnesses. A previous statement used to contradict a witness does not become a
15 substantive evidence but merely serves the purpose of throwing doubt on the veracity of the witness. Under no circumstances can such statements be used for the purpose of corroboration or as substantive evidence.

The reason for the prohibition of the use of the statements made to the police during the course
20 of the investigation for that purpose is that the police cannot be trusted for recording the statements correctly as they are often taken down in a haphazard manner, sometimes in the midst of a crowd and confusion, when witnesses are still in a state of shock, other emotional disturbances or similar circumstances in which omissions or inaccuracies are bound to occur. It is for that reason that it is now well established that where a police statement is used to impeach
25 the credibility of a witness and such statement is proved to be contradictory to his or her testimony, the court will always prefer the witness' evidence which is tested by cross-examination (see *Chemonges Fred v. Uganda, S. C. Criminal Appeal No. 12 of 2001*).

In the instant case, P.W.8 Josephine Baati recorded her statement with the police, exhibit D.
30 Ex.1, on 11th October, 2016 approximately five days after the event. An omission to state a fact or circumstance, in the police statement may amount to a contradiction or inconsistency if the

same appears to be significant and otherwise relevant, having regard to the context in which such omission occurs. I consider these omissions to be relevant and significant in so far as they relate to her evidence of identification of the perpetrators of the offence. The Court may disbelieve the evidence of this witness, if it forms the opinion that these are improvements in her testimony
5 made over her statement to the police, to cover up or fill omissions which cannot be explained as having arisen from the circumstances which prevailed at the time the statement was recorded, especially where the statement was recorded in a calm and controlled environment.

Although statements made soon after the incident are generally considered to be more accurate
10 because they are made when the memory is still fresh, the court must however, consider as well the fact that oral accounts based on recollection of events which occurred under traumatising situations are susceptible to the unreliability, lapses and fallibility of human memory even when they are made soon after the incident. She explained her omission of the names of the rest of the accused now before court in her statement to the police as having been occasioned by the fact
15 that their names had been mentioned by those who had recorded statements at the police before her. She was emphatic that she saw the accused before court with her own eyes but just confused their names at the time she recorded her statement at the police.

I find corroboration of the circumstances surrounding her identification of the accused now
20 before court, despite her failure to name them in her statement to the police, in the fact that in the still photograph, exhibit P. Ex. 11 B, the rim of what appears to be a steel tray is clearly visible. I also observed her while under cross-examination and she did not appear to be motivated to mislead court or tell lies. She testified that she had known A1 for more than ten years, A2 for four years and that he comes from Pacuawi, a neighboring village to Opiro, A3 for more than ten
25 years, A4 for more than ten years, A6 for more than ten years and his father is Andrea and he is her uncle, A7 Dralaghu and A8 Ambayo for over ten years. It is for those reasons that I am inclined to follow the decision in *Chemonges Fred v. Uganda, S. C. Criminal Appeal No. 12 of 2001* by preferring the witness' testimony in court, which was tested by cross-examination, to the contents of her police statement.

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The testimony of P.W.6 Jane Baatio, that of P.W.7 Vudiga Henry and that of P.W.8 Josephine Baati implicating the five accused persons all being evidence of visual identification which took place in a situation of considerable commotion attendant to mob justice involving over forty people as estimated by P.W.8, the question to be determined is whether the identifying witnesses
5 were able to recognise the accused. In circumstances of this nature, the court is required to first warn itself of the likely dangers of acting on such evidence and only do so after being satisfied that correct identification was made which is free of error or mistake (see *Abdalla Bin Wendo v. R* (1953) 20 EACA 106; *Roria v. R* [1967] EA 583 and *Abdalla Nabulere and two others v. Uganda* [1975] HCB 77). In doing so, the court considers; whether the witnesses were familiar
10 with the accused, whether there was light to aid visual identification, the length of time taken by the witnesses to observe and identify the accused and the proximity of the witnesses to the accused at the time of observing the accused.

As regards familiarity, the three identifying witnesses knew all the accused prior to the incident.
15 In terms of proximity, P.W.6 and P.W.7 demonstrated distances which in court were estimated to have been about 25 metres from the scene, which would be close enough for recognition of persons they had known before. As regards duration, it would seem that P.W.6 and P.W.7 fled the scene at the moment the deceased was being led from the venue back to his home. By the time the deceased was killed at his home, these two had fled the scene. It is only P.W.8 who
20 remained at the scene until after seeing the body of the deceased being set alight at which point she fled out of fear for her life, being a relative of the deceased. These periods were long enough a period to aid correct identification. Both witnesses also recognized him by his voice they had heard him speak to them before. Lastly, the events occurred outdoors during broad day light. Despite the commotion, the lighting conditions favored correct identification.

