

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CRIMINAL SESSION NO. 0183 OF 2018

(Arising from Pallisa Criminal Case No. 240/2017; CRB 700/2017Kibuku)

UGANDA :: PROSECUTION

VERSUS

A1. MAKERI WILLIAM  
A2. KOBOI JOHN  
A3. MPYANGU JAMES  
A4. NACHAI JANIFFER } :: ACCUSED

RULING

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The accused persons **Makeri William** (A<sub>1</sub>), **Koboi John** (A<sub>2</sub>), **Mpyangu James**(A<sub>3</sub>) and **Nachai Janiffer** (A<sub>4</sub>) were indicted for ***Murder*** contrary to ***Sections 188 and 189 Penal Code Act***. It is alleged that on the 06<sup>th</sup> day of October, 2017 at Budukulu village, Kagumu Sub county in Kibuku District, with malice aforethought, the accused persons unlawfully caused the death of **Kasio Zadok**. The accused persons pleaded not guilty to the offence.
- [2] At the preliminary hearing of the case, the Prosecution adduced and tendered in evidence P. F48B (postmortem report) as an agreed fact under ***Section 66 Trial on Indictment Act*** and it was admitted as **P. Exh. I**. The deceased’s cause of death as established by the postmortem report was sharp force injuries and poisoning. Thereafter, the Prosecution led evidence of 3 witnesses.
- [3] **Tavuga Damiano** (PW<sub>1</sub>) is an elder brother of the deceased **Kasio Zadok** and A<sub>2</sub>. In his evidence, he testified that on the 06<sup>th</sup> day of October, 2017 at around 06:00pm, on his way for prayers at the Church, he left the deceased in the company of A<sub>2</sub> and A<sub>3</sub> while at A<sub>2</sub>’s place where the deceased’s wife A<sub>4</sub> used to operate a bar for malwa. It was while he was in the Church that **Muhammed Libo** (PW<sub>2</sub>), son to the deceased rang him and told him that the deceased had been killed. He

rushed back home and found the body of the deceased having been dumped behind his pit latrine. He attributed the death of the deceased to A<sub>1</sub>, A<sub>2</sub> and A<sub>3</sub> because A<sub>3</sub> who was loving the deceased's wife (A<sub>4</sub>), together with his friends A<sub>1</sub> and A<sub>2</sub> used to intimidate the deceased with threats with the view to scare him off his wife, (A<sub>4</sub>). Upon the death of the deceased, his wife (A<sub>4</sub>) was found stabbed in the belly and it appears that the deceased fought with the accused person over his wife (A<sub>4</sub>) and in the process, A<sub>4</sub> was injured and her husband was killed.

[4] **Libo Muhammed** (PW<sub>2</sub>), son to the deceased confirmed the love relationship between A<sub>3</sub> and his mother (A<sub>4</sub>) and the threats of his uncles (A<sub>1</sub> and A<sub>2</sub>) against the deceased over A<sub>4</sub>. He testified that on the fateful day, while in bed at around 09:30pm, he heard his mother (A<sub>4</sub>) alarming "*they have killed me.*" He came out and also started alarming. That is when the accused persons came and took her away. It is apparent that they took her to the hospital.

[5] **Kirya Latif** (PW<sub>3</sub>), also a brother to the deceased and A<sub>2</sub> also testified on how they found the body of the deceased behind the pit latrine.

[6] The Prosecution closed its case on the evidence of these 3 witnesses. In a case of **Murder**, the Prosecution is enjoined to prove the following ingredients of the offence;

- i. That there was death of the person named in the Indictment.
- i. Death was unlawfully caused.
- ii. Death was caused with malice aforethought.
- iii. The accused persons were responsible for the death of the deceased; **Sections 188 and 189 Penal Code Act.**

[7] It is settled law that where there has been no evidence to prove an essential ingredient in the alleged offence, or where the evidence adduced by Prosecution has been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it, then a prima facie case would not have been established by the evidence to require the accused person to be called upon to offer his defence; **BHATT VS. R [1957] E. A 322.**

[8] In the instant case, none of the 3 Prosecution witnesses pointed a finger at any of the accused persons as being responsible for the

death of the deceased. The accused persons are merely being suspected because of an alleged love relationship between A<sub>3</sub> and the deceased's wife (A<sub>4</sub>) for which the accused persons had been intimidating the deceased with threats with the view to scare him off his wife.

[9] Suspicion can never be a basis of a conviction in a criminal case; *UG. VS. WABOMBA & 6 ORS. Mbale H. C. CRIM. SESSION NO. 146/2018*. Whereas evidence of a prior threat or of an announced intention to kill is always admissible evidence against a person accused of murder, its probative value varies greatly and may be very small or even amount to nothing; *WAIHI & ANOR. VS. UGANDA [1968] EA 278 at p. 280*.

[10] In the instant case, it is actually the prior threats against the deceased by the accused persons that are the basis of the suspicion. The Prosecution has not been able to prove an essential ingredient of the offence to wit, that the accused persons are responsible for or participated in the murder of the deceased. As a result, I find the accused persons; A<sub>1</sub>, A<sub>2</sub> and A<sub>3</sub> not guilty of the offence of *Murder* and they are acquitted and discharged accordingly under *Section 73 Trial on Indictment Act*.

Dated at **Mbale** this 10<sup>th</sup> day of **February, 2021**.

Byaruhanga Jesse Ruggyema  
**JUDGE**