

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(INTERNATIONAL CRIMES DIVISION)

CRIMINAL SESSION CASE No. HCT - 00 - ICD - CR - SC - No. 004 OF 2015

UGANDA ::: PROSECUTION

VERSUS

A1: SHEIKH SIRAJE KAWOOYA

A2: SHEIKH MUHAMAD YUNUSU KAMOGA

A3: SHEKH MURTA MUDDE BUKENYA

A4: SHEIKH FAHAD KALUNGI

A5: AMIR KINENE

A6: HAKIM KINENE MUSWASWA

A7: KAKANDE YUSUF alias ABDALLAH

A8: SEKAYANJA ABDUL SALAAM alias KASIMU MULUMBA

A9: SEMATIMBA ABDUL HAMID MUBIRU

A10: HAMUZA KASIRYE

A11: TWAHA SSEKITTO

A12: JJINGO RASHID

A13: MUSA ISSA MUBIRU

A14: IGA GEORGE WILLIAM ::: ACCUSED

(BEFORE: HON. MR. JUSTICE E.K. MUHANGUZI, J; HON. LADY JUSTICE P.N. TUHAISE; J. HON. LADY JUSTICE J.F.B. KIGGUNDU, J.)

JUDGMENT OF THE COURT

Brief background:

The fourteen accused persons, namely: A1: SHEIKH SIRAJE KAWOOYA, A2: SHEIKH MOHAMAD YUNUSU KAMOGA, A3: SHEKH MURTA MUDDE BUKENYA, A4: SHEIKH FAHAD KALUNGI, A5: AMIR KINENE, A6: HAKIM KINENE MUSWASWA, A7: KAKANDE YUSUF alias ABDALLAH, A8: SEKAYANJA ABDUL SALAAM alias KASIMU MULUMBA, A9: SEMATIMBA ABDUL HAMID MUBIRU, A10: HAMUZA KASIRYE, A11: TWAHA SSEKITTO, A12: JJINGO RASHID, A13: MUSA ISSA MUBIRU and A14: IGA GEORGE WILLIAM were, on 17/10/2016, jointly indicted on four counts (one of terrorism, two of murder and one of attempted murder).

In count No. 1, relating to the offence of terrorism, it was alleged in the particulars of the offence that Sheikh Siraje Kawooya, Sheikh Mohamad Kamoga, Sheikh Murta Mudde Bukenya, Sheikh Fahad Kalungi, Amir Kinene, Hakim Kinene Muswaswa, Kakande Yusuf alias Abdallah, Sekayanja Abdulsalam alias Kassim Mulumba Sematimba Abdulhamid Mubiru, Hamza Kasirye, Twaha Sekkito, Jingo Rashid, Musa Issa Mubiru and Iga George William and others still at large, between December 2013 and June 2015 in Kampala and Wakiso Districts, with intent to intimidate the public or a section of the public and for a political, religious, social, or economic aim, indiscriminately and without due regard to the safety of others or property, directly involved themselves or were complicit in the attempted or threatened murder or attack on Ssonko Najib, Bayiga Mustafah, Umar Swadiq, Ibrahim Hassan Kirya, Mahmood Kibaate, Haruna Jemba and Omulangira Kassim Nakibinge who were members in a public or private institution.

In count No. 2, relating to the offence of murder to the prejudice of Sheikh Mustafa Bahiga, it was alleged in the particulars of the offence that Sheikh Siraje Kawooya, Sheikh Muhamad Yunus Kamoga, Sheikh Murta Mudde Bukenya, Sheikh Fahad Kalungi, Amir

Kinene, Hakim Kinene Muswaswa, Kakande Yusuf alias Abdallah, Sekayanja Abdulsalam alias Kassim Mulumba, Sematimba Abdulhamid Mubiru, Hamza Kasirye, Twaha Sekkito, Jingo Rashid, Musa Issa Mubiru, Iga George William and others at large, on the 28th December, 2014 at Bwebajja in the Wakiso District, with malice aforethought unlawfully caused the death of SHEIKH MUSTAFA BAHIGA.

In count No. 3, relating to the offence of murder to the prejudice of Sheikh Hassan Ibrahim Kirya, it was alleged in the particulars of the offence that Sheikh Siraje Kawooya, Sheikh Mohamad Yunus Kamoga, Sheikh Murta Mudde Bukenya, Sheikh Fahad Kalungi, Amir Kinene, Hakim Kinene Muswaswa, Kakande Yusuf alias Abdallah, Sekayanja Abdulsalam Alias Kassim Mulumba, Sematimba Abdulhamid Mubiru, Hamza Kasirye, Twaha Sekkito, Jingo Rashid, Musa Issa Mubiru, Iga George William and others still at large, on the 30th of June 2015, at Bweyogerere Trading Centre in the Wakiso District, with malice aforethought unlawfully caused the death of SHEIKH HASSAN IBRAHIM KIRYA.

In count No. 4, relating to the offence of attempted murder to the prejudice of Sheikh Dr. Haruna Jemba, it was alleged in the particulars of the offence that Sheikh Siraje Kawooya, Sheikh Mohamad Yunus Kamoga, Sheikh Murta Mudde Bukenya, Sheikh Fahad Kalungi, Amir Kinene, Hakim Kinene Muswaswa, Kakande Yusuf Alias Abdallah, Sekayanja Abdulsalam alias Kassim Mulumba, Sematimba Abdulhamid Mubiru, Hamza Kasirye, Twaha Sekkito, Jingo Rashid, Musa Issa Mubiru, Iga George William and others still at large, on the 3rd January 2015, at Wattuba, Matugga in the Wakiso District attempted unlawfully to cause the death of SHEIKH DR. HARUNA JEMBA.

Each count was separately read out and translated from English to Luganda languages for the benefit of the accused. Each accused denied the charge and court accordingly entered on record a plea of not guilty for each accused in respect of each count separately.

Court then interviewed and swore in three assessors to act as assessors during the trial.

Representations and Court Officials:

The Prosecution team from the office of the Director of Public Prosecutions included:

- 1.** Mr. Anguzu Lino, Principal State Attorney;
- 2.** Mr. Thomas Jatiko, Principal State Attorney;
- 3.** Ms. Rachel Bikhole, Principal State Attorney;
- 4.** Ms. Marion Ben- Bella, State Attorney.

Defence teams included:

- 1.** Mr. McDosman Kabega, for Accused Nos. 5 and 6 on private brief;
- 2.** M/s. Fred Muwema, Kagoro Friday Roberts, Twaha Mayanja, Kagoya Allen and Charles Nsubuga for A1, A2, A3, A4, A7, A8, A9, A10, A11, A12, and A13 on private brief;
- 3.** Ms. Namaweje Sylvia Ebitu for A14 on State brief.

Assessors:

- 1.** Ms. Muhairwe Judith
- 2.** Mr. Ddumba Ahmed
- 3.** Mr. Lubega Robert Seguya.

Court Clerks/ Interpreters:

- 1.** Mr. Cornelius Kiyuba
- 2.** Ms Mukhaye Lillian

Mr. Anguzu Lino, Principal State Attorney, for the prosecution informed court and Mr. Muwema Fred, for the defence, confirmed that the prosecution and defence teams had agreed at the pre-trial proceedings on the following facts and issues which they wished to adopt at the trial, namely:

- A.** Agreed Facts
 - 1.** That the late Sheikh Mustafa Bahiga is dead.
 - 2.** That the late Sheikh Mustafa Bahiga died on the 28th December, 2014 while in transit to Kibuli hospital.

- 3.** Post Mortem was done at Mulago Hospital Mortuary on the body of the deceased (Sheikh Mustafa Bahiga).
- 4.** That Sheikh Mustafa Bahiga's death was caused unlawfully with malice aforethought.
- 5.** That Sheikh Hassan Ibrahim Kirya is dead.
- 6.** That Sheikh Hassan Ibrahim Kirya died on the 30th June, 2015.
- 7.** That Sheikh Hassan Ibrahim Kirya's death was caused unlawfully and with malice aforethought.
- 8.** The accused persons were arrested by the police, charged and indicted to High Court for trial.

B. Agreed Issues:

- 1.** On count No. 1 of Terrorism contrary to Section 7 (1) and 2 (b) of the Anti-Terrorism Act, Act No. 14 of 2002:

- a)** Whether there was actual, attempted or threatened murder, maiming or attack on a person or group of persons in a public or private institution.
- b)** Whether the acts in a) above were for purposes of intimidating the public or a section of the public and for a religious, political, social or economic aim.
- c)** Whether the acts in a) above were committed indiscriminately without due regard to the safety of others or property.
- d)** Whether the accused persons participated in the commission of the offence either by direct involvement or complicity.

- 2.** On count No. 2 of murder contrary to Sections 188 and 189 of the Penal Code Act, (Cap. 120):

- a) Whether the accused persons participated in unlawfully causing the death of Sheikh Mustafa Bahiga.

- 3.** On count No. 3 of murder contrary to Section 188 and 189 of the Penal Code Act, (Cap.120):

a) Whether the accused persons participated in unlawfully causing the death of Sheikh Ibrahim Hassan Kirya.

4. On count No. 4 of attempted murder contrary to Section 204 of the Penal Code Act, (Cap.120):

a) Whether there was an intention to cause the death of Sheikh Dr. Haruna Jjemba.

b) Whether that intention was manifested by overt acts.

c) Whether the accused persons participated in the commission of that offence

General Issue:

Whether the accused persons had a common intention to commit any of the above.

THE LAW:

The burden and standard of proof:

In all criminal cases, except a few statutory ones not including the offences now before court, an accused person is presumed innocent until proved or unless he/she pleads guilty. The burden of proving the charge is upon the prosecution throughout the trial to prove every essential ingredient of the offence beyond reasonable doubt and that burden never shifts to the accused. [See:

- 1.** Woolmington vs. D.P.P. [1935] A.C. 462;
- 2.** Miller vs. Minister of Pensions (1947) 2 All E.R. 372 at page 373-374 per Lord Denning;
- 3.** Okethi Okale & Ors. vs. Republic [1965] E.A. 555;
- 4.** Lubogo & Ors. vs. Uganda [1967] E.A. 440;
- 5.** Joseph Kiiza & Ors. vs. Uganda [1978] HCB 279].

THE EVIDENCE:

To prove the four charges in the indictment the prosecution called a total of thirty- six (36) witnesses, several of whom gave very long testimonies. Three of those witnesses, by consent

of prosecution and defence, were allowed to testify under pseudo names. We shall not reproduce verbatim the evidence of each witness in this judgment because of the big number of witnesses and the extensive length of the evidence of many of them. We shall, however, consider all the evidence and weigh it against the law in order to arrive at conclusive findings and holdings in this case. Suffice it, for now, to set out below a list of the witnesses and the gist of the evidence of each of them as follows:

- 1.** Samuel Sasya (PW1), a 49 years old medical clinical officer who examined Mudde Bukenya, Mohamed Kamoga and Kalungi Fahad on 21/01/2015 and issued reports in exhibits P12, P13 and P15.
- 2.** No. 56710 D/C Akankwasa Anthony (PW2), a 30 years old Police Officer, who went with ASP Bwire Susan to Bwebajja Mosque and cordoned off the scene of crime;
- 3.** Kabahinda Elizabeth Sanyu (PW3), a 37 years old Medical Billing Clerk at Namulundu Medical Centre, Bwebajja who heard the deceased say: *“Kamoga is this what you have decided to do? Let me die for my religion.”*
- 4.** Dr. Moses Byaruhanga (PW4), a 42 years old Medical Officer Pathologist, who did Postmortem examination on late Mustapha Bahiga on PF24 dated 29/12/2014 (exhibit P.4) and on late Hassan Kirya on PF24 dated 01/7/2015 (Exhibit P5).
- 5.** Asiku Denis (PW5) a 30 years old Medical Clinical Officer at Mayfair Clinic at Najjanankumbi, Entebbe Road who examined Iga George William alias Hamza on 18/8/2015 on PF24 (Exhibit P6).
- 6.** Mujahiid Mustapha Bahiga (PW6), an 18 years old student of Mbogo College School at Kawempe, son of late Mustapha Bahiga who, on 28/12/2014, was with late Mustapha Bahiga the whole day up to the shooting and heard his father state: *“Kamoga onzise”* in Luganda meaning *“Kamoga you have killed me,”* (See: Police Statement (Exhibit D1)).
- 7.** Dr. Nuwamanya Emmanuel (PW7), a 43 years old Medical Officer, based at Police Headquarters Officer at Nsambya, who examined Sekayanja Abdu Salaam Mulumba Kassim, Sematimba Abdul Hamid Mubiru, Jingo Rashid, Twaha Sekitto, Kakande

Yusuf, Musa Isa Mubiru and Sheikh Siraje Kawooya all on PF24 on 18/01/2015 (See: Exhibits P.7, 8, 9,10, 11 and 13).

8. Serunjogi Wilson (PW8), a 40 years old resident of Kitende, Bwebajja who witnessed 2 men on a motor cycle around 7.00p.m at the Mosque shooting at a Noah car that was parked at the mosque.

9. Madrama Charles (PW9), a 50 years old Medical Officer, who examined Kinene Amir on 22/1/2015 on PF24 dated 21/1/2015 and Kinene Akim Muswaswa on 22/1/2015 [See: PF24 Exhibits P14 and 15].