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On the other hand, their evidence is corroborated by the accused some of whom in their respective defences admitted either having been at the meeting venue or that the witnesses knew them. A2 admitted in his defence that P.W.7 Vudiga Henry and P.W.6 Jane Baatio knew him since they used to pass time together at her place. Both A7 Dralaghu Christopher and A8
30 Ambayo Paul admitted having attended the meeting although they denied having witnessed or participated in the violence that erupted soon thereafter. In light of the identification evidence

that is free from error or mistake, their respective defences raised by each of the five accused persons have been effectively disproved by the prosecution evidence, which has squarely placed them at the scene of crime as participants in the perpetration of the offence with which they are indicted. Therefore in agreement with both assessors, I find that this ingredient has been proved
5 beyond reasonable doubt.

In a case of this nature, the court must have regard to section 20 of *The Penal Code Act*, which provides that 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
10 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. Due to this doctrine, two or more persons who shared a common criminal plan as result of which crimes were committed are responsible not only for those crimes they agreed to, but for all other crimes that would be considered the natural and foreseeable consequence of the plan.

15 The evidence has established that all the accused formed an unlawful common plan to assault the deceased in a manner that made it probable that as a consequence of the prosecution of that purpose his death would result, as such each of them is deemed to have committed the offence. More so, under section 24 of *The Trial on Indictments Act*, persons accused of the same offence
20 committed in the course of the same transaction as well as persons accused of different offences committed in the course of the same transaction, may be joined in one indictment and may be tried together. It does not matter which one of them struck the fatal blow.

In a case such as the instant one, where the accused have all been tried together as persons
25 accused of the same offence committed in the course of the same transaction, a question may arise as to whether all the accused can be found responsible for the final outcome. This is because the assault on the deceased was in three phases; first when he was intercepted and forced back to the venue of the meeting. second at the venue of the meeting and finally at his home where he was eventually killed and his body and houses burnt. There is a possibility that some of
30 the accused may have participated at one phase and not the other.

However, when a situation of fact (e.g. killing) is being considered, and a question arises as to when that situation began and when it ended, it may be arbitrary and artificial to confine the analysis to the ultimate act that resulted in death without considering in a broader sense, the context in which it happened. A criminal transaction comprises a series of acts which are so connected together by proximity of time, community of criminal intent, continuity of action and purpose or by the relation of cause and effect as to constitute one transaction.

Acts linked by cause and effect will not necessarily form part of the same transaction. On the other hand, acts whether they occurred at the same time and place or at different times and places, which are so interconnected and are also connected with the final outcome, will be deemed to form part of the same transaction. Where the transaction of which the alleged murder formed an integral part cannot be truly isolated from the assaults leading to the death, or where a killing is committed by the accused during what may be said to be a continuous orgy, the prior assaults will be deemed to form part of the same criminal transaction and any of the accused who took any significant part in the process, is deemed to have committed the offence. The distinction as to who participated at what phase thus become irrelevant.

Therefore in agreement with the joint opinion of the assessors, I find that the prosecution has been proved beyond reasonable doubt that each of the five accused; A2 Vukoni Charles (alias Jurugo), A4 Lejigo Pascal, A6 Amamaru Christopher (alias Konvu), A7 Dralaghu Christopher and A8 Ambayo Paul participated in the commission of this offence.

Since the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt, I therefore hereby convict; A2 Vukoni Charles (alias Jurugo), A4 Lejigo Pascal, A6 Amamaru Christopher (alias Konvu), A7 Dralaghu Christopher and A8 Ambayo Paul for the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Adjumani this 28th day of February, 2018.

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Stephen Mubiru
Judge.
28th February, 2018.

9th March, 2018.

2.51 pm

Attendance

Ms. Baako Frances, Court Clerk.

5 Mr. Okello Richard, Principal State Attorney, for the Prosecution.

Mr. Ndahura Edward, Counsel for the accused person on state brief is present in court

The accused is present in court.

