

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORTPORTAL

HCT – 01 – CR – SC – 0153/2016

UGANDA.....PROSECUTION

5 **VERSUS**

**1. TWIKIRIZE KAMUGISHA }
2. KAMUGISHA KOMUNDA.....ACCUSED**

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

10 **Judgment**

The accused were indicted with the offence of Murder contrary to **Sections 188** and **189** of the Penal Code Act. It is alleged that the accused on the 17th day of February 2016 at Rukarabo Village in Kyenjojo District murdered Tumuboine Irene.

15 The prosecution produced 5 witnesses to prove their case against the accused. The accused denied committing the offence and raised a defence of alibi. They did not produce any witnesses to support their defence apart from themselves.

State Attorney Kwesiga Michael appeared for the state and Counsel Ahabwe James appeared for the accused on State Brief.

Ingredients of the offence:

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1. Death of a Human being, Tumuboine Irene.
 2. The death was unlawfully caused.
 3. The death was as a result of Malice a forethought.
 4. Identification of the accused as those who caused the death of the deceased.

All the prosecution witnesses including the accused in their defence confirmed the death of Tumuboine Irene. The post mortem report revealed that there were multiple cuts on the head exposing brain tissue and 4 cuts on the shoulders. The cause of death was severe bleeding from the cut wounds and exposed brain tissue. That confirms that death was unlawful and out
5 of malice aforethought.

Counsel for the accused and the State did not agree on identification submissions by Mr. James Ahabwe which were that evidence of the dog and dog handler needed corroboration which was lacking. Counsel for the State submitted to the contrary, that the dog handler was trained and that failure to exhibit the panga used was not fatal. Witnesses like PW1,
10 Tumwekurse Egidio woke up to find the deceased a neighbour, dead. He did not know who killed the deceased and he reported to Police.

PW2, Corporal Okot Patrick was the dog handler. He recovered the killer weapon, a panga which was covered with blood and an old cap. The dog led them to the house of A1, where another panga was recovered, and A2 where the dog charged at him. Exhibits were handed
15 over to the investigating Officer but not exhibited in Court.

PW3, Mbabazi, the NRM Chairman testified that the deceased was a neighbour to the accused persons. PW4, Rutehenda Robert narrated to Court how the sniffer dog trucked A1, Kamugisha and A2 and that the two had threatened the deceased earlier.

Both accused persons gave sworn testimonies and denied killing the deceased.

20 I have carefully considered the evidence as adduced by all the witnesses, PW1 told Court that he knew the accused persons very well and the deceased. He said that he woke up at 5:00am, only to realise he was locked from outside. The assailants locked the neighbours' houses. PW1 then added that after discovering the dead body he made an alarm and the Police was alerted.

25 PW2 was an experienced dog handler. He found the scene of crime well preserved. He noticed that all the neighbours' houses had new padlocks. The dog after moving for 8 kms led the handler to Karabo Village where the accused lived. A similar panga was found at A1's residence.

A2 admitted that he had a similar panga with a green handle. At A2's home, the dog charged at A2. It had captured A2's scent. The conduct of A1 moving 8 kms from the crime scene indicated that he was trying to hide his tracks.

PW3 told Court that the two accused had a land dispute with the deceased which had
5 attracted much mediation to no avail.

PW4 corroborated all the above evidence.

In the case of **Omondi and Another versus R [1967] E.A 802** the High Court observed as follow at page807,

10 *“But we think it proper to sound a note of warning about what, without undue levity, we may call the evidence of dogs. It is evidence which we think should be admitted with caution, and if admitted should be treated with great care. Before the evidence is admitted the court should, we think ask for evidence as to how the dog has been trained and for evidence as to the dog's reliability. To say that a dog has a thousand arrests to its credit is clearly, by itself, quite unconvincing. Clear evidence that the dog had repeatedly and faultlessly followed a*
15 *scent over difficult country would be required, we think, to render this kind of evidence admissible. But having received the evidence that the dog was, if we might so describe it, a reasonably reliable tracking machine, the court must never forget that even a pack of hounds can change foxes and that this kind of evidence is quite obviously fallible.”*

Also, in the case of **Uganda versus Muheirwe and Anor HCT-05-CR-CN-0011 of**
20 **2012**,my brother Gaswaga, J., proposed the following principles to guide trial courts with regard to admissibility and reliance on dog evidence. He opined,

“Therefore, from the above discourse, the following propositions are made as principles that may govern the considerations for the exclusion or admissibility of and weight to be attached to tracker (sniffer) dog evidence:

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1. *The evidence must be treated with utmost care (caution) by court and given the fullest sort of explanation by the prosecution.*
 2. *There must be material before the court establishing the experience and qualifications of the dog handler.*

3. *The reputation, skill and training of the tracker dog [is] require[d] to be proved before the court (of course by the handler/ trainer who is familiar with the characteristics of the dog).*
4. *The circumstances relating to the actual trailing must be demonstrated. Preservation of the scene is crucial. And the trail must not have become stale.*
5. *The human handler must not try to explore the inner workings of the animals mind in relation to the conduct of the trailing. This reservation apart, he is free to describe the behaviour of the dog and give an expert opinion as to the inferences which might properly be drawn from a particular action by the dog.*
10. *The court should direct its attention to the conclusion which it is minded to reach on the basis of the tracker evidence and the perils in too quickly coming to that conclusion from material not subject to the truth-eliciting process of cross-examination.*
15. *It should be borne in the mind of the trial judge that according to the circumstances otherwise deposed to in evidence, the canine evidence might be at the forefront of the prosecution case or a lesser link in the chain of evidence.”*

In the instant case the dog handler had attended training and had handled dogs for over a year and the dog that was used in the instant case called BOAZ was a dog that he was currently working with. The dog handler categorically told Court that the dog when trained rarely makes mistakes and always accurately identify the assailant. Boaz in the instant case tracked the assailants who he charged at and that was the two accused. PW2 the dog handler told Court that the dog moved from the crime scene to where the accused were hiding covering a distance of about 8 kms and charged at all the accused upon reaching where they were. The dog handler’s evidence was consistent and was corroborated by PW3 and PW4. The crime scene at the time the dog was introduced had not been tampered with. From the foregoing I find that the prosecution ably placed the accused at the crime scene and proved it case beyond reasonable doubt.

Counsel for the accused also contended that the two pangas the alleged weapons used to commit the offence were not exhibited however, PW5 stated that the exhibits recovered by Police were submitted to GAL for analysis and by the time the matter was being concluded they had not yet been returned and that is why they could not be exhibited in Court. I accordingly agree with the gentleman assessor and find the accused guilty as charged and

convict them of the offence of murder contrary to **Sections 188** and **189** of the Penal Code Act.

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5 **WILSON MASALU MUSENE**

JUDGE

14/5/2019