

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CR- CS – 0022 OF 2017

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

VERSUS

MONDAY WILSON.....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** as Count I, Count II and Count III. It is alleged that the accused on the 25th day of January 2016 at Kamata Village in Kyenjojo District murdered Kanyunyuzi Scola, Monday Israel, and Kabarokole Eunice. The accused denied committing the offence.

15 The prosecution produced 4 witnesses in a bid to prove its case and the accused did not produce any witnesses save for himself.

The prosecution was represented by State Attorney Kwesiga Michael, while M/s Ahabwe James represented the accused on state brief.

Burden of proof

20 It is a requirement by the law that the prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove, his innocence (**Article 28 of the Constitution of the Republic of Uganda, 1995**). (See: **Woolmington versus D.P.P. [1935] AC 462. Uganda versus Joseph Lote [1978] HCB 269**).

It is our principle of the law that an accused person should be convicted on the strength of the
25 case as proved by prosecution but not on weakness of his defence. (See: **Insrail Epuku s/o Achietu versus R [1934] I 166 at page 167**).

Standard of proof

The standard of proof is beyond reasonable doubt as discussed in the case of **Miller versus Minister of Pensions (1947) 2 All ER 372 at 373**; wherein **Lord Denning** stated as follows;

“That degree is well settled. It needs not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would prevail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility of his favour which can be dismissed with the sentence of course it is doubt but nothing short of that will suffice”.

Prosecution must prove all the ingredients of the Offence of Murder in order to sustain a conviction thereof. In the case of **Uganda versus Bosco Okello [1992-93] HCB 68 , Uganda versus Muzamiru Bakubye & Anor, High Court Criminal Session No.399/2010**, it was held that Prosecution must prove the following ingredients beyond reasonable doubt:-

1. That the deceased is dead;
2. That the death was caused unlawfully;
3. That there was malice aforethought; and
4. That the Accused person directly or indirectly participated in the commission of the alleged Offence. (See: Also, **Uganda versus Kalungi Constance HC Criminal case No. 443/2007** and **Mukombe Moses Bulo versus Uganda SC. Criminal Appeal 12/95.**)

The death of a person is caused when the offender commits any of the acts listed in **Section 196** of the Penal Code Act and such act or acts are committed within a period of one year and a day prior to the death. (See: **Section 198 of the Penal Code Act.**)

The prosecution witnesses all confirmed that the three persons all died. PW1 Emmanuel Kasangaki told Court that he saw the bodies of the deceased persons who were cut into pieces and so did all the prosecution witnesses. Therefore there was death of three human beings as proved by the prosecution. Their death was unlawfully caused since they were cut with a pick

axe. The deceaseds' bodies, Kanyunyuzi Scola in particular was cut into pieces and they were all buried in a mass grave. This is a clear indication that the assailant had motive while committing the offence. The accused even lied to the father of the deceased that is PW1, Emmanuel Kasangaki, that the deceased had left his home with the children a long time ago.

5 The bodies of the deceased were eventually found in trenches.

PW1 also told Court that the hand, arm and leg of Scola were cut. These were all sensitive parts of the body. Secondly, she was dumped in a trench together with her children who were found rotting. Thirdly, the act of hiding the bodies in a trench and stating that Scola had left; all these actions imply malice aforethought.

10 Before the deceased disappeared, she was married to the accused. All prosecution witnesses, PW1, PW2, PW3 and PW4, confirmed that the accused deceived witnesses, PW1, PW2 and PW3 that the deceased had left. The accused after the disappearance of the deceased introduced another woman to PW3, an evangelist and the LCII Chairperson.

15 According to PW3, accused told some people that Scola had returned to her parents, others that she had gone to work in plantations, while others that she had married elsewhere. The dead bodies were discovered in a trench near the accused's house in a mass grave. PW4, stated that the accused never reported to any authority that his people were missing. All these pieces of evidence are circumstantial.

20 The accused on the other hand made a general denial as his demeanour revealed, he had red eyes and he was swallowing saliva from time to time. Words could not come out properly.

I have carefully, looked at the evidence as adduced, the deceased were the wife and children of the accused and the accused did not report about their disappearance to any authorities. The bodies were found on the accused's piece of land and the wife cut into pieces. The accused then brought another woman to his home after the deceased disappeared. In relying
25 on circumstantial evidence Court must be sure that there is no other co-existing circumstances which would weaken or destroy the inference. **(See: Emmanuel Nsubuga versus Uganda, SCCA No. 16 of 1988 (1992-93) H.C.B 24.**

In the case of **Simoni Musoke versus R [1958] E.A 715**, it was held that;

30 *"In a case depending exclusively upon circumstantial evidence, the Court must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of*

the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. That the circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt. That it is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing
5 *circumstances which would destroy the inference."*

The evidence is all circumstantial however the conduct of the accused speaks volumes and I find that the prosecution proved its case beyond reasonable doubt.

I accordingly agree with the opinion of the two assessors and find the accused, guilty as indicted and he is therefore convicted with the offence of murder contrary to **Sections 188**
10 **and 189** of the Penal Code Act.

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WILSON MASALU MUSENE

JUDGE

15 **9/5/2019**