

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01- CR – CS – 126 OF 2015

5 **UGANDA.....PROSECUTION**

VERSUS

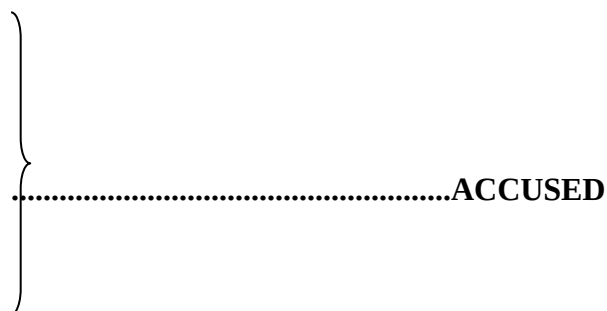
1. **MUGISA SELEVANO**

2. **MONDAY ROBERT**

3. **BIRUNGI STEPHEN**

10 4. **MWAKA WISLON**

5. **TIBAMWENDA ABDALLAH**



BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

Judgment

15 The four accused persons, Mugisa Silvano, Birungi Stephen, Mwaka Wilson and Tibamwenda Abdallah were indicated with the offence of murder contrary to sections **188** and **189** of the Penal Code Act.

The particulars were that the four accused, and others still at large, on the 8th day of January 2014 at Nyabibya village in Kabarole District, murdered Friday Stephen.

20 The prosecution was represented by Mr. Kwesiga Michael state attorney, while Mr. Luleti Robert represented the accused on state brief.

One of the accused, Mwaka Wilson pleaded guilty at the beginning of the trial and was sentenced to 11 years imprisonment. As for the rest of the accused persons, the prosecution relied on the post-mortem report which had been tendered in court when Mwaka Wilson
25 pleaded guilty.

The cause of death was internal bleeding as a result of enlarged rupture of the spleen which was caused by a blunt object.

The prosecution also called three witnesses. PW1 was Barugahare Robert the father of the deceased. He was also a brother to A1, Mugisa Silvano and A2, Birungi Stephen.

5 PW1 told court that A4, Tibamwenda Abdalla is a neighbour. PW1 was called by one Balinda that his son had been killed and when he visited the scene, he confirmed the death.

PW1 added that he was told by Balinda that it was Mugisa Silvano, A1 Birungi Stephen, A2 Tibamwenda Abdallah, A4 and Mwaka Wilson who killed the deceased. PW1 Also stated that he had a grudge with A1, Mugisa Silvano over land. So apart from the land dispute with
10 Mugisa Silivano, A1, did not see who killed his son.

PW2, Karugaba Justus knew all the accused persons as brothers and A4, Tibamwenda as a neighbour. PW2 categorically told court that he did not know how the deceased Friday Stephen died as he was not around at the time. And apart from seeing one Besisa Charles who had a rope that was in the neck and around the waist, he heard from people that it was his
15 brothers who had killed the deceased. Unfortunately, Besisa whom PW2 saw with a rope was reported to have run away and was not in the dock.

PW3 Muhwezi Robert knew all the accused persons. He saw Mwaka Wilson calling the deceased and the following day, he learnt of the death of the deceased. PW3 therefore implicated Mwaka Wilson who had pleaded guilty.

20 Lastly PW4, Habib Monday Yassin, a boda boda rider who took the deceased to police and the police rejected him as he was sickly. PW4 confirmed that the deceased, who could talk, was brought by A1 Mugisa, A2 Birungi and Kyomuhendo. PW4 also told court that in the company of the accused was Mwaka Wilson (who pleaded guilty), and Malingumu David. PW4 also stated that after police had rejected the deceased as a suspect since he was not in a
25 good physical condition, he left the deceased with the accused persons save Tibamwenda Abdallah whom he did not mention.

PW4 concluded that the following morning, the deceased had passed on. The prosecution closed the case without calling any eye witness who was allegedly on the run and could not be arrested. However, this court wondered why the police, who rejected to detain the

deceased as he was badly off, was not called as a witness. And even the investigating officer was not called to tell this court what investigations revealed.

In my view, that was not proper handling of the prosecution case. Never the less, according to PW4, the deceased was last seen in the company of Mugisa, A1, Birungi A2, then Mwaka Wilson who pleaded guilty. Others were reported to be Malingumu David and Kyomuhendo and Kyomuhendo who are not in the dock. A1, Mugisa Selevano and A2, Birungi Stephen as the last people to have been seen with the deceased had to tell court what happened to the deceased during those last hours before he was sent to meet his creator.

As for A4, Abdallah Tibamwenda, who was in the company of deceased before he was rejected by police was found with no case to answer. A plea of not guilty was entered in respect of A4 and he was acquitted under **Section 73 (1)** of the Trial on Indictment Act on no case to answer.

In regard to the participation of A1 and A2, the prosecution witnesses did not see the two accused beat the deceased, they did not have a clear vision of what happened. The two accused were called after the arrest of the deceased whom they found in a poor state. It was their weak decision not to take him to hospital but took him to police. Mwaka Wilson is the one that was implicated by both accused in their defence.

PW4, the boda boda rider corroborated the defence of the two accused and confirmed that Mwaka Wilson was the one that killed the deceased. Mwaka Wilson pleaded guilty to committing the offence and is already serving his sentence. A1 and A2 are accordingly found not guilty and acquitted and set free unless they are being held on any other lawful charges. I so order.

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25 **WILSON MASALU MUSENE**

JUDGE

5/4/2019