10. Robinah Kirinya (PW10), a 54 years old Senior Government Analyst in Ballistics, based at the Government Analytical Laboratories at Wandegaya, who authored a report dated 09/01/2015 relating to 6 spent cartridges that were submitted by D/IP Byamugisha Fulgensia in respect of Kajjansi Police CRB 818/2014 to the laboratory for examinations [See: Exhibit P16], another report dated 22/9/2015 in respect of Bweyogerere Police Station CRB 148/2015 and a 3rd report dated 01/10/2015 relating to Kajjansi CRB 818/2014. [See: Exhibits P16, P17 and P18]. She also authored an additional report on 01/10/2015 in respect of Bweyogerere CRB 148/2015 [See: Exhibit P19].

11. Dr. Muwema Emmanuel Natosh (PW11), a 28 years old Medical Officer who, on 28/12/2014 at Namulundu Health Centre IV, attended to a wounded Mustapha Bahiga but referred him to Mulago Hospital. He heard his patient state:

“Bankubye amasasi naye ngenda kufiira diini yange” (Luganda),

“I have been shot but I am going to die for my religion” (English).

12. No.19426 D/Sgt. Birungi Jane Barbara (PW12), a 45 years old police officer attached to Kajjansi Police Station as Division Scenes of Crime Officer (SOCO), who, on 28/12/2014 recovered 6 spent cartridges from the scene at the mosque at Bwebajja in respect of Kajjansi CRB 818/2014 (Exhibits P20, P21 and 22) and made a sketch plan

of the scene (Exhibit P23).

- 13.** No. 22638 Sgt. Obatai John (PW13), a 49 years old Police Officer of Naguru Police Barracks attached at Bweyogerere Police Station as Political Commissar who, on 30/6/2015, picked both Hassan Ibrahim Kirya's body and another body from Bweyogerere at the Kampala/Jinja Road flyover and took them to Mulago Hospital.
- 14.** Afuwa Namugenyi (PW14), a 55 years old market vendor at Bweyogerere Taawo who, on 30/6/2015 was trying to sell fruits to Sheikh Hassan Kirya at about 10.00pm when suddenly there was a lot of gun shots that killed the late Hassan Kirya.
- 15.** Haruna Jemba Abdul Hamid Katungulu (PW15), a 60 years old teacher of Religion and Peace Studies at Makerere University, one of the lead preachers originally at the Nakasero Mosque and Executive Committee Member with Muhamad Yunus Kamoga, late Abdul Hakim Sekimpi, late Kirya, late Bahiga and others numbering to 20. Their organization split into 2 rival groups. On 03/01/2015 his home at Wattuba, Mattuga, Wakiso District was attacked by unknown gun men between 3.30am and 4.00am in the night.
- 16.** No. 40622 D/C Wafana Rogers (PW16), a 32 years old policeman attached to Wandegeya Police Station, who visited the scene at Jokolera village with ASP Buyondo, D/IP Kusimirwa Charles and other police personnel and collected 8 cartridges and drew Sketch Plan (Exhibit P24).
- 17.** No. 39996 D/CPL Lule Moses (PW17), a 33 years old police officer of Natete police Barracks, who together with O/C CID, D/AIP Kusingura Charles, on 03/01/2015 went to the home of Sheikh Haruna Jemba at Wattuba around 10.45am. He, as SOCO, cordoned off and protected the scene recovered 5 empty cartridges, one SMG serial No.48009311 from a policeman, one projectile and took photographs of the exhibits at the home and made an exhibit slip (Exhibit P25). Photographs are exhibit P26, SOCO report is Exhibit P27.

18. D/ASP Kusingura Katsimbura Charles (PW18), a 47 years old Police officer who, on 03/01/2015, went to Wattuba Village at Haji Jemba's residence and instructed PW17 as SOCO of that scene. He took over from PW17 all exhibits at Mattuga Police Station on PF17A and took them to the Government Analytical Laboratory for examination (Exhibit P28).

19. Mubiru Ben (PW19), a 28 years old Health Practitioner of Market Street Medical Clinic who, on 01/7/2015, examined Kenneth Rono on PF3 (Exhibit P.29).

20. Kenneth Rono (PW20), a 33 years old Trailer Turn Boy who, in the night of 30/6/2015, was injured when gunmen shot at the Motor Vehicle he was travelling in near Mukono Police Station and the glasses were shattered and injured his left eye.

21. Semakula Isma (PW21), a 20 years old, chicken Roaster at Bweyogerere Fly over and Trading Centre who, on 30/6/2015, at about 10.00pm was shot in the leg in the midst of heavy gun fire at the fly over.

22. Haji Yasin Kakomo (PW22), a 54 years old trader of Kyazanga and Masaka in Lwengo and Masaka Districts who was part of the Tabliq Sect with the late Mustapha Bahiga and the late Hassan Kirya since 1988 and 1994 respectively and Yunus Kamoga since 1983. He witnessed and attempted to mediate the wrangles involving the said leaders of the Tabliq Sect. that Kamoga told him in reference to late Bahiga's group:

".....I was tired and not going to accept anything that was going to divide Muslims.....even if it meant killing I can kill, those are joking and have never killed but for me even if it is during daylight I can kill".

23. SSP Odong Mark Paul (PW23), a 36 years old police officer who, on 12/01/2015, recorded a statement from the late Sheikh Hassan Kirya on instructions of D/SSP Ogwang Julius, deceased.

24. No. 58831 D/C Mutono Geoffrey (PW24), a 30 years old police officer who, on

30/6/2015 went with a team to Bweyogerere Crime Scene where late Hassan Kirya had been shot, cordoned off the scene, took photographs, recovered bullet casings and projectiles, labeled and packaged them and handed them over to D/C Agwang Winnie, the evidence custodian at the scene.

- 25.** Zeena Mugubil (PW25), a 42 years old resident of Jinja Plot 11/3 Main Street, retail shop operator who, sometime in June 2015, rented out shop premises for 3 months at Ugx. 300,000/= per month and also residential premises at Mafubira 4 miles from Jinja town at Ugx. 150,000/= per month for 4 months (Ugx. 600,000/=) which they paid in advance on top of the shop premises for 3 months at Ugx. 300,000/= per month (Ugx. 900,000). Those tenants were Akim and Amir whom she identified in Court.
- 26.** Semwanga Lutaaya Badru (PW26), a 58 years old employee of UBC as News Anchor and translator/Interpreter from English into Luganda. In June 2016 he translated 2 fliers that had photos of people on them from Luganda into English (Exhibit P35 and P36).
- 27.** D/ASP Muramira Patrick (PW27), a 40 years old Police Officer who, in December 2014 acted as the arresting officer on instructions of SSP Agasirwe Nixon on 29/12/2014 to arrest seven suspects in connection with the killing of Moslem Clerics in Kampala. He arrested them and one of them Amir Kinene allegedly, on 09/01/2015 mentioned his accomplices, who were also subsequently arrested on various dates and from various locations.
- 28.** “A” (pseudonym) (PW28), a 50 years old businessman of Makindye, Kampala who identified A1, A2, A3, A4 A7, A9, A12 and A13 in Court as fellow Muslims he knew for various periods since the 1990s. He knew late Mustapha Bahiga since 1994 till his death in 2014 and Hassan Kirya since 1994 till death in 2015.
- 29.** “B” (Pseudonym) (PW29), a 30 years old businessman of Kibuye, Makindye Kampala who towards end of 2011 together with several of the accused and others numbering to 40 or more attended several meetings at Sheikh Kawooya’s home along

Gayaza road with the objectives of changing the leadership of this organization “*Jamuhiyata Daawa Asalafiya*”. He stated that Sheikh Kawooya said:

- 1.** “Sheikh Bahiga is like a snake in the saucepan and if you didn’t kill it you cannot eat.”
- 2.** “You creatures, you have forgotten that we are the ones who hold your lives, should we release these young ones?”

Further that Kawoya told him on 25/4/2012:

“Those are just talking, for us we have guns here.”

“Those people should not joke with us.”

- 30.** “C” (Pseudonym) (PW30), a 34 years old businessman resident of Nansana, near Kawempe Division who stated that he was acquainted with the leadership of the Moslem sect at the William Street Mosque since 2003 onwards. He knew about the disagreements and breakup leading to division into two groups led by a) Kamoga and b) Jemba in 2011. He was on Kamoga’s side and mobilized with Murta Bukonya to protect Kamoga’s leadership against any attempt to take over leadership from Kamoga.

Following the shooting dead of Sheikh Abdul Karim Sentamu at William Street Mosque Kamoga stated at a meeting:

“What I told -----would stop us from reaching our target has just started happening.”

Kamoga also stated: “That only four people were remaining hindering our way, namely:

- 1.** Mustapha Bahiga
- 2.** Hassan Ibrahim Kirya
- 3.** Mohammed Kiggundu, a Major in UPDF.
- 4.** Umar Sudik Ndaula, Muhammed Kibaate, Haji Jamil Kiddu, and others to be identified later)”.

Further that in the year 2014 at a meeting at Sheikh Kawooya's residence at Gayaza Road, attended by: Murta Bukonya, Fahad Kalungi, Hamidu Mbaziira, Sheikh Kawooya and others.....

31. D/AIP Ntende Godfrey (PW31), a 35 years old Police Officer attached to Counter-Terrorism and Intelligence Investigation.

On 28/7/2015 he arrested Hamza Jafari Kasirye at his home at Ddegeya, Mbirizi in Lwengo District for the reason that Kasirye used his phone no.0703-427-176 to send threatening messages to Najib Ssonko. He conducted a search, recovered some exhibits and made a search certificate.

32. D/Sgt. Kamuntu Herbert (PW32), a 33 years old Police Officer who, on 09/01/2015, arrested Sematimba Abdul Hamid from Owino Market and took him to CPS, Kampala where he handed him over to SSP Ogweng.

33. D/SSP Kanalo Stephen (PW33), a 59 years old police officer who, on 29/01/2016, arrested Isa Musa Mubiru from Entebbe International Airport, told him the reason for arrest and escorted him to Kireka SID where he handed him to the Director, CID Musana who instructed him to take him to Nalufenya police station.

34. Kabera Francis (PW34), a 38 years old Security Manager, Airtel Uganda Ltd who, on 02/02/2016 issued a call Data Record (CDR) document in respect of No. 256 753 742 181 of 4 pages (Exhibit P37).

35. D/AIP Mpamizo Kanyomozi (PW35), a 48 years old Police Officer who, on 8/01/2015, was instructed to join the team of investigators of the murders of Muslim Clerics. On 11/01/2015 Amir Kinene, a suspect, led that team to his rented house at Mafubira in Jinja where 2 others, Muswaswa and Muzafari were found and arrested. A search was conducted at the house and a certificate was made (Exhibit P38). On 12/08/2015 he went to CMI Headquarters at Mbuya and re-arrested Iga George William and made a statement dated 15/3/2015 (exhibit D7).

36. D/IP Byamugisha Fulgence (PW36), a 44 years Police Officer who, on 31/12/2014 collected a Post Mortem Report, relating to death of Sheikh Mustapha Bahiga, from Mulago Hospital. He interviewed Sheikh Bahiga's family members, various witnesses, including the Sheikh's 2nd widow, the sister Mbabazi Zahuya who gave him a flier containing names of Sheikh Kibaate, Sheikh Kirya, etc. While searching the home of Abdul Kassim Sekayanja, 3 people travelling in a Motor Vehicle UAN 460T Toyota Ipsum, Siraji Kawooya, Sekito Twaha and Rashid Jingo, confronted them as brothers to Abdul Sekayanja and were arrested and detained at Katwe police station on 06/01/2015. He made a statement dated 29/02/2016 (Exhibit D8).

At the close of the evidence for the prosecution court ruled that prosecution had established a prima facie case against the accused on all four counts of the indictment and therefore informed the accused of the options available to them under the law relating to their defence. In turn, the accused persons elected to exercise their constitutional right to not offer any defence.

In the circumstances, court had to rely entirely on prosecution evidence to decide all issues in this case.

REVIEW OF THE EVIDENCE:

The offences in counts Nos. 2, 3 and 4 are components of the offence in count No.1 of the indictment under consideration in this case. For this reason, we deemed it logical and expedient to resolve, firstly count No. 2, secondly No. 3, thirdly count No.4 and lastly count No. 1.

COUNT NO. 2: Murder contrary to sections 188 and 189 of the Penal Code Act, (Cap. 120) in relation to the late Sheikh Mustafa Bahiga.

b) The offence of Murder, contrary to sections 188 and 189 of the Penal Code Act, (Cap. 120), which is the subject of counts Nos. 2 and 3 of the indictment has four essential ingredients all of which the prosecution has to prove beyond reasonable doubt. Even when the defence does not contest or concedes to any one or more of the above ingredients as

having been sufficiently proved the court has the duty to evaluate the evidence and make a finding that such ingredient has or has not been so proved (Mawanda Edward Vs. Uganda, SC. Crim. Appeal No. 4/1999, unreported).

According to Section 188 of the Penal Code Act, (Cap.120):

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission commits murder. ”

Therefore, the four ingredients of the offence of murder, as specified in the case of Uganda Vs Kassim Obura [1981] HCB 9 are, namely:

- 1.** Death of the deceased named in the indictment;
- 2.** Death having been caused unlawfully (Gusambizi s/o Wesonga Vs. R. **(1948)** 15 EACA 65);
- 3.** Malice aforethought having prompted the death (R. Vs. Tubere [1945] 12 EACA 63);
- 4.** Participation of the accused (Bogere Moses & Anor. Vs. Uganda, SC. Crim. Appeal No. 1/1997, ISCD (CRIM) 1996-2000)

On this count, the prosecution relied, firstly, on the agreed facts above, namely;

- 1.** That the late Sheikh Mustafa Bahiga is dead.
- 2.** That the late Sheikh Mustafa Bahiga died on the 28th December, 2014 while in transit to Kibuli Hospital;
- 3.** Post mortem was done at Mulago Hospital Mortuary on the body of the deceased (Sheikh Mustafa Bahiga); and
- 4.** That Sheikh Mustafa Bahiga’s death was caused unlawfully with malice aforethought.

