

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CR – SC – 0094 OF 2017

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

VERSUS

MAZINGA YOKONIA.....ACCUSED

BEFORE: HIS LORDSHIP HON. MR WILSON MASALU MUSENE

10 **Judgment**

The accused was indicted with the offence of Murder contrary to **Sections 188 and 189** of the Penal Code Act. It is alleged that the accused and others still at large on the night of 24th to 25th May 2016 at Mulinda Village in Kasese District murder Grace Musoki. The accused denied committing the offence.

15 The prosecution in a bid to prove its case produced 3 witnesses and the accused produced two witnesses to help him in his defence.

The prosecution was represented by Mr. Kwesiga Michael state attorney, while Mr. James Ahabwe represented the accused on state brief.

Burden of proof:

20 The burden of proof is on the prosecution to prove all the ingredients of the offences beyond all reasonable doubt. The burden never shifts except in some exceptional cases set down by law. **(See: Woolmington versus DPP [1935] AC 322 & Uganda versus R.O. 973 Lt. Samuel Kasujja & 2 Others Criminal case No. 08/92.)**

The accused person is presumed innocent until proven guilty or otherwise pleads guilty. It is
25 not for the accused to prove his innocence; he only needs to call evidence that may raise

doubt of his guilt in the mind of the court. Any doubt in the prosecution case has to be resolved in favour of the accused person.

Section 101 (2) of the Evidence Act provides that;

5 *“When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”*

It is further provided under **Section 103 of the Evidence Act** that;

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe its existence, unless it is provided by law that the proof of that fact lie on any particular person.”

10 **Standard of proof:**

The standard of proof in criminal cases is beyond reasonable doubt. This however, does not mean proof with utmost certainty. If evidence is so strong against an accused as to leave only a remote possibility in his favour, which can be dismissed with a sentence: ‘of course it is possible but not in the least probable’, the case is proved beyond reasonable doubt; but
15 nothing short of that will suffice. (**See: Miller versus Minister of Pensions [1947] 2 ALL E.R. 372**)

The ingredients of the offence of murder are; there was death of a human being, the death was unlawfully caused, there was malice aforethought resulting into the death of the deceased and the accused is the one that committed the offence. (**See: Also, Uganda versus Kalungi Constance HC Criminal case No. 443/2007 and Mukombe Moses Bulo versus Uganda SC. Criminal Appeal 12/95.**)
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The prosecution witnesses all confirmed that the deceased died and she was beaten by the accused. The post mortem report indicated that the deceased died due to cardio-respiratory arrest, due to severe acute brain haemorrhage, neurogenic shock also contributed. In the case
25 of **Wanda Alex and 2 others versus Uganda, Supreme Court, Criminal appeal No.42 of 1995**, it was held that;

“After the Court has properly considered all the essential elements which constitute the offence of murder, then the killing was unlawful, since it was not accidental or authorized by law.”

It is without doubt that the deceased's death was unlawful and a hoe was used during the commission of the offence. The blood stained hoe was also recovered at the scene of crime.

PW1 who is the eye witness told Court that the deceased was hit on the head leading to brain damage and this indicates that there was presence of malice aforethought. PW3 also confirmed that the deceased had a wound on her head when she got to the scene of crime. The head is a very delicate body part and that is the part the assailant targeted. In the circumstances it is evident that the person that attacked the deceased did so with the sole aim of creating at most impact which resulted into her death.

In the instant case there was only one identifying witness and that was PW1. PW2 and PW3 corroborated his evidence with circumstantial evidence.

The law relating to a single identifying witness is that court can convict on such evidence after warning itself and the assessors of the special need for caution before convicting on reliance of the correctness of the identification. The reason for special need for caution is that there is a possibility that the witness might be mistaken. **(See: Christopher Byagonza versus Uganda Crim. Appeal No. 25 of 1997 and Abdala Nabulere & Another versus Uganda Crim. Appeal No. 9 of 1978.**

In the case of **John Katuramu versus Uganda Criminal Appeal No. 2 of 1998** it was held that;

“The legal position is that the court can convict on the basis of evidence of a single identifying witness alone. However, the court should warn itself of the danger of possibility of mistaken identity in such case. This is particularly important where there are factors which present difficulties for identification at the material time. The court must in every such case examine the testimony of the single witness with greatest care and where possible look for corroborating or other supportive evidence. If after warning itself and scrutinising the evidence the court finds no corroboration for the identification evidence, it can still convict if it is sure that there is no mistaken identity.”

The test of correct identification was explicitly outlined in **Abdala Nabulere & another versus Uganda**, 1979 HCB 77, as follows;

“The court must closely examine the circumstances in which the identification was made. These include the length of time the accused was under observation, the distance between the

witness and the accused, the lighting and the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good then the danger of mistaken identity is reduced, the poorer the quality the greater the danger.”

PW1 Masereka Joasi, told Court that he was present when the deceased who was his mother
5 was beaten by the accused. That the accused was known to him for 10 years and he was able to recognise him on the fateful day because he had a torch.

PW1 categorically told Court that he was coming from hospital with the deceased when the
accused a village mate stated beating his mother and he made an alarm. That the accused
used a small hoe to hit the deceased and also hit PW1 on the back. The accused reported
10 himself that very night to Police, as the second person ran away.

PW2, Bisokho answered the alarm and found the deceased dead. He found Mazinga on the
way saying he had killed someone and was reporting to Police. PW3 was told by PW1 that
the accused killed the deceased.

The accused made a general denial and put up a defence of alibi that he was looking after his
15 mother, Naume Kabubu. The accused stated that when he heard an alarm, he reported himself to Police since the people at crime scene alleged that he had killed the accused and he needed protection.

DW2, Jemima Biira was a sister to the accused. She tried to defend the alibi of the accused.
However, DW2, during cross examination by Counsel for the state testified that their
20 mother’s home and the deceased’s home was only 100 metres away and takes few seconds to ran there. Also, whereas DW2 heard the alarm at 9:00PM, DW1 talked of an alarm at 11:00pm – a big discrepancy.

DW3, Kabugho Margret, testified that when she heard an alarm, she woke up the accused as
those alarming were mentioning accused’s name.

25 It is my considered opinion according to the evidence as outlined above that PW1 correctly identified the accused and the accused was also known to him as a neighbour. The prosecution ably proved all the ingredients of the offence of murder to the satisfaction of this Court by placing the accused at the scene of crime. I accordingly agree with the opinion of the two assessors and find the accused guilty as indicted and he is therefore convicted of the
30 offence of murder contrary to **Section 188** and **189** of the Penal Code Act.

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WILSON MASALU MUSENE

JUDGE

5 **8/5/2019**