

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT – 01 – CR – SC – 61 – 2016**

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

**VERSUS**

**1. TUMWINE CALED**

**2. AHIMBISIBWE WILSON**

**3. MUGISHA TOBIAS**

}.....**ACCUSED**

10

**BEFORE: HIS LORDSHIP HON. MR. WILSON MASULU MUSENE**

**Judgment**

The accused was indicted with the offence of murder contrary to **Sections 188 and 189** of the Penal Code Act. It was alleged that the accused on the 21<sup>st</sup> day of August 2015 at Bwizi Cell  
15 in the Kamwenge District murdered Muhimbura Edison Abubaka Kabina. The accused denied committing the offence.

The prosecution produced three witnesses to aid in proving its case and the accused did not produce any witnesses save for himself.

The three accused were alleged to have killed Muhimbura Edison Abubaka Kabina. A1  
20 absconded and was never arrested by the time of trial. Ahimbisibwe Wilson was acquitted on no case to answer. So it was Mugisa Tobias remaining.

The Accused person is presumed innocent until the contrary is proved. (**See Article 28 (3) (a) of the Constitution of the Republic of Uganda 1995 as amended**). Therefore, the Prosecution bears the burden to prove not only the fact that the offence was committed but  
25 that it was committed by the Accused persons or that the Accused persons participated in the

commission of the alleged Offence. It is therefore relevant to place the Accused person at the scene of crime.

Regarding the standard of proof, the Prosecution has the duty to prove all the ingredients of the offence beyond reasonable doubt. (See: **Woolmington versus. DPP [1935] AC 462**).

5 However, this does not mean proof beyond shadow of doubt. If there is a strong doubt as to the guilt of the Accused, it should be resolved in the favour of the Accused persons. Therefore, the Accused persons must not be convicted because they have put a weak defence but rather that Prosecution case strongly incriminates them and that there is no other reasonable hypothesis than the fact that the Accused persons committed the alleged crime.

10 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*  
15 *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”.*

Ingredients of the offence of murder are;

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1. Death of Muhimbura Edison Abubaka Kabina.
  2. Death was unlawfully caused.
  3. Death was out of malice aforethought.
  4. Identification of the accused, Mugisa Tobius as one who participated in killing of the deceased.

25 The prosecution witnesses all proved the fact that death did occur. The cause of death according to the post mortem report was that the deceased had a severe blunt head injury and ruptured viscera leading to severe blood loss and death. The deceased was stabbed several times and PW2 in his testimony told Court that the deceased was found with a cut on his neck and blood on the car. Thus, the death was unlawful, for no one is allowed to cut someone to  
30 death. Going by the nature of injuries, weapons used that is a knife and part of the body targeted that is the neck, malice aforethought can be established.

PW3, D/ASS/Inspector of Police, Muhoozi James, recorded a charge and caution statement from Mugisa Tobius alias Bets, who was arrested after tracking his mobile phone. The charge and caution statement was admitted in evidence and marked as PEX4.

5 The accused made a total denial and alleged torture in Police custody. He admitted having signed a confession statement under torture which was never read back to him.

PW1 and PW2 on the other hand during a trial with in a trial confirmed to Court that the accused was never tortured during the recording of the charge and caution statement. The accused stated that he used his sim card Tel: 0781547155 and inserted in a phone of another. The deceased was then called to bring his car and they take a patient to hospital. The accused  
10 brought a rope which they used and a knife. A3 said that they laid ambush for the deceased and when he came driving, A3 and four others came out of the bush. That he and others were; Bruno, Ahimbisibwe Wilson, and Alfredina (Rwandese) and Michael. A3 also said that he put a rope in the neck of the deceased and strangled him to death. That Alfreina drove off the vehicle of the deceased towards Kampala. Shortly thereafter, the car knocked the pavement  
15 and got struck. A3 added that he went to Kisoro with Alfrdina, who abandoned him. So he sold his shoes and returned to Kampala. The accused was arrested at Kalangala, Bombo, Luwero through phone trucking.

It is my finding from the above evidence that prosecution proved its case beyond reasonable doubt and placed the accused at the scene of crime. I agree with the two assessors that the  
20 accused is guilty as indicted and he is accordingly convicted of the offence of murder Contrary to **sections 188** and **189** of the Penal Code act.

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**WILSON MASALU MUSENE**

25 **JUDGE**

**14/05/2015**