Both assessors are in court

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SENTENCE AND REASONS FOR SENTENCE

The convicts were found guilty of the offence of Murder c/s 188 and 189 of the *Penal Code Act*. In her submissions on sentencing, the learned Resident State attorney prayed for a deterrent sentence on the following grounds; although none of the convicts has a previous record of conviction, but the offence is of a serious nature. They killed the deceased. He was subjected to severe beatings. Their conduct is of heartless human beings. He died a painful death. They had planned it. They burnt his body and his three houses. The family of the deceased was traumatised when the accused took the law into their hands. The intention is undisclosed. He had been a sole bread winner of the family. Killing under mob justice of suspected witches is rampant. Each of them should be given a deterrent sentence. They deserve the same sentence. They cannot undo the damage done to the deceased. They were not lenient to the deceased. She prayed that each is sentenced to death because of mutilating the body.

In mitigation, defence counsel submitted that a term of imprisonment and not a sentence of death is deserved. A5 and A9 readily understood the circumstances of the case and they pleaded guilty. That is a sign of someone who is remorseful and their hearts are repentant. The court should be considerate. The rest of the accused; A4 is an elderly man, he was 44 years old by the time of the offence. A term of imprisonment would suffice. The rest of the convicts the age varies from 23 to 38. They are youthful and can be reformed by a long term custodial sentence. They can still learn from that and the family members may have reduced the anger and cooled down. He proposed twenty years' imprisonment as appropriate.

In their respective *allocutus*, A2 Vukoni Charles forgiveness. He stated that he is married and has a family. His elder son is in school and another in P.7. Their mother is dead. He prayed for a

sentence which will enable him to help his family. The two children are living with his mother in law. His father is old and cannot take care of children. On his part, A4 Lejigo Pascal stated that he is married with two wives and the children he had with his first wife are out of school. His late brother had children who were being cared for by Godfrey. The children are left without
5 proper care. The children were then under his care because Godfrey escaped. He is sick, he has a cough and does not know whether he can stay long in prison. A6 Ammaru Christopher stated that he prays for forgiveness because his wife is an orphan and she is sick. She cannot be alert at night. His mother died and his father is now old. He was the one taking care of his father before this incident. He prayed for a sentence which will enable him take care of his children. He has
10 since learnt that the house he built for my children has collapsed. He did not fully participate in the crime. It was my brothers who participated. They left it on him (he broke down and wept).

On his part, A7 Dralaghu Christopher stated that he was sorry for what has happened. He did not know he would get involved in a problem of this nature. Now that the court has found him guilty
15 he prayed for lenience. His mother re-married and his father is insane. He has siblings younger than him who were staying with him. He is the one taking care of them. He does not know how they are surviving. He is sick, suffering from Hepatitis "B," ulcers and heart disease. He does not know whether he will survive a long custodial sentence but he is sorry for what has happened. Lastly, A8 Ambayo Paul stated that he was sorry for what has happened. He too did not expect to
20 be involved in this kind of incident. He is married and has four children. His elder daughter is in Primary four. He prayed for lenience to enable him help his children. Before his arrest he was Registrar of NRM on the village and the post is vacant since he left it. He had SACCO where he was the General Secretary. He was engaged in agricultural work. His wife left his children with his mother who cannot take care of them. He is a P.7 lever and he wanted his children to exceed
25 his level. He used to help the children at home after school he would give them some homework to do. He had been keeping cattle for the future of his children and some have been confiscated for destroying people's crops.

In his victim impact statement, Mr. Maku Jacob Michael, a cousin of the deceased stated that he
30 has followed the case since the 6th when his cousin was killed. The witness explained how the convicts acted. He was present when Legigo was arrested. They slaughtered a cow at night on 7th

when they got the information that he was at the site they rushed there. They got him with a piece of meat. He was about to be lynched but he protected him. His brother pleaded with the convicts but they never respected him they killed him and burnt all his property and the body. They have asked for mercy. It is Dramari who requested for that mercy first. They never
5 respected him. The court should not listen to their plea. Dramari had a family and more than ten children and they are now suffering he had an 80 year old mother and she was slapped on that day by one of the accused. He said the sentence of death is suitable, even by firing squad.

Sentencing is a reflection of more than just the seriousness of the offence. The court at this stage,
10 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 the facts establish that each of them participated differently as part of the mob which killed the deceased, or responded differently to the accusation.

15 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*. This represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. According to Regulation 17 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the
20 court may only pass a sentence of death in exceptional circumstances in the “rarest of the rare” cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate. Examples are given such as where a group of persons acting in the execution or furtherance of a common purpose. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence especially where the offence involved use of deadly
25 weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life.