Secondly, prosecution relied on the evidence of: Mujahid Mustafa Bahiga (PW6) who witnessed the shooting of the deceased at the mosque at Bwebajja; Dr. Muwema Emmanuel Natosh (PW11) Who Attended to the wounded Mustafa Bahiga at Namulundu Health Centre IV on the 28/12/2014 and also referred him to Mulago Hospital but heard the patient

state:

“Bankubye amasasi naye ngenda kufiira ediini yange” (Luganda) meaning:

“I have been shot but I am going to die for my religion”;

Kabahinda Elizabeth Sanyu (PW3) a medical billing clerk at Namulundu Medical Centre, Bwebajja, who testified that she heard the deceased state:

“Kamoga, is this what you have decided to do? Let me die for my religion” and Dr. Moses Byaruhanga (PW4), a Medical Officer and Pathologist who, on 29/12/2014 performed a post mortem examination on the body of the late Mustafa Bahiga and issued a report (Exhibit P5) dated 29/12/2014. He found gunshot wounds on the chest, lip, waist, hand, rib, right lung, liver, diaphragm, colon and certified cause of death as gunshot injuries and described them as “close gunshot injuries”.

On the basis of the above evidence we are satisfied and find and hold that the prosecution proved beyond reasonable doubt the first three essential ingredients of the offence of murder, namely:

- 1.** That Sheikh Mustafa Bahiga died (Exhibit P5);
- 2.** That the death of Sheikh Mustafa Bahiga was unlawfully caused because it was neither accidental nor lawfully authorized, such as in execution of a death sentence (Gusambizi s/o Wesonga V. R supra);
- 3.** That the shooting at close range and injuring the chest and vital internal organs such as the Lung, liver, colon and diaphragm was definitely actuated by malice aforethought (R. vs. Tubere (1945) 12 EACA 68, supra).

However, we are satisfied and find and hold that no single prosecution witness identified either the assailants or recovered the killer weapon at the time and at the scene of the crime. Consequently, the prosecution did not place any of the accused persons at the scene or time of the crime (Bogere Moses & Anor. vs Uganda, SC. Crim. App. No. 1/1997, supra).

Instead, other evidence on record shows that two un-identified assailants were seen at the scene at the time of the shooting and immediately after the shooting they jumped on a motor

cycle and rode away. The assailants were never arrested and the killer gun and the motor cycle were never recovered. If and how any of the fourteen accused participated in causing the death of Mustafa Bahiga appears to us not clear.

Consequently, substantial doubt was cast in the prosecution case, particularly regarding the fourth essential ingredient of participation of any of the accused persons in commission of the offence in count No.2 of the indictment.

Nevertheless, the prosecution relied exclusively on circumstantial evidence to prove the fourth essential ingredient in count No. 2, namely: participation of the accused in commission of the offence, which we shall shortly revert to as we review the evidence relating to counts Nos. 3 and 4.

COUNT NO. 3: Murder of Sheikh Hassan Ibrahim Kirya contrary to Sections 188 and 189 of the Penal Code Act, (Cap.120).

Regarding the murder of the late Sheikh Hassan Ibrahim Kirya, prosecution relied, firstly, on other agreed facts also earlier outlined above, namely:

- 1.** That Sheikh Hassan Ibrahim Kirya is dead.
- 2.** That Sheikh Hassan Ibrahim Kirya died on the 30th June 2015;
- 3.** That Sheikh Hassan Ibrahim Kirya's death was caused unlawfully and with malice aforethought.
- 4.** The accused persons were arrested by police, charged and indicted to High Court for trial in respect of the deaths of both Sheikhs Bahiga and Kirya.

In addition, prosecution also adduced evidence of Afuwa Namugenyi (PW14), a 55 years old Market Vendor of Bweyogerere Taawo, who on 30/6/2015, witnessed a lot of gunshots that killed the late Sheikh Hassan Kirya ; No. 22638 sgt. Obatai John (PW13), a 39 years old Police Officer who picked the body of the late Hassan Ibrahim Kirya and another one from Bweyogerere at Kampala/Jinja Road fly-over and took them to Mulago Hospital as well as Dr. Moses Byaruhanga (PW4), a Medical Officer and Pathologist who performed a Post-Mortem examination on the body of the late Hassan Ibrahim Kirya on

01/7/2015 and issued a report (Exhibit P5) dated 01/07/2015. In that report the pathologist showed the followings findings:

- 1.** Gunshot wounds on the back, anterior chest, thigh, right buttock, waist, left pectoral muscles, ribs, vertebral column, thoracic aorta, heart, roots of all the great vessels of the heart, left diaphragm and stomach;
- 2.** Fractured lateral “barder” of T.12, Hemorrhagic froth in the airway, pale abdominal organs, heamatoma in the muscles of the right thigh with lacerated femoral blood vessels.

He certified the cause of death to be multiple gunshot injuries.

Upon careful consideration of the above evidence we are satisfied and we find and hold that the prosecution proved beyond reasonable doubt the first three essential ingredients of murder, namely:

- 1.** The death of Sheikh Hassan Ibrahim Kirya on 30/6/2015 (Exhibit P5);
- 2.** That Sheikh Hassan Ibrahim Kirya’s death was caused unlawfully as his shooting was neither accidental nor authorized by law, such as in execution of a death sentence imposed by a court of law (Gusambizi s/o Wesonga, supra);
- 3.** The multiple gunshot wounds on the chest and other parts of the body that injured vital organs of the body indicated malice aforethought on the part of the assailants (R vs. Tubere, supra).

However, as the assailants and the killer guns were neither identified nor recovered at the time and scene of the crime by any of the prosecution witnesses, we were unable to find any direct evidence placing any of the accused persons at the time and scene of the crime (Bogere Moses & Anor. Vs. Uganda, supra).

The circumstances surrounding this death on 30/6/2015 were similar to those surrounding the death of Sheikh Mustafa Bahiga on 28/12/2014 in that prosecution witnesses only saw and heard un-identified assailants shooting their victims and immediately after the shooting the assailants rode away on motor cycles. If and how any of the fourteen accused

participated in the murder of Hassan Ibrahim Kirya remained unclear to us.

That, in our view, is a source of substantial doubt in the prosecution case on count No. 3 of the indictment.

COUNT NO. 4: Attempted Murder Contrary to Sections 204 (a) of the Penal Code Act in relation to Dr. Haruna Jjemba.

In relation to this count of the indictment, the prosecution had the burden of proving beyond reasonable doubt three essential Ingredients, namely:

- 1.** That there was established an intention to cause the death of Dr. Haruna Jjemba;
- 2.** That the intention was manifested in overt acts;
- 3.** That the accused persons directly or indirectly participated in the commission of that offence.

That burden remained on the prosecution and did not shift to the accused throughout the trial.

To discharge that burden, especially in relation to the fourth essential ingredient regarding participation of the accused in the commission of the offence, the prosecution relied, exclusively, on circumstantial evidence.

In a case depending exclusively upon circumstantial evidence, the court must find, before deciding on conviction that inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilt, as stated in the case of R vs. Kipkering Arap Koske & Anor.

(1949)¹⁶ EAC135. That statement was adopted with approval in Simon Musoke vs. R [1958] E.A. 715. The same statement was reaffirmed by the Supreme Court of Uganda in the case of Mureeba Janet & Others vs. Uganda, SCCA No. 13 of 2003.

While dealing with circumstantial evidence the prosecution made extensive submissions detailing various specific pieces of evidence relating to dying declarations, grudges between the accused and the victims, Previous Threats, Fliers, Planning Meetings, Peculiar

circumstances of the killings, Telephone records, and Conduct of Accused Persons. The effort of the prosecution was aiming at proving participation of the accused persons in the commission of the offences in the indictment under consideration. We shall endeavour to analyse that evidence now as well as when dealing with count no.1 relating to terrorism.

1. Dying Declarations:

We have carefully considered the aspect of dying declarations with particular reference to the evidence of PW4, PW6 and PW11 concerning the alleged words spoken by the late Mustafa Bahiga in his dying moments. More detail on this evidence is stated in the section concerning count no.1 relating terrorism. Suffice it to state now that we find and hold that there were inconsistencies and contradictions in that evidence. There was no corroborating evidence to support it also. For that reason we are unable to accept that evidence as a dying declaration.

We also carefully considered the evidence of PW23 and exhibit P30. The evidence of PW23 was simply that he recorded a statement from Hassan Ibrahim Kirya. The contents of that statement (P30) were not his evidence and the maker of that statement was not able to testify and the veracity of the contents of that exhibit could not be tested through cross examination. Therefore, we find and hold that exhibit P30 did not qualify as dying a declaration and accordingly reject it.

2. Grudges between the accused and the victims:

Prosecution adduced evidence of PW15, PW22, PW28, PW29 and PW30 who testified to the effect that A1, A2, A3 and others were having serious wrangles with Ssonko Najib, Bahiga Mustapha, Umar Swiq, Ibrahim Hassan Kirya, Mahamood Kibaate, Haruna Jemba and Omulangira Nakibinge from as far back as 2012 and these escalated between October and December 2014. Mustapha Bahiga and Hassan Ibrahim Kirya appeared to be the primary targets of A1, A2, and A3 in this disagreement. This suggests motive on the part of the accused. Motive alone, in our view, may not prove anything.

3. Previous Threats:

Prosecution adduced evidence of PW15, PW22, PW28, PW29 and PW30 who testified about the threats issued by A2 to the victims and deceased persons. PW15 testified that at the height of the wrangles, an anonymous person called him from William Street and told him that his neck was ripe for slaughtering. He also told the court that at a meeting organized by Hajji Moses Kigongo, Mustapha Bahiga informed the meeting that he was no longer willing to work with A2 because *this man is planning to kill us*'. The statements made by A2 to PW22 to the effect that Mustapha Bahiga, Hassan Kirya, Mohammed Kiggunu and Swadiq Ndaula were the strong ones on the other side and the threat that he would kill them is on record. A2 told PW22:

even if it means killing them I will kill them those men are joking they have never killed but for me even if it is in broad day light I can kill".

A2 said this while thumping his chest. PW29 testified that A2 uttered several threats to the deceased persons. Among other things A2 said:

'Kirya is joking he can't survive.....those people are joking... we have guns'.

4. Fliers:

Prosecution tendered evidence regarding the printing and distribution of fliers with defamatory messages against the victims and the association of the fliers to A1, A2, A3, A4, A7, A11 and A12. This was in the testimony of PW27, PW28, PW30 and PW36. PW30 particularly testified that it was agreed at one of their meetings at A1's home that the names of the six victims should be tarnished in all ways. A team was appointed to achieve this. PW30 further testified that A2 was the invisible hand behind those fliers. Counsel for the prosecution submitted that for the accused persons to take the time and resources to print these fliers and distribute them at the mosques means only one thing: that they were not only determined to and capable of implementing their plans and threats to eliminate the victims, they had in fact started to implement their plans.

5. Planning Meetings:

Prosecution adduced evidence of PW29 and PW30 regarding meetings organized at the homes of A1, A2, A3 and A4 to discuss the elimination of the victims. The suggestion to kill the deceased, the procurement of young men to train in handling guns, the attempt to find shooters, the recruitment of former rebels, the promise to eliminate the deceased using guns, procurement of motorcycles and riders to execute the mission to kill the deceased persons were all hatched and discussed at these meetings. It was at one of these meetings that A2 stated that it was now time for *'bullet to the flesh'* for the victims. PW30 further testified about the prominent role played by A.8 in planning the killings. He was in charge of training in Nakasero mosque and identifying the people to execute the mission.

There is further evidence of PW30 regarding a conversation he had with A2, A3 and A8 at A2's office at Nakasero Mosque a few days before the murder of Mustapha Bahiga. PW30 testified that at this meeting A2, A3 and A8 warned him not to be shocked if something happened that weekend. Mustapha Bahiga was shot dead that Sunday. Prosecution submitted that this was further evidence that the accused persons were not only aware of what happened; they were the ones who planned it.

6. Peculiar circumstances of the Murders:

Prosecution adduced evidence on the mode of killings. The mode of execution of killings is further corroboration of the dying declaration. PW30 testified that in their various planning meetings, the accused persons agreed to eliminate the victims by *'bullet to flesh'*.

Further, PW22 testified that A2 had threatened to kill the victims. The pictures and names of Hassan Ibrahim Kirya, Mustapha Bahiga and PW15 were all on the three fliers that were circulated and tendered as P41, P42 and P43. All 3 were attacked using guns. The assailants at Bwebajja Mosque and Bweyogerere were both riding motorcycles and fled on the same. The evidence of PW10, the senior Government Ballistics Analyst which comprised in P18 and P19 is to the effect that the firearm used in the attack on Hassan Ibrahim Kirya and Musapha Bahiga was the same type. These attacks apparently aimed to kill each of the

victims and not for any other purpose. Prosecution also submitted that the assailants did not rob anything from their victims and it is clear from the evidence that their sole purpose was to kill their victims. Further that there was no other evidence to indicate to court that all the deceased persons and other victims had any other serious conflict with any other person other than the group led by A1 and A2 at the time of these attacks.

In our view this piece of evidence does not seem to advance any further proof of participation of any of the accused person in the death of Mustapha Bahiga or Hassan Kirya or the attack at Haruna Jjemba's home.

7. Telephone records:

Prosecution adduced evidence of telephone records tendered in court further connects the accused persons to the offence. PW30 testified that at their meetings, as they finalized plans to eliminate the victims, A8 was desperately looking for a one Amir Kinene [A5] and stated that Amir Kinene was the only one missing for the mission to succeed and this was immediately before the death of Bahiga Mustapha.

PW35 testified that upon arrest, A5 led him to search his father's house at Ketu Farao zone in Kawempe Division and among others he recovered sim pack for telephone number 0753742181. This was recorded on the search certificate tendered as P38. PW36 testified that the late SSP Ogweng Julius handed over to him P45 a Nokia phone model RM9640 as property recovered from A5 upon arrest. The serial number IMEI 351723066087935 of P45 shows that telephone number 0753742181 was the very number used in this phone on the 28/12/2014 at 8pm. PW34 testified that the telephone number in question is registered with Airtel network in the name of Kinene Tebukoza. He further explained that the last digit of an IMEI number is always recorded on a Call Data Recovered [CDR] as 0 because it is inconsequential as the first 14 are sufficient to uniquely identify a handset. The CDR for this telephone number 0753742181 tendered as P.37 shows the telephone number was operating in an area scientifically located at the scene of murder of Bahiga Mustapha on the 28th December 2014 between 7pm and 8pm, at approximate time when Mustapha Bahiga was

shot. It shows that telephone number 0753742181 was making communication using base masts of Namasuba, Najjanakumbi and Ndeeba, places geographically proximate to the scene of murder. It further shows that immediately after the murder, the holder of the number left towards Jinja District as subsequent calls were recorded as using base masts of Kireka, Ryder Hotel and Bulyasi; an indication the holder of the number was moving in that direction.

This should be considered in light of evidence of PW25 who testified that A5 and A6 rented a house from her located at Mafubira Village in Jinja on the 27/12/2014 just one day before the murder of Mustapha Bahiga. It was from this house that A6 was arrested after A5 identified him to PW27 as his accomplice and led PW27 and team to arrest them in Jinja.

In the case of Akbar Hussein Godi v Uganda Cr. App. No.03 of 2013 the Supreme Court observed that evidence of telephone print outs is significant even where the exact messages sent or words are not captured. The print outs were instrumental on the conviction of the appellant. In Uganda v Kato Kajubi, Cr. App.

No. 39 of 2010 (CA), one of the pieces of evidence considered as corroboration was evidence of telephone communications. This evidence was used to connect the accused to the scene of crime.

Learned counsel for the prosecution argued that the above circumstantial evidence connects A5 and A6 to the offences indicted. Further, that it can't be by pure coincidence that A8 was looking for A5 immediately before the murder of Mustapha Bahiga, and A5 is placed at the scene of crime at exactly the relevant time when the offence was committed, and immediately after the offence he is shown moving away from the scene of crime towards Jinja. And there is evidence that he only secured a residence in Jinja a day before the offence was committed. Learned counsel submitted that this was in preparation for the offence.

The inevitable question, at this point is this, who is Kinene Tebukoza and is that person the same as Amir Kinene (A5) or Hakim Kinene Muswaswa (A6). That question was not clarified, and as such, casts doubt about the submissions relating to any participation of A5

and A6 in commission of the offences in counts Nos. 2,

3, or 4 of the indictment.

8. Conduct of Accused Persons.

Prosecution made reference to the conduct of A2, A6 and A11. PW30 testified that after the death of Bahiga Mustapha, when PW30 confronted A2 and congratulated him for succeeding in the murder, A2 retorted that he knew of this. PW36 on the other hand called A11 and summoned him to come to police. A11 instead switched off all his known telephone numbers and fled to the village in Lwengo District where he was arrested from by PW31.

PW27 testified to court about the circumstances under which they came to arrest A6. He told court that A6 refused to open the door despite repeated calls for him to do so by A5 who was his brother and the witness who clearly introduced his team as police officers. The conduct of A6 upon being requested to open the door by A5 and PW27 is clear evidence of conduct of a guilty mind. Finally according to prosecution, this was conduct inconsistent with the innocence of the accused persons.

We do not find much significance in the above conduct of the accused to link them to participation in commission of the offence they are indicted for.

9. Contradictions/ inconsistencies:

In criminal trials, inconsistencies in evidence often arise. They may be minor or major. Minor ones unless they point to deliberate untruthfulness can be ignored or overlooked. Major ones are those considered to be going to the root of the matter and pointing to deliberate untruthfulness. They may result in evidence being rejected. This is the reason why we rejected the evidence of dying declarations.

Haruna Jemba Abdul Hamid Katungulu (PW15), a 60 years old teacher of Religion and Peace Studies at Makerere University, testified that he was one of the lead preachers originally at the Nakasero Mosque and member of the Executive Committee together with Muhamad Yunus Kamoga, late Abdul Hakim Sekimpi, late Kirya, late Bahiga and others numbering up to 20. That their organization originally known as the “*Tabliq Movement*”

later became known as “*Jamia Daawa Salafiya*” and again broke up into two (2) rival groups.

One group was headed by Kirya and included Bahiga, Najib Ssonko, Umar Sudiq Ndaula, Haruna Jemba and other executive committee members. The other group was head by Kamoga, and included his brother Murtaba Bukenya and others newly recruited. That there was rivalry between the two groups. He saw three (3) leaflets on which individuals were listed as being dangerous to the community (Islam). One list had names of the late Bahiga, the late Kirya and Najib Ssonko.

Another list had the names of six (6) persons, namely:

- 1.** Bahiga
- 2.** Kirya
- 3.** Mahamood Kibaate
- 4.** Najib Ssonko
- 5.** Umar Sudiq Ndaula
- 6.** Haruna Jemba

The third list had the names of six (6) persons after the death of Bahiga, namely:-

1. Kirya
2. Mahamood Kibaate
3. Najib Ssonko
4. Umar Sudiq Ndaula
5. Haruna Jemba
6. Kassim Nakibinge.

That he saw the first list around the middle of 2014, the second list after his nomination as leader on 27/11/2014 and the third (3rd)one after the death of Bahiga. That he did not know the origin of the fliers (lists). That against his name, on the 3rd list/flier, were written the words to the effect that the Amir of the disabled stole wealth and money supposed to be gifts

for Koramic competition in 2004 and destroyed the school at Kabigi and other words to the effect that *“I built my own school at Wattuba”*. Further that he received a telephone call saying his neck was ripe for cutting but in cross-examination by defense counsel this witness stated that he did not know or identify who attacked his home at Mattuga or who sent him a telephone call saying his neck was ripe for cutting or if any of the accused persons participated in the killings of Bahiga, Kirya or any other Muslim Sheikh or in the attack at his home at Mattuga on 30/01/2015;

No. 40622 D/cpl. Wafana Rogers (PW16), No. 39996 D/cpl. Lule Moses (PW17) as well as D/ASP Kusingura Katsimbura Charles (PW.18) all visited the scene at the residence of PW15 at Wattuba Village. PW16 collected eight (8) cartridges from the scene and drew a Sketch Plan (Exhibit P24). PW17, as Scene of Crime Officer (SOCO) cordoned off and protected the scene, recovered five (5) empty cartridges, one SMG (gun) serial No. 48009311 from the policeman who was guarding that residence, one projectile, made an exhibit slip (Exhibit P25), (Exhibit P26) and made a SOCO Report (Exhibit P27). PW18 took over the exhibits from PW17 at the scene and delivered them at Mattuga Police Station on PF17A and later took them to the Government Analytical Laboratory for examination (Exhibit P28);

Haji Yasin Kakomo (PW22), a 54 years old trader of Kyazanga and Masaka testified that he was part of the Tabliq Sect. That following divisions into two groups and verbal and other exchanges in mosques and elsewhere I attempted to mediate between the group headed by A2 and the one headed by the late Mustapha Bahiga. I held meetings with A2 who was the Amir of the mosque at that time. At one such a meeting, he told me he was tired and was not going to accept anything that was going to divide the Muslims and that even if it meant killing he would kill. And that *“those were joking and have never killed but for me even if it’s during daylight, I can kill.”* He said that while thumbing his chest. On another occasion A2 told me the difficult people who wanted to remove him from leadership included Hassan Kirya, Mustapha Bahiga, Ahmad Kiggundu and Sudiq Ndawula.

That while attending a seminar at Masaka in November 2014, A3 read out the names of

people who were no longer wanted in their group namely 1. Mustapha Bahiga, 2. Sudiq Ndawula, 3. Muhamood Kibaate, 4. Haruna Jjemba, 5. Hasan Kirya and Najib Ssonko. There was a list which he distributed to all those present at the seminar that list had the names and pictures of the six people named above. That A2 was present when that list was being distributed by A3. That out of the four people, A1 had mentioned to me as the ones who wanted A2 to be removed from leadership only one of them namely Sudiq Ndawula is still alive, Muhamad Kiggundu having died about two weeks prior to this witness' testimony in this case. In cross-examination, this witness said that A3 did not say that any of the six people should be killed that they should not be allowed in our mosques. Further when asked to repeat what A2 had told the witness, he stated in *"even if it means killing or shading blood, I can do it because I have ever done it."* That the statement above was made by A1 at his office at Nakasero in the presence of only this witness and in reference to the four people named by A1 earlier. The witness stated that A2 never threatened him and never sent any messages to him. Finally he stated that he had no evidence that any of the accused persons were never involved in acts of terrorism.

PW23 (SSP Odongo Mark Paul), a 36 years old police officer attached to SIU at Kireka testified that on 12th January, 2015 he recorded a statement from Sheikh Hassan Kirya (PE30) in which the said Sheikh Kirya complained that a threatening (SMS) message had been sent to him from telephone number 0782344324 written in Luganda language from an unknown person. In cross examination, the witness said that the late Kirya refused to divulge more information to him, further the witness found no proof that A2 or any of the other accused persons were behind the murder of Sheikh Kirya and that the late Kirya declined to show the witness the actual text of the (SMS) message.

Witness "A" (a pseudonym) (PW28), testified in relation to threats in examination-in-chief:

"I saw 3 posters starting in 2014 in September/October when Yusuf Kakande was distributing those posters at the entrance of the mosque at Masjid Noor Mosque at William Street. On the posters were names of three (3) of us, first mine, followed by Najib Ssonko, Hassan Kirya and Bahiga Mustafa. It had three photos of people including my photo on top

of the others. At the top was written:

“This is to notify all Muslims of the badness of the people below ...” At the bottom was written:

“The above want the place...Noor closed and they are the ones leading to the arrest of Muslims.Avoid them. ”

In cross- examination he stated:

“The words on this poster are the same as the one I received. The words which threatened my life are on the poster:

“The ones above are the ones who want the closure of the mosque and you should avoid them.”

Further he stated:

“The messages sent to me by Hamuza Kasirye were taken from me by police in my phone and police bought me another phone. ”

Further he stated that:

“I did not know who attacked Jemba and those who killed Kirya, who attacked Sheikh Haruna Jemba but I know who printed the posters, he confessed to me. He is Sulaiman Mubiru and he did so sometime I can’t remember the date.

I have never seen any of the accused at any of the murder scenes of either Bahiga or Kirya. Apart from warning to leave issues of Islam, Kamoga has never threatened me.

I have got some threatening messages.like from Yahaya Mwanje, Kawooya and Murta Bukenya and I wrote to them about them but I have not shown court any such threatening messages”.

Witness “B” (a pseudonym) (PW29), a 30 years old businessman testified about meetings held at A1 ’s residence and elsewhere which among other things resolved to isolate leaders such as Sheikh Bahiga, Sheikh Kirya, Sheikh Major Kiggundu and a campaign to tarnish their names at mosques, beat some and pour acid on others. In cross- examination, he denied anybody ever being assigned to kill either Bahiga or Kirya and he did not know who killed the two. However, he stated that at one such meeting Sheikh Kawooya (A1) said:

“Sheikh Bahiga is like a snake in the saucepan and if you don’t kill it you cannot eat.

You creatures, you have forgotten that we are the ones who hold your lives, should we release these young ones?”

Further that Kamoga (A.2), on 25/4/2012 told him:

“Those are just talking, for us we have guns here. Those people should not joke with us.”

Witness “C” (a pseudonym) (PW30), a 34 year old businessman of Nansana Kampala testified that he knew the late Mustapha Bahiga and the late Hassan Kirya since 2003 and 2004 respectively. That he also knew A2 since 2009 whom he was a very close friend of. That A2 instructed the witness and other fellow youths at Nakasero Mosque to be always prepared so that if any one tried to take power / leadership, they should fight and protect A2’s leadership. A2 was a leader of that mosque and he instructed the witness together with about 100 youths being assisted by Sheikh Murta Bukenya as the group called “lupalusewa” was being trained. A2 together with Sheikh Murta Bukenya, A1 and A2 and several others met in March and April 2012 at Kyengera in someone’s home. In April 2012 Sheikh Abdul Karim Sentamu, whom A2 had said was conniving with others to take away leadership from A2 had been shot dead at William Street Mosque. Following his burial on Saturday, A2 called a meeting and told us

“what I told could stop us from reaching our target has just started happening

“ Later I met A2 with A1 and A3 and A4 who was introduced to us as an addition to our team and was to train us in appropriate aspects of fighting. The training started at the Mosque at Nakasero beginning of 2013. The training was in boxing, kicking and use of sticks in fighting. A2 often addressed us emphasizing discipline and told us our objective was to take over the leadership of this Nation. Further he told us that only a few people remained hindering our way, namely 1. Mustapha Bahiga, a police spy, 2. Hassan Kirya an agent of CMI, 3. Muhamad Kiggundu, a major in UPDF, 4. The others were Umar Sudiq Ndawula, Sheikh Muhamood Kibaate, Hajji Jamiru Kiddu and others to be made known later. That was at a meeting at the home of A1 at Gayaza Road which was attended by A1, A3, A4 and Hamidu Mbazira and many others. After that meeting in which A2 said the year 2014 was dedicated to ways and means of those who were standing in our way, another meeting took place at the home of A3 at Kajjansi. At that meeting, A1 repeated the same message A2 had given us in the earlier meeting and 3 things were agreed upon, namely; 1. To tarnish their names so that people hate them, 2. Whoever we were able to meet, we beat such a person, 3. Whoever we could be able to pour acid on, we could do so. In October 2014, we beat Yahaya Ssegujja at Masjid Noor Mosque at William Street to near death. After that A2 told us that the next thing was to be *"a bullet to the flesh"* and that Abdul Salam Sekayanja, who was introduced to us at that meeting would lead the new phase of *"bullet to the flesh."* In November 2011, A8 told us our objective was to kill the following people. 1. Bahiga Mustapha, 2. Hassan Kirya, 3. Muhamad Kiggundu, 4. Umar Sudiq Ndawula, which we declined to do because those were our prominent teachers for a long time.