Under Regulation 21 (e) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, a plea of guilty is one of the factors to be taken into account as
30 mitigation for offences punishable by death. It is for that reason that I have considered the fact

that A5 Mali Augustine and A9 Obulejo Patrick readily pleaded guilty. I have therefore taken into account their pleas of guilty in mitigation what would otherwise have been a death sentence.

Where the death penalty is not imposed, the starting point in the determination of a custodial
5 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. 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*
10 *Crim. C.A Criminal Appeal No. 180 of 2010*).

I have therefore considered the current sentencing practices in relation to cases of this nature,
such as *Mugabe v. Uganda C.A. Cr. Appeal No. 412 of 2009*, where the Court of Appeal in its
decision of 18th December 2014, confirmed the death sentence for a thirty year old convict who
15 following an allegation of rape against him, was heard threatening that he would kill a member
of the deceased's family. The deceased was aged twelve years and on the fateful day he was sent
by his father to sell milk at a nearby Trading Centre. He never returned home. The relatives
made a search for him and his body was discovered in a house in a banana plantation. The
appellant had been seen coming out of a house near that plantation. On examination of the body
20 of the deceased, it was revealed that the stomach had been cut open and the heart and lungs had
been removed. His private parts had also been cut off and were missing from his body. The cause
of death was severe hemorrhage due to cut wounds and the body parts removed. The accused
pleaded guilty on arraignment. He was sentenced to death despite his plea of guilty.

25 From the facts of this case, all the seven convicts bear the highest degree of blameworthiness for
having attacked the deceased purposely to kill him. Their conduct demonstrates utter disregard of
life and pre-meditation. The deceased sort to resolve the controversy surrounding him by civil
methods, the convicts responded with violence. They committed it in a callous, brutal manner
and thereafter mutilated and degraded the body by burning it to near cinders, and destroyed most
30 of his properties. What remained of the body was left to dogs to rip off parts. In light of these
aggravating factors, the offence fits the category of exceptional circumstances considered to be

the “rarest of the rare” cases, where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate. However in respect of A5 Mali Augustine and A9 Obulejo Patrick, because of their respective pleas of guilty, I consider a starting point of forty five years’ imprisonment.

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I have nevertheless considered the mitigation made in their respective *allocutus* and thereby reduce the sentence to forty five 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 note that he has been in custody since 23rd November, 2016. I hereby take into account and set off one year and three months as the period he has already spent on remand. I therefore sentence A5 Mali Augustine and A9 Obulejo Patrick each to a term of imprisonment of forty three years (43) years and nine (9) months to be served starting today.

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For the rest of the convicts, an attempt to determine the moral blameworthiness of each of them, guided by the nature of the weapons each used in assaulting the deceased, and the manner in which they were used as an indication of the degree of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind that has no regard for the sanctity of life manifested by each of them, has not yielded any material distinction between them. This is because of the heinous act of setting the body of the deceased on fire in which all participated whereby P.W.8 Josephine Baati saw A7 Dralaghu and the rest pulling down thatch from one of the deceased’s houses and piling it on the body of the deceased, whereupon A6 Amamaru Christopher (alias Konvu) then collected embers using a tray, and set the body of the deceased on fire. In the still photograph, exhibit P. Ex. 11 B, the rim of what appears to be a steel tray is clearly visible and corroborates the testimony of P.W.8 Josephine Baati as to their collective participation.

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This was a gruesome death where the deceased was practically killed and his body desecrated in the proximity of his family, including his mother and wife. I know a life can never be adequately compensated, not even with another life but the death penalty remains one of the lawful

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sentences for this type of crime. The court cannot balk out of the duty entrusted to it to express public indignation and retribution towards some of the extreme modes of perpetration of crime. Mob justice has no place in modern society and must be deterred. Consequently, A2 Vukoni Charles (alias Jurugo), A4 Lejigo Pascal, A6 Amamaru Christopher (alias Konvu), A7 Dralaghu Christopher and A8 Ambayo Paul, are each sentenced to suffer death in accordance with the law.

Having been convicted and sentenced on their own pleas of guilty, both A5 Mali Augustine and A9 Obulejo Patrick are advised that they have a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Each of the convicts; A2 Vukoni Charles (alias Jurugo), A4 Lejigo Pascal, A6 Amamaru Christopher (alias Konvu), A7 Dralaghu Christopher and A8 Ambayo Paul is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Adjumani this 9th day of March, 2018.

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Stephen Mubiru
Judge.
9th March, 2018.