This witness rode one motorcycle from Ndeeba and handed it over to A3 at the mosque in November 2014. It was new and unregistered. Finally, this witness stated that he was suspected to be no longer loyal to the group of accused persons and he was isolated.

D/IP Mpamizo Kanyomozi (PW35), a 48 years old Police Officer testified attached to SID at Kireka who on 12th/08/2015 found A14 at SMI headquarters at Mbuya, cautioned him, took him to SID Kireka and detained him there. That upon interrogation, A14 disclosed that he had been recruited in a group that was supposed to follow up Hassan Kirya at his home at

Busabala and kill him. A14 showed the witness a phone with photographs of the home of late Kirya. The witness recovered the phone and handed it over to the store man D/Kawanga. The witness did not take a charge and caution statement from A14 and did not know whether A14 ever made a charge and caution statement at all. Finally this witness in cross-examination stated that he did not find any evidence relating to the murders of Sheikh Bahiga and Sheikh Kirya and that he did not know who killed any of the two.

Intention to cause the death of Dr. Haruna Jjemba

Intention is a mental state that represents a commitment to carry out an action or actions. Intention involves mental activities such as planning and malice aforethought.

The intention to cause death may be inferred from the surrounding circumstances that threaten the life of the victim and once the prosecution shows such a set of circumstances was caused by the voluntary act of the accused persons the burden on the prosecution is discharged.

From the evidence so far on record, we have seen that Haruna Jjemba was allegedly categorised to be among the people said to be opposed to A2's leadership of the Tabliq sect otherwise known as '*Jamia Daawa Salafiya*. Haruna Jjemba's name and photograph was among those people listed on fliers/ posters and described as people who were not wanted in the mosques patronized by A2, A3 and several others. He testified that on 31/01/2015 in the night, his home at

Wattuba, Mattuga in Wakiso District, was attacked by unknown gun men who shot several rounds outside of the house. He belonged to the rival group headed by Mustapha Bahiga, deceased, Hassan Ibrahim Kirya, deceased, and other Muslim Clerics some of whom are either deceased or still living. In cross-examination, he stated that he received a call from someone saying that his neck was ripe for slaughter but he did not know the person who called him. That although he did not know who printed the fliers /posters he believed the fliers were made by A2. That he did not know who killed the deceased persons named in the

indictment or who carried out any acts of terrorism and he did not mention any name of who telephoned him and threatened him and that he did not know who attacked his home on 3rd January, 2015.

Upon consideration of the above evidence we are unable to find proof beyond reasonable doubt that there was intention to cause the death of Dr Haruna Jjemba.

That the intention was manifested in overt acts:

PW15 Dr. Haruna Jjemba testified that someone called him and told him that his neck was ripe for slaughtering. He also testified that his residence was attacked by gunmen who shot bullets at his house in Matugga. Five empty bullet cartridges were recovered from the garden outside the wall fence. PW17 No. 9996 Detective Corporal Lule Moses, PW28 (Witness A), PW29 (Witness B) and PW30 (Witness C) testified that the accused persons had intention to kill the victims. And that this intention was expressed by threats and preaching in mosques. Further that the threats were translated into action through holding meetings chaired by A1 and A2. A2 proceeded to actively plan by a campaign of slander, beating, militia training, identifying gunmen to execute *bullet to flesh* command, buying motorcycles and getting riders.

Upon consideration of the above evidence we find and hold that the prosecution failed to prove beyond reasonable doubt that the intention was manifested in overt acts because with specific regard to attempts to kill Haruna Jjemba we see no beating, any other form of physical assault, attack on his person, pouring of acid or similar acts. The shooting took place outside the house while he was inside the house. No bullets or projectile was recovered from inside the house. None of the assailants entered the house. There appears to have not been any contact whatsoever between Haruna Jjemba and those who attacked his home.

In our view no overt acts were committed in the house where Haruna Jjemba was or on the body of Haruna Jjemba during the night of 3/01/2015.

Whether the accused persons directly or indirectly participated in commission of the offences in count Nos. 2, 3 or 4.

The attackers were not identified by Dr. Haruna Jjemba (PW15) as the attack was at night, in the dark and he never got out of the house. No one saw the assailants as they attacked and showered bullets outside the house. There was an armed police guard outside the house who reported the attack to PW15 early the following morning.

We wish to observe here that, at this point in the evidence, either the investigators or the prosecution team made a significant omission by leaving out the potentially useful evidence of the police guard. That guard is the one who could have seen, possibly identified, counted the number of the assailants, their transport means and any other relevant aspect about the assailants. In absence of that evidence participation of any of the accused in the commission of the offence remains, to us, very doubtful.

Upon careful consideration of all the above circumstantial evidence, we find and hold that the prosecution evidence does not irresistibly show that the accused persons or any of them participated in the deaths of Mustapha Bahiga or Hassan Ibrahim Kirya or the attempted murder of Haruna Jjemba. The prosecution evidence leaves several possibilities to point to other perpetrators of the offences than the accused persons.

Consequently, we find and hold that the prosecution has not proved beyond reasonable doubt that any of the accused participated in the commission of the offence in count No. 4 of the indictment.

COUNT NO.1: Terrorism Contrary to Section 7(1) and 2(b) of the AntiTerrorism Act, 2002.

Essential Ingredients: The Prosecution is under a duty to prove beyond reasonable doubt all the four (4) ingredients, namely:

- 1) Actual, attempted or threatened murder, maiming or attack on a group of persons in a private or public institution;**
- 2) The actual, attempted or threatened murder, maiming or attack on a person or a group of persons in a private or public institution were for purposes of intimidating the public or a section of the public and for a religious, political, social or economic aim;**

3) The actual, attempted or threatened murder, maiming, attack on a person or a group of persons in a private or public institution were committed indiscriminately without due regard to the safety of others or property.

4) The accused persons participated in the commission of the offence either by direct involvement or complicity.

Section 7(1) of the Anti-Terrorism Act 2002 provides that any person who engages in or carries out any act of terrorism commits an offence and shall on conviction be sentenced to death if the offence directly results in the death of any person. In any other case the person shall be liable to suffer death. The acts or omissions that constitute the offence of terrorism are listed in Section 7 (2) (a) - (j) of the Act. In the instant case, under count 1 of the indictment, the acts for which the accused persons have been charged, and which the prosecution must prove beyond reasonable doubt, are contained in Section 7 (2) (b) of Anti-Terrorism Act 2002, namely:

“direct involvement or complicity in the murder, kidnapping, maiming or attack, whether actual, attempted or threatened, on a person or groups of persons, in public or private institutions. ”

Section 7(2) of the Act expressly states that the offence of terrorism is committed when a person carries out “all or any” of the acts enumerated in Section 7 (2) (a) - (j) of the Act. The act or acts of terrorism must have been committed:

“for purposes of influencing the government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property”.

Thus the aspects for consideration are the purpose or purposes for carrying out the acts or acts; the manner in which the act or acts are carried out; and the nature of the act or acts. The essential ingredients of the offence of terrorism under Section 7(2) (b) of the Anti-Terrorism Act have already been highlighted above.

All the fourteen accused persons elected to keep silent when they were put on their defence.

The burden of proof of a criminal offence rests on the prosecution and remains so throughout the trial. The accused persons do not bear the burden of proving their innocence. They are presumed innocent until proven guilty. The duty is therefore on the prosecution to discharge the burden of proof on all the ingredients of the offence of terrorism. It is for this court, therefore, to analyze the prosecution evidence and determine whether on its own, that evidence proves beyond reasonable doubt, all the four ingredients of the offence of terrorism. This will be discussed along the issues that were agreed on.

Issue (i): whether there was actual, attempted or threatened murder, maiming or attack on a person or a group of persons in a public or private institution.

On actual murder, it is already a finding of this court as reflected in counts 2 and 3 that the evidence adduced by the prosecution does not establish beyond reasonable doubt that the accused persons or any of them participated in the murder of Mustapha Bahiga or Hassan Ibrahim Kirya. Actual murder as an act of terrorism has therefore not been proved against the accused persons by the prosecution beyond reasonable doubt.

On attempted murder, it is a finding of this court under count 4 that attempted murder as an act of terrorism was not proved by the prosecution against all the accused beyond reasonable doubt.

On threatened murder, the prosecution relied on the evidence of PW15 (Haruna Jjemba); PW22 (Yasin Kakomo); PW28 (Witness A) PW29 (Witness B), PW30 (Witness C); and PW36 (D/Inspector Byamugisha Fulgensi).

PW15 (Jjemba) testified that he received a call from someone telling him that “*your neck is ripe for slaughtering*”. PW28 (Witness A) testified that he received pictures of graves on his phone through Whatsapp. One grave was with a body and another was empty. After the death of Bahiga he received pictures of a magazine and a gun AK47. The pictures were accompanied with words that “*the other one is finished, this one is yours*.” The other evidence is threatening messages traced to be that of A9 (Sematimba Abdulhamid Mubiru) who allegedly confirmed that he sent messages and that the number 0782344324 which sent the message was his. This evidence is supported by the statement of Ibrahim Hassan Kirya

(Exhibit P30), which was recorded by PW23 (SSP Odong Mark Paul) before Kirya died.

The prosecution however did not tender in evidence any recording or print out of the calls where PW15 (Haruna Jjemba) was told on phone that his neck was ripe for slaughtering, nor was the telephone set tendered as an exhibit. Similarly, the handset or phone of PW28 (Witness A) that received the Whatsapp messages was not tendered in evidence, neither were the offending messages tendered in evidence in any form, that is, soft copy or hard copy. In the same manner the phone and the offending text message against Kirya allegedly sent by A9 (Sematimba AbdulhamidMubiru) were not tendered in evidence by the prosecution.

Witness A stated during cross examination that the threatening death messages sent to him were from A10 (Hamuza Kasirye). The evidence of PW36 as supported by exhibit P30 is that the threatening messages to Ibrahim Kirya were sent by A9 (Sematimba Abdulhamid Mubiru) who is supposed to have confirmed so.

A9 and A10 elected to keep quiet when called upon to make their defence. This is their constitutional right. It does not remove the burden of proof on the part of the prosecution to prove their guilt beyond reasonable doubt. The burden of proof at all times remains with the prosecution to prove the guilt of the accused. Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist, that is the burden of proof lies on that person. [Also See: *Woolmington v. DPP; Okethi Okale & Others v. Republic; Lubogo & Others v. Uganda; Joseph Kiiza & Others v. Uganda, supra*].

Thus, the burden to prove threatened murder of Hassan Kirya, of PW15 (Haruna Jjemba) and of PW28 (Witness A) through calls or text messages or pictures sent to their respective mobile telephones was, in our opinion, not discharged by the prosecution to the required standard in criminal matters.

We agree with the Assessors that there was reasonable doubt as to whether the calls or messages or pictures were actually sent to PW15 and PW28 on their respective mobile

phones. We make the same finding regarding the threatening messages sent to PW15, PW28 and Hassan Kirya.

On threatened murder, however, there is other evidence that threats of death were directly communicated to some witnesses by Sheikh Yunus Kamoga (A2) in his conversations with them, during meetings, preaching in mosques, and through fliers which were distributed among Muslim.

On threatened murder through direct communication or person to person conversations, PW28 (Witness A), testified that Sheikh Yunus Kamoga (A2) told him (Witness A) that:

“...you are a businessman; you should leave these things. You are not a sheikh...if not these children will kill you. ”

PW22 (Yasin Kakomo), who was part of the Tabliq sect with the late Mustapha Bahiga and the late Hassan Kirya since 1988 and 1994 respectively, testified that A.2 sheikh Yunus Kamoga, in reference to the Bahiga group, told him (Kakomo) that;

“.../ was tired and not going to accept anything that was going to divide Muslims and even if it meant killing I would kill.....those are joking and have never killed but for me even if it is during daylight I can kill”.

Witness B also testified that A2 (Sheikh Yunus Kamoga) told him that (Witness B) that:

“Kirya cannot survive, those people are joking, for us we have guns”. Section 58 of the

Evidence Act (Cap. 21) provides that:

“All facts, except the contents of documents, may be proved by oral evidence”. Section 59 of

the same Act provides as follows:

“Oral evidence must be direct, that is to say:

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it;

(b) if it refers to a fact which could be heard it must be the evidence of a witness who says

he or she heard it. ”

PW22 and PW28 testified as to what they directly saw and heard, regarding their direct conversations with A2 (Sheikh Yunus Kamoga). Their evidence was therefore not hearsay but direct oral evidence. PW22 in his own words, testified that he knew A2 (Sheikh Yunus Kamoga) “very well” as he had been with him “for quite a long time” and we were united because of religion and we were doing religious matters together.” PW28 also testified that he knew A2 (Sheikh Yunus Kamoga) well, along with other accused persons “as a fellow Muslim and I have been with them for a long time”. The two witnesses belonged to the Tabliq sect like A2. PW28 testified that he had known the accused persons, including A2, for various periods since 1994. PW22, a Muslim from Masaka, Lwengo, testified that he was part of the tabliq sect to which A2 and the late Mustapha Bahiga and Hassan Kirya belonged. PW28 and PW22 each identified A2 in court while they were testifying. They could therefore not have been mistaken about his identify. The defence, save for submitting that the accusations were provoked by wrangles amongst the two groups, did not, in our view, controvert or discredit this evidence.

On the aspect of threatened murder through direct communication or conversations, therefore, it is our finding that the prosecution has proved this aspect beyond reasonable doubt against A2.

The same legal provisions on direct oral evidence as highlighted above concerning threatened murder by direct communication would apply to the evidence against A3 (Murta Bukenya) and A4 (Fahad Kalungi) directed at PW30 (Witness C). Witness C testified that A1 (Sheikh Siraje Kawooya), A3 (Murta Bukenya) and A4 (Fahad Kalungi) informed him (Witness C) that he had hours to purify his name otherwise he would be included on the list of those to be killed. This was not hearsay since PW30 (Witness C) was testifying about what he heard directly from the said three accused persons. PW30 (Witness C) could not have been mistaken about the identities of A1, A3 and A4. His evidence is that he was in Kamoga’s group where he mobilized with A1 (Sheikh Siraje Kawooya), A3 (Murta Bukenya) and eventually A4 (Fahad Kalungi) who was introduced to the group by A2

(Sheikh Yunus Kamoga) to help in training. He was acquainted with the leadership of the Muslim sect at William Street Mosque since 2003. He knew about the disagreements and break up leading to the division into two groups one led by Kamoga and the other by Haruna Jjemba. During the trial he identified A1, A3 and A4, among other accused persons, as persons he knew well.

In view of the above adduced evidence, based on the law already cited, it is our finding that threatened murder of PW30 by A1, A3 and A4 as brought out by Witness C was established beyond reasonable doubt by the prosecution against A1, A3, and A4.

On the threatened murder during meetings, PW29 (Witness B) testified that while in the meeting towards the end of 2011 at the home of A1 at Gayaza Road, A1 (Sheikh Siraje Kawooya) said:

“Bahiga is like a snake in the saucepan. If you do not kill it, you cannot eat.”

PW29 (Witness B) testified that A3 (Murta Bukenya) told them in the same meeting that (Hassan) Kirya was a government spy; that in the days of prophet Mohamed they would send someone to kill those who frustrated the progress of Muslims. PW30 (Witness C) testified that A8 (Sekayanja Abdul Salaam) told them that their target was to kill Sheikh Bahiga, Sheikh Kiggundu, and Swadiq Ndawula; that A2 (Sheikh Yunus Kamoga) introduced A8 (Sekayanja Abdulsalaam) as an expert in “bullet to flesh”, that they recruited ex rebels, and that A4 (Fahad Kalungi) was on the selection team.

The evidence of PW29 (Witness B) and PW30 (Witness C) is not hearsay as the two witnesses actually attended the meetings and heard directly what the stated accused persons were saying. PW29 (Witness B) and PW30 (Witness C) knew A1, A2, A3, A4 and A8 well. They identified the said accused persons in court during the trial.

The defence submitted that since there were no minutes of the meetings submitted in evidence, what transpired in a meeting can only be proved by documentary evidence. However, in view of Sections 58 and 59 of the Evidence Act already highlighted above, oral evidence of a person who saw the accused persons and heard what they said is as good as

documentary evidence of what transpired in such meetings. Witness B stated during cross examination that initially minutes were taken but later this was abandoned. The oral evidence of threatened murder by A1, A2, A3, A4 and A8 was not controverted by the defence.

In the circumstances, based on the law and the above evidence, it is our finding that the element of threatened murder through meetings by A1, A2, A3, A4 and A8 has been proved by the prosecution beyond reasonable doubt.

On threatened murder using fliers, PW30 (Witness C) testified that A7 (Kakande Yusuf) distributed fliers at William Street Mosque. The fliers were tendered in evidence by the prosecution as exhibits P41, P42 and P43. Exhibit P42 bears photographs of six people namely Ssonko Najib, Mustapha Bahiga, Umar Swadiq, Ibrahim Hassan Kirya, Mahmood Kibaate, Sudiq Ndaula. Exhibit P42 bears the names of the same people save that the name of Mustapha Bahiga who had already been killed was replaced by that of Omulangira Kassim Nakibinge. Exhibit P43 which was the first flier to be issued, bore the names of Ssonko Najib, Hassan Kirya and Mustapha Bahiga. The messages on the fliers were that the people mentioned thereon should be avoided (*"mubewale"*). This in our opinion does not amount to a death threat.

In that regard, based on the adduced evidence and findings, it is our finding that the threatened murder using fliers has not been proved by the prosecution beyond reasonable doubt.

On maiming, PW20 (Kenneth Rono) testified that he was injured with glass on his right eye. PW19 (Mubiru Ben) the health practitioner examined him on the medical form PF3 where he classified the injury as harm. The medical form was tendered in evidence by the prosecution as exhibit P29. PW21 (Semakula Isma) testified that he was shot on his right leg on the day Hassan Kirya was shot, and he was admitted to Mulago Hospital for six months. Witness C testified that a one Yahaya Ssegujja was beaten to a point of near death at William Street by a group belonging to A2 (Sheikh Muhammad Yunus Kamoga) and A4 (Sheikh Fahad Kalungi) who was in charge of the beating. However Ssegujja was not called

as a prosecution witness neither was there a medical report to classify the kind of injury suffered by Ssegujja.

Thus, the evidence of PW19 and PW20 as corroborated by exhibit P29 establishes actual maiming of PW20. There is however no direct or circumstantial evidence to establish that the accused persons or any of them participated in the actual maiming of PW19 or PW20. In that regard actual maiming as an act of terrorism has not been established beyond reasonable doubt against the accused persons or any of them.

On threats of maiming, Witness C testified that in a meeting attended by A1 (Sheikh Siraje Kawooya), A2 (Sheikh Yunus Kamoga) and A4 (Sheikh Fahad Kalungi), there was a resolution that one of the ways to eliminate people standing in their way was to use acid. This, as already established above, was direct evidence by Witness C who attended the meeting and directly heard the statements of A1 and A4. That evidence was not controverted and we believe and accept it. Threats of maiming have, in our view, been established against A1, A2, and A4 by the prosecution beyond reasonable doubt.

On actual attack, the Oxford Advanced Learner's Dictionary defines "attack" to mean, among other things, as "*an act of using violence to try to hurt or kill*" or "*strong criticism of something in speech or in writing*" (emphasis added).

The evidence of PW15 (Haruna Jjemba) PW16, PW17 and PW18 establishes that the home of Haruna Jjemba was attacked by gunmen who shot bullets at his wall fence. Spent cartridges (Exhibit P26) were recovered from the scene of crime by PW17. However, as established in count No. 4, there is no evidence, direct or circumstantial, to link the attack to the accused persons. Thus "attack" in the sense of using violence or trying to kill by the accused persons has not been established beyond reasonable doubt by the prosecution.

There is the evidence of PW15, PW22, PW26, PW27, PW28, Witness C and PW36 that the names and reputations of Mustapha Bahiga, Umar Swadiq, Ibrahim Hassan Kirya, Mahmood Kibaate, Sudiq Ndaula and Omulangira Kassim Nakibinge were tarnished to the effect that the said people were a danger to the community and that they should be avoided.

This was contained in fliers (exhibits P41, P42 and P43). There is evidence that A7 distributed these fliers at William Street Mosque. In exhibit P41 Haruna Jjemba was stated to have stolen prize money for the best Quran reader in 2004 and to have stolen funds from Kabigi School out of which he built his own school. PW28 (Witness A) was stated to have stolen a coaster. The words in the fliers attacked the reputations of the people mentioned. The evidence of PW22 is that A3 read out the names in the fliers which were distributed in a seminar in Masaka. The evidence of PW28 (Witness A) and PW29 (Witness B) and PW30 (Witness C) is that the fliers were distributed in Kampala with the words that those named should be avoided.

It is our finding that this amounted to attack of the reputations of the people named. The adduced evidence is that it is A1, A3 and A7 who were involved in the attacks.

One important aspect in the first ingredient of the offence of terrorism is that the actual, attempted or threatened murders, and the maiming or attack should be on a person or a group of persons in a public or private institution. The word “*institution*” is defined by Oxford English Dictionary as “an organization founded for a religious, educational, professional, or social purpose”. Black’s Law Dictionary, 8th Edition, at page 813 defines the same term as “*an established organization especially one of a public character*”¹.

The evidence adduced by prosecution has established that Ssonko Najib, Mustapha Bahiga, Umar Swadiq, Ibrahim Hassan Kirya, Muhamood Kibaate, Haruna Jjemba and Omulangira Kassim Nakibinge, all of whom were targeted in the attacks, were in the leadership of *Jamiya Dawa Al Salafiya*, a religious movement within the Muslim Religion based at Nakasero and William Street mosques.

The defence submitted however that the existence of such an institution was not proved; that in Uganda established institutions or organizations are registrable entities under laws like Non-Governmental Organizations Act, the Trustees Incorporation Act and the Companies Act; and that without a Certificate of Incorporation showing that the said institution is a registered private or public institution, no act of terrorism as envisaged under Section 7(2) (b) of the AntiTerrorism Act can be sustained.

The Cambridge international Dictionary of English, Cambridge University Press at page 651 defines an institution as a large and important organization such as a University or a Bank: a medical/ educational/ financial institution. An institution is not only restricted to registered or registrable entities. It is true, it includes registered or registrable entities, but it extends beyond that. It can relate to a religion, a family, a school, a society, a University, *etcetera*. With respect, there is nothing in the Anti-Terrorisms Act to suggest that an institution should be registered or must be a legal person with a Certificate of Incorporation the way it is understood in the law of Business Associations. There is evidence adduced in this case that the threats or actual threats were directed at persons in an organization, the '*Jamiya Dawat Al Salafiya*', which existed among persons professing Islam as a religion in Uganda.

Issue (ii): Whether the acts in issue (i) were for purposes of intimidating the public or a section of the public and for a religious, political, social or economic aim.

The prosecution relied on the testimonies of PW15 (Haruna Jjemba), PW22 (Yasin Kakomo), PW23 (SSP Odong Mark), PW28 (Witness A), PW29 (Witness B), PW30 (Witness C), and PW36 (DIP Byamugisha Fulgence) to establish this ingredient of the offence.

On the aspect that the proved acts of terrorism were for purposes of intimidating the public or a section of the public, PW16 (Haruna Jjemba) testified that he saw the first flier (Exhibit P42) bearing names of three people, namely Mustapha Bahiga, Hassan Kirya and Najib Ssonko with their photographs, with words that they are a danger to the community; that he saw the second flier (Exhibit P42) it came after the killing of Mustapha Bahiga whose name was replaced with by that of Prince Kassim Nakibinge.

PW15 (Haruna Jjemba) testified that he got fliers bearing photographs and names of persons whose names were being tarnished among the Muslim community. The fliers sought to tarnish the reputations of the named persons. PW27 (Detective ASP Mulamira Patrick) testified that he conducted a search at the home of A1 (Siraje Kawooya) where fliers bearing names of the targeted sheikhs were written. This was confirmed in the testimonies of PW22 (Yasin Kakomo), PW26 (Semwanga Lutaaya Badru), PW28 (Witness C) and PW36 (Detective Inspector Byarugisha Fulgence).

PW15 testified that the fliers caused a threat to him. PW22 (Yasin Kakomo) testified that after A3 (Murta Mudde Bukenya) read out names on the fliers which were distributed in the Masaka seminar, he (PW22) lost hope saying that he had never seen Muslims refusing fellow Muslims to enter into mosques and calling them enemies. This was confirmed in the testimonies of PW28 (Witness A), PW29 (Witness B) and PW30 (Witness C) who all testified that fliers were distributed in mosques in Kampala with words that those named should be avoided.

This, in our considered opinion, amounted to intimidation of that group of Muslims for religious and or social purposes. The adduced evidence, in our view, establishes, beyond reasonable doubt, the element of intimidation of a section of the public, that is, a group of targeted Muslims within their organization '*Jamiya Daawa Asalafiya*' where there were warring factions.

On intimidation for religious purposes, PW15 (Haruna Jjemba), PW22 (Yasin Kakomo), PW28 (Witness A), PW29 (Witness B) and PW30 (Witness C) testified that there were wrangles and misunderstandings among the Muslim community around 2011 and 2012 over leadership of different mosques. This led to forming of two rival groups. One group was led by A2 Sheikh Yunus Mohammad Kamoga and the other was that of Hassan Kirya and Mustapha Bahiga. The prosecution witnesses testified that the group of A2 started abusing the other group of Bahiga and Kirya over loud speakers.

The evidence of PW15 (Haruna Jjemba), PW22 (Yasin Kakomo), PW28 (Witness A), PW29 (Witness B) and PW30 (Witness C) is that A2 (Sheikh Yunus Muhammad Kamoga) ignited conflicts. There is evidence of intimidation for religious purposes through meetings as testified by the witnesses who attended those meetings. Witness C testified that A2 wanted to remain in office and retain religious leadership of '*Jamiya Daawa Al Salafiya*' Group. PW29 (Witness B) testified that towards the end of 2011 together with several of the accused persons and others numbering up to forty or more attended several meetings at A1's (Sheikh Kawooya's) home along Gayaza Road with the objective of changing the leadership of the organization called "*Jamuhiyata Daawa Asalafiya.*" Witness C in his testimony quoted A2,

following the shooting of Sheikh Abdul Karim Sentamu, to have stated as follows at the meeting:

“What I told ...would stop us from reaching our goals has just started happening...”

Witness B testified that in 2011, Muslim leaders used to have meetings after every week; that one day they agreed that some leaders had over stayed in power and that they should be removed to allow the young ones to be involved in leadership; and that in some meetings held by Muslim leaders, A1 (Sheikh Siraje Kawooya) would talk about Sheikh Ibrahim Kirya, Bahiga, Kibaate, Lubega, Kiddu, and Kiggundu. PW22 and Witness A testified that misunderstandings among the Muslim community started around 2011 or 2012. PW15 (Haruna Jjemba) knew A2 very well as a fellow Muslim belonging to the Tabliq sect. He identified him in court during the trial. PW15 was a committee member together with A2 (Yunus Kamoga), Mustapha Bahiga, Ibrahim Hassan Kirya and others numbering to about twenty. PW28 (Witness A) also identified A1, A2, A3, A4, A7, A9, A12, and A13 in court as fellow Muslims he knew for various periods since the 1990’s. PW29 (Witness B) also knew several of the accused persons and attended meetings with them towards the end of 2011 at Sheikh Kawooya’s (A1) home along Gayaza Road. PW30 (Witness C) also attended a meeting where he quoted A2 to have stated that the only four people remaining hindering their way were Mustapha Bahiga, Hassan Ibrahim Kirya, Major Mohamed Kiggundu, Umar Sudiq Ndaula, Mohamed Kibaate and Haji Jamil Kiddu. He also attended a meeting with A.1 (Siraje Kawooya), A3 (Murta Mudde Bukenya), A4 (Fahad Kalungi) and others in 2014 at the same home of A1.

The testimonies of the above prosecution witness who knew some of the accused very well and who attended the meetings and listened to their conversations, in our view, establishes beyond reasonable doubt that the intentions of the stated accused persons were to intimidate the public or a section of the public for religious as well as political purposes.

On intimidation for religious purposes using fliers, PW15 (Haruna Jjemba) testified that he believed the fliers were from A2 (Yunus Kamoga); that when he talked to him about it, A2

said there were more fliers which were coming. PW22 (Yasin Kakomo) testified that A2 (Sheikh Yunus Mohammad Kamoga) told him (PW22) that he cannot tolerate the Bahiga group to separate the Muslims even if it means shedding blood; that in Nyendo, Masaka, A3 (Sheikh Murta Mudde Bukenya) made announcements that people who were enemies of Islam were not wanted in Muslim mosques and fliers listing the people not wanted were distributed. PW22 (Yasin Kakomo) testified that he took the flier to A2 (Sheikh Yunus Mohammad Kamoga) who told him that was the beginning and more were coming; that Bahiga was killed immediately after the second flier came out. The prosecution evidence is that fliers/leaflets were distributed at different mosques bearing names, photographs and words stating that these people are a danger to the Muslim community.

The above evidence, in our view, amounts to intimidation for religious purposes.

The testimonies of the prosecution witnesses that at one time a member of the Bahiga group (Yahaya Segujja) was beaten and tied with ropes and A2 himself stood to fight Musa Masimbi was not supported by any other evidence. Neither Yahaya Seguja nor Musa Masimbi were called as prosecution witness to corroborate this piece of evidence. We find and hold that allegation was not proven beyond reasonable doubt.

On intimidation for political purposes, Witness C testified that A2 Sheikh (Yunus Mohammad Kamoga) told the youths that when he and others were still young they put a foundation and it was the responsibility of the youths to build on that foundation and that they will not reach their target unless some people are dead and no longer on earth; that after that Sheikh Sentamu died and A2 told their group the things he told them would hinder them had just started happening; that meetings were held at the home of A1 (Sheikh Siraje Kawooya) at Gayaza Road where A2 (Sheikh Yunus Mohammad Kamoga) told them that their target was to take over leadership of this nation, that there were a few people hindering their way, among them Bahiga a police spy, Kirya CMI, and Mohammad Kiggundu a UPDF Major; that after that A4 (Sheikh Fahad Kalungi) was introduced to the recruits to teach them how to fight. A8 (Sekayanja Abdul Salam) was introduced to them to teach them how to use a gun. He told them their target was to kill Sheikh Kirya, Sheikh

Bahiga, Sudiq Ndaula and Sheikh Kigundu. When the recruits failed to execute the plan, A2 (Sheikh Yunus Mohammad Kamoga) came up with plan B to use ex rebels. A4 (Sheikh Fahad Kalungi) and A8 (Sekayanja Abdul Salam) were to select the rebels. The name of A5 (Amir Kinene) was mentioned among the desired recruits.

The evidence of witness C is that the accused had plans to assume political leadership by overthrowing the legitimate government of Uganda, and that one of the reasons for earmarking Bahiga and Kirya were because of their political attachment to government, that is Bahiga being a *“a spy for police”* and Kirya *“a worker for Chief of Military Intelligence”*.

The above evidence, which implicates A1, A4 and A8, in our view, amounts to intimidation for political purposes.

On intimidation for economic purposes, PW15 (Haruna Jjemba) testified that the first flier (Exhibit P41) stated that Haruna Jjemba (PW15) stole prize money for the best quran reader in 2004; that PW15 as *“Mubbi yabba... wessomero lye Kabigi n’azimba mu erirye e Wattuba”* (he stole from a school in Kabigi and built his own school in Wattuba). PW28 (Witness A) testified that in the same fliers he (Witness A) was accused of stealing a coaster and rice.

Further, on intimidation for social purposes, PW30 (Witness C) testified that, in their meetings they agreed that, whoever gets a chance to get a microphone would tarnish the names of people mentioned on the fliers so that they get tired of them. Exhibits P41 and P42 bore words that tarnished the names of all the people named. The message on the fliers to the Muslims was *“tubekesa abasilamu okukolegana nabantu abo nebakolagana nabo”* (*“we warn those Muslims who are dealing with them”*); *“mubewale”*. (*avoid them*).

PW30 (Witness C) attended the meetings and he knew the accused persons who made the statements during the meetings having been their associate and colleague in the Muslim community. He could not have been mistaken as to their identity and he identified the mentioned accused during the trial. His evidence that the said accused persons made the statements during meetings was corroborated by that of PW15 (Haruna Jjemba), PW28

(Witness A), PW29 (Witness B) and PW30 (Witness C). All that was direct oral evidence admissible under Sections 58 and 59 of the Evidence Act highlighted above.

In view of the forgoing, based on the adduced evidence and the reasons given, it is our finding that the prosecution has proved beyond reasonable doubt that those acts of terrorism that have been proved against the stated accused persons were for purposes of intimidating the public or a section of the public and for a religious, political, social or economic aim.

Issue 3: Whether the acts in (1) were committed indiscriminately without regard to the safety of others or property:

The acts in (1) have been thoroughly discussed above. For ease of reference, these are actual, attempted or threatened murder, maiming or attack on a person or group of persons in a public or private institution and whether these acts were committed indiscriminately without due regard to the safety of others or property.

What meaning do we attach to the word indiscriminate? The question to guide the court is: what is indiscriminate in an act of terrorism?

In common parlance the word indiscriminate means affecting or harming many people or things in a careless, reckless, or unfair way. When something is *indiscriminate*, it makes no fine distinctions. Usually the word is used to describe violent acts or natural events because these things do not have a specific target. They affect all people without considering the differences in their lives for example nuclear bombs are indiscriminate, as are earthquakes. They affect everyone in their path rather than picking or choosing.

In Black's Law Dictionary, Ninth Edition, page 843 indiscriminate attack is defined as follows: (International law): An aggressive act that:

- 1** Is not carried out for a specific military objective,
- 2** employs a means of combat not directed at a specific military objective, or
- 3** Employs a means of combat the effects of which cannot be limited in accordance with an international protocol such as the Geneva Convention of 1949 and their protocols

or The Hague Conventions of 1899 and 1907.

We shall take the meaning of indiscriminate to be an aggressive act (aggressive in that it is done in a determined or forceful way) not carried out for a specific military objective and affecting everyone and everything in their way without picking or choosing.

It is worth noting at this point that this Court found that actual murder (i.e. the two counts of murder) was not proved to the required standard and neither was attempted murder.

Court however found that acts of terrorism; threats of murder; threat to maim; and attack on a person or group of persons were proved by prosecution beyond reasonable doubt and it is in this context that the third ingredient will be considered. Court will look at and assess the circumstances under which they were committed to determine whether they were indiscriminately employed without regard to the safety of others or property.

Threat of murder; threat to maim; and attack on a person or group of persons

Prosecution led evidence of PW15, (Sheikh Haruna Jemba), PW22 (Haji Yasin Kakomo), PW28 (Witness A), PW.29, (Witness B), PW30 (Witness C) and PW36, (D/IP Byamugisha Fulgence):

PW22: A hotelier and businessman testified that he was trying to mediate the split factions in the Muslim Community of the Tabliq sect: one was led by Sheikh Yunus Kamoga while the other was led by late Sheikh Mustafa Bahiga. PW22 knew the deceased Sheikh from 1988. He knew Sheikh Yunus Kamoga (A2) since 1983 and late Sheikh Kirya in 1994. He got to know Sheikh Murta Bukenya (A3) in 1988/89. He identified the three accused Sheikhs in court. Indeed, they worked together to spread the word of Islam and the Islamic faith. Often times, they would hold meetings. They would also spread the faith in Nakasero (Kampala), Masaka, Mutukula, Kyazanga, Mbarara, Busia and the rest of the country.

They developed misunderstandings in their group in 2011/1012. In 2013, the problems exacerbated in their team of Tabliqs. Then started the rumor mongering and backstabbing of the leaders. PW22 decided to try and arbitrate with a view of resolving the disputes. The

success he achieved was short-lived since in 2014 problems arose again.

He discussed the issue of publicizing matters on the mic with Kamoga who promised to ensure that this is stopped and for a month, they were compliant. Then violence broke out when at William Street a Muslim faithful from the Bahiga group was beaten and tied with ropes.

PW22 again went to him in Nakasero whereby A2 told him that some issues were disturbing him and for that reason, he should return later. After about a week, he went back to him and found him still unsettled. A2 told him that he was tired and would not accept the position of the men; he objected to a division and if it meant shedding blood, he would do it. If it meant killing them, he would do it. *He also said those group members were joking as they had never killed but for him, he could do it in broad daylight.* This he said as he thumped his chest.

After hearing from A2, he went back to Masaka. A2 however told him that on 20th November 2014, he (A2) and his group would go to Nyendo for a Seminar to address all Muslims in the country.

PW22 attended the Seminar. A3 read out the names of people no longer wanted in the mosques of Muslims as follows: Sheikh Mustafa Bahiga, Sheik Sadiq Ndawula, Sheik Najib Sonko, Sheik Hassan Kirya, Sheik Muhammed Kibaate and Sheikh Haruna Jemba. He was in no doubt that all this was from the office of the Amir who was then Sheikh Yunus Kamoga (A2). A1 was castigating the Muslims whose names were read out and the message was that *'those whose names were read out were enemies of Islam; they should not be allowed in mosques'*.

PW22 testified that he lost hope when the names were read out and the message articulated; for it had never been heard of or seen to disallow brothers from Islam and the mosque.

About a month later, he heard of the death of Sheikh Bahiga and he was scared. The words he thought were a mere threat or a joke turned out to be real. He got very scared and told his colleagues in Kyazanga and Masaka and warned them of the dangers brewing in Kampala.

A week from the death of Sheikh Bahiga, he started receiving threatening messages. He placed the issues in the hands of the police and was given security.

PW28 (Witness A) testified that the misunderstanding within the Tabliq sect led to two factions forming. The tension culminated into posters pointing out people to be avoided and warning Muslims not to associate with them. The posters were being distributed at the entrance of the mosque on William Street. He got one from a one Yusuf Kakande. His picture was on one of the posters together with the ones of Sheikh late Mustafa Bahiga and late Sheikh Hassan Kirya. He testified that with the two having been killed, he lives in fear. He proceeded to A2 to tell him about the challenge and the response was *'this was the beginning and more are coming'*.

More posters were printed and PW28 was on all of them. He testified that many attempts were made to resolve the misunderstanding but they failed.

Kamoga told PW28 that 'you are not a Sheikh or Muslim leader but a business man' and 'that he should concentrate on his business otherwise the youths would kill him'.

PW28 testified that he has since been receiving threats in various forms. A one Hamza Kasirye (A10) (which name he got from the provider using MM app) sent him threatening messages which included pictures of a magazine and gun; picture of a grave with words *'that one has gone, next is yours'*; two pictures one with a body and one without.

PW28 during cross-examination testified that on one of the posters there was a statement to the effect that he stole a coaster which should have been for the Muslims and stole rice as well. PW28 had all the information on a CD. Defense Counsel applied to have the CD produced in Court but soon after abandoned the application.

PW28 pointed out that A2 and A3 made verbal threatening messages to him.

PW30 (Witness C): he too testified on the wrangles and the rift that threatened the Muslim Tabliq sect. He also testified on failed mediation. He pointed out Sheikh Kamoga (A2) wanted to retain leadership at all cost. Youths were recruited to protect his position. With the help of Sheikh Murta Bukenya (A3) they were about to mobilize a team of about

100 youths. These would meet in Nakasero Mosque, Kyengera and various other places; A2 called the team '*Balubaluseewa*' meaning '*where has the war broken out?*' and the essence was to be ever prepared. The leaders of the team were picked and they would meet the Sheikh (A2) in the company of A1 and A3. A2 at the meeting would tell them that they had put a foundation and it was their responsibility to build on that foundation. He warned them that they would not achieve that purpose unless some people were eliminated or dead.

In 2012, a one Sheikh Ssentamu was shot at and killed near Nakasero Mosque. The assailants were never found but after the burial, A2 met with the youths at Kajjansi and told them that what he earlier told them about things hindering their progress and targets were beginning to happen and take place. A1 and A3 were in attendance and they introduced a one Fahad Kalungi (A4) who would assist in training the youths. The training was in boxing, kicking, how to use sticks and this intensified with time. A2 told the youths that the ultimate objective was to assume political power but some obstacles were hindering their path. There was Sheik Mustafa Bahiga, a police spy, Sheikh Kirya, a CMI operative and Major Kiggundu (now deceased), a UPDF soldier. This was in a meeting at A1's residence in Gayaza and A1, A4 and others were in attendance.

PW30 further testified that several other meetings were held and in one of them, they made three major resolutions to eradicate the enemy:

- to tarnish their names so that the public hold them in disrepute,
- to ambush any one and beat,
- to pour acid on any of them if possible.

These tasks were assigned to different players. Work commenced. At the subsequent meeting, A2 informed them that the next thing would be '*sasi ku nyama*' meaning '*bullet to flesh*'. A2 introduced A8 as the expert in bullets. Those who could handle guns were selected and it was agreed with A8 that there was need to re-train them.

PW30 also testified that a decision was made to make posters with the names of the problematic people and these were made and distributed. At yet another meeting, A8

informed them of the need for training. A8 also told them that the mission was to kill Sheikh Bahiga, Sheikh Kirya, Major Kiggundu, Umar Sadiq Ndawula and others. Many of the youths were scared and they communicated this to him. A2 then informed them that he would focus on Plan B. A8 communicated this plan which was to use ex-rebels. A4 and A8 were to select the team of exrebels to carry out the task. A8 repeatedly talked of a one Amir Kinene (A5) whom he wished to get.

A decision was taken to use motorcycles in their missions. PW30 assisted in the movement of one of them after purchase. Thereafter, PW30 informed Court that his group started to doubt him and labelled him a traitor. He was accused of revealing secrets to the rival group. A1, A4 and others confronted him and told him that they knew what he was doing which was tantamount to a betrayal. They warned him to be careful lest he is also taken.

At a meeting with A2, A3 and A4, PW30 was informed how his name had come out on a list of the enemy and how he was left with only a few hours. This threat to his life deeply scared him.

Defense conceded that evidence of previous threats is relevant and admissible but that no evidence of previous or present threats was adduced in the case. They submitted that the evidence of PW30 was fabricated and attributed it to the power struggles that rocked the Tabliq Muslim sect. It is worth noting that PW30 all along belonged to the A2 group and there was no evidence to the contrary. In the opinion of Court, this evidence was not denied and the defense submission nether discredited nor controverted it.

Court findings: The sequence of events as narrated in the testimonies above point to the following:

- The leaders A1, A2, A3 and A4 were aggressive in delivering death threats to PW22, PW28 and PW30. They were forceful, determined and persistent as they delivered the threats.
- Court finds that neither the death threats made by A1, A2, A3, and A4 nor their mode of delivery of the threats targeted a specific military objective.

- Court finds that the threats were delivered by word of mouth through preaching in the mosques, in meetings and on loudspeakers and affected many people both Muslims and non-Muslims alike hence indiscriminate. The law on oral evidence has already been discussed above.
- Court also finds that the attack on the character of the people named on the fliers to wit; Mustapha Bahiga, Umar Swadiq, Ibrahim Kirya, Mahmood Kibaate, Sudiq Ndaula and Omulangira Kassim Nakibinge tarnished their names in as far as the named were alleged to be a danger to the community and that they were to be avoided. The fliers were distributed in Kampala and beyond bringing into play the aggressive and indiscriminate nature of the conduct and mode of distribution. The evidence adduced pointed at A1, A3 and A7 as the ring leaders in the character assassination mission.
- Acid reaction to skin is most feared due to the adverse effects which are non-reversible. The Court of Appeal in *Mbatudde Betty v Uganda Crim. App. No. 140/2004 [2010] UGCA 17* described acid related crimes as ‘barbaric and should not be tolerated in a civilized society’. This threat of acid delivered by A1, A2 and A4 as a mode of attack was part of the grand plan to systematically eliminate the enemy.

Issue 4: That the accused persons participated in the commission of the offence either by direct involvement or complicity.

The fourteen accused persons are charged jointly with the offence of terrorism contrary to Section 7 (1) and (2) (b) of the Anti-Terrorism Act, 2002.

Important general principles of law that are relevant to this issue: In a case of this nature (where many people are jointly charged and tried for committing a given offence) in a bid to determine their respective culpability, Court has a duty to handle the State's case against each of the accused persons separately and individually. If Court does not do so, but resorts to handling the matters in an omnibus way, that procedure could prejudice all the accused persons or some of them. Secondly, in a case of this nature, it is always advisable to bear in

mind the contents of *Section 20 of the Penal Code Act (Cap. 120)*. For the sake of clarity Court will lay them out below. They read as follows:

20. Joint offender in prosecution of common purpose.

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence”.

The import of the above section is this: In a case of this nature (i.e. where many people are accused of committing a given offence; and it might also not be known who played what part in committing the said offence) proof of the fact that all the accused persons shared a common intention to execute an unlawful purpose is enough to establish their respective culpability. (See: *Sunday Kala Alagba v The King 19 N. L. R. 128 (P.C. 1950)* and *Rex v. Dominiko Omenyi s/o Obuka 10 E.A.C.A. 81* quoted at pages 538 and 541 of ‘*A Source book of the Criminal Law of Africa*’ by Robert B. Seidman).

Section 7(1) of the Anti-Terrorism Act clearly states that a person who engages in or carries out acts of Terrorism commits an offence.

Court made a finding that the evidence of PW22 and PW28 regarding verbal or person to person death threats were made by A2 (Sheikh Muhamad Yunus Kamoga).

Court also made a finding that the evidence of PW30 and PW28 regarding verbal or person to person death threats were made by A1 (Sheikh Siraje Kawooya), A3 (Sheikh Murta Mudde Bukenya) and A4 (Sheikh Fahad Kalungi).

Court also made a finding that the evidence of PW29 and PW30 regarding threatened murder during meetings were made by A1 (Sheikh Siraje Kawooya), A2 (Sheikh Muhamad Yunus Kamoga), A3 (Sheikh Murta Mudde Bukenya), A4 (Sheikh Fahad Kalungi) and A8 (Sekayanja Abdul Salaam alias Kasimu Mulumba).

Court also made a finding that the evidence of PW30 regarding threats of maiming through

use of acid on adversaries during meetings were made by A1 (Sheikh Siraje Kawooya), A.2 (Sheikh Muhamad Yunus Kamoga), and A4 (Sheikh Fahad Kalungi).

Court also made a finding that the evidence of PW15, PW22, PW26, PW27, PW28 and PW36 regarding character smudging hence actual attack on persons during meetings were made by A1 (Sheikh Siraje Kawooya), A3 (Sheikh Murta Mudde Bukenya) and A7 Kakande Yusuf alias Abdallah.

The assessors seem not to have appreciated the import of the law and evidence on threats. This could be the reason why they advised court that prosecution had failed to prove any terrorism offence and that all the accused persons should be set free.

Conclusion:

In the course of reviewing the evidence above we found and held that the prosecution has failed to prove beyond reasonable doubt that any of the accused persons participated in commission of the offences in counts Nos. 2, 3 and 4 of the indictment. Therefore, we find all the accused not guilty on counts Nos. 2, 3, and 4 of the indictment and accordingly acquit all the accused on counts Nos. 2,

3, and 4.

Regarding count No. 1 of the indictment we find and hold that the prosecution also failed to prove beyond reasonable doubt that A5, A6, A9, A10, A11, A12, A13, and A14 participated in the commission of the offence in count No.1 of the indictment. Therefore, we find them not guilty and accordingly acquit them on count No. 1.

Nevertheless, regarding count No.1 of the indictment we found and held that the prosecution proved beyond reasonable doubt that A1, A2, A3, A4, A7 and A8 committed, at various times, acts of terrorism like attacking the reputation/character and threatening murder of members of a rival faction of the

Tabliq sect over the '*Jamiya Daawa Asalafiya*' program. The acts were committed against members of the Muslim faith in at least one seminar at Masaka, in meetings at the homes of

A1, A2 and at gatherings in various mosques at Nakasero, William Street in Kampala and elsewhere. The acts were intended to and actually intimidated members of the Muslim Community and the rest of the public. The acts were for political, religious, economic or social purposes. Consequently, we find A1, A2, A3, A4, A7 and A8 guilty of the offence of terrorism and accordingly convict them on count No. 1 of the indictment. We hereby acquit A5, A6, A9, A10, A11, A12, A13 and A14 of all the charges in the indictment and set them free forthwith unless they are held on other lawful charges.

Dated at Kampala this 21st day of August, 2017.

E. K. Muhanguzi

P. N. Tuhaise

J. F.B. Kiggundu

JUDGE

JUDGE

JUDGE

SENTENCE AND REASON FOR THE SAME

Following conviction of accused Nos. 1, 2, 3, 4, 7 and 8 on 21st August, 2017 on the count of Terrorism, Ms Rachael Bikhole - PSA, learned counsel for the prosecution for DPP, submitted that:

- 1.** The offence was committed meticulously with premeditation.
- 2.** Fear was instilled in the families and society at large.
- 3.** Victims were traumatized and they live in fear.
- 4.** Some of the victims listed on the fliers lost their lives.
- 5.** Victims' character were attacked and tarnished.
- 6.** Security of victims and their families had to be beefed up.
- 7.** The threats linger on.
- 8.** The convicts are Muslim leaders, yet they orchestrated the crimes and were pivotal in the criminal enterprise.

In response, Counsel Fred Muwema for convicts Nos. 1, 2, 3, 4, 7, and 8 stated that the convicts were convicted for "*just*" for aspects of the offence of terrorism. However, he conceded that convicts were responsible and religious leaders of a big section of a tabliq sect with a very large following in Uganda. That the convicts have not been convicted on any direct evidence but on largely circumstantial evidence. That court acquitted them on the very serious crimes of murder and attempted murder. That the deceased are brothers in the Islamic faith. That convicts have been in detention for over two years for even offences for which they were found innocent. That their businesses, families and followers are suffering if they continue in incarceration. That those who were named on the fliers were many but only two testified. That the convicts committed minor threats not to a wider group but one or two who testified which could pass for threatening violence or defamation.

That the convicts have no previous conviction in relation to this offence or offences of this nature. He prayed for any light sentence or even a caution since the whole case was based on wrangles for leadership and not terrorism as known with weapons. That this appears to be a "*technical terrorism*".

Upon consideration of the submissions from the prosecution and the defence, it is our view that terrorism is a very serious offence punishable by mandatory death sentence, where murder was committed and maximum death sentence, where no murder was committed.

In this case no murder has been proved against the convicts. However, probably by coincidence, the very persons listed on the fliers that attacked their character and intimidated them were the same that were eventually killed, though by unknown assailants. The manner in which the offences were committed was very meticulous and aggressive. It was premeditated and planned in meetings, during preaching at mosques using loud speakers and at seminars using fliers. That was done, not on a one off occasion but over a period of time and at diverse places around Kampala and elsewhere.

Consequently, as testified by witnesses like PW22, PW28, PW29 and PW30 fear, suspicion, divisions, rivalry and anxiety were instilled in the victims, tabliq sect members, the rest of the Muslim Community and the general public at large.

With respect to defense counsel's submissions, we do not agree that the convicts were convicted for "*just*" aspects of the offence of terrorism or that they were convicted on largely circumstantial evidence. They were convicted for the offence of terrorism on direct evidence. We agree with defence counsel that no evidence of previous conviction was availed and that the convicts have been on remand for about two years.

On the other hand, it is our view that the convicts having been leaders and yet orchestrated the offence is an aggravating factor and not a mitigating factor. The convicts should have put all their leadership energies into preventing crimes. They should have channeled their efforts into developing the livelihood of the members of their organization and the tabliq sect as a whole.

We note with concern that the prosecution appeared not to have obtained any victim impact statement or any community impact assessment and did not tender such statements to court to assist court arrive at the most suitable sentence.

We have taken into account the period (about two years) the convicts have spent on remand. We have considered the fact that the convicts have families, the particulars of whom were not brought to courts' attention.

Terrorism is a very serious wide spread and traumatizing offence. It has attained global attention. It has devastating impact on individual, communities and in some cases on the environment. It is necessary to protect society from the perpetrators of this offence. The perpetrators deserve such a sentence as will keep them away from society and deter others who may be contemplating committing that offence.

The maximum sentence prescribed by Section 7(1) (b) of the Anti-Terrorism Act being death sentence and the sentencing range for capital offences including terrorism, according to the Sentencing Guidelines, being between 35years and death, we think it appropriate to sentence the convicts as follows:

- a)** Sheikh Siraje Kawooya, Sheikh Muhamad Yunus Kamoga, Sheikh Murta Mudde Bukenya and Sheikh Fahad Kalungi to life imprisonment for all their lives on earth because they are leaders who orchestrated the crime instead of being good role models.
- b)** Kakande Yusuf alias Abudallah and Sekayanja Abdulsalam alias Kassim Mulumba to 30 years prison term because they were not leaders but just followers.

Dated at Kampala this 22nd day of August, 2017.

E.K. Muhanguzi

JUDGE

P.N. Tuhaise

JUDGE

J.F.B. Kiggundu

JUDGE