

THE REPUBLIC OF UGANDA

**IN THE SUPREME COURT OF
UGANDA AT MENGGO**

**(CORAM: ODER, KAROKORA, MULENGA, KANYEIHAMBA AND
KATUREEBE, JJ.S.C)**

CRIMINAL APPEAL NO. 32 OF 2003

BETWEEN

MWAYI ANTONIO

MWEMEKE MARTINI

.....APPELLANTS

KALOLI GANGA

DAUNA MANUEL

AND

UGANDA ::

.....RESPONDENT

[An appeal from the judgment of the Court of Appeal (Okello, Engwau, Twinomujuni, JJA) dated 27th August 2003 in Criminal Appeal No. 162 of 2001]

JUDGMENT OF THE COURT

The appellants were indicted, tried and convicted of murder, contrary to sections 183 and 184 of the Penal Code Act and were each sentenced to death. Their appeal to the Court of Appeal were dismissed. Hence this appeal.

Through their counsel, the appellants filed separate memoranda of appeal and have, at different times of appearing in court, been represented by different counsel. The substance of their respective joint and several grounds of appeal is that the Court of Appeal erred both in law and fact to confirm the convictions and sentences of the appellants.

Mr. Sekabojja represented the 1st appellant. Mr. Kafuko represented the 2nd appellant and Mr. Ddamulira Muguluma represented the 3rd and 4th appellants. Mr. Vicent Okwonga, Principal State Attorney represented the respondent.

Counsel addressed court fully on what they considered to be the errors in the findings and decisions of the Court of Appeal. In our view, the issues which the respective submissions and arguments of counsel raise and which call for resolution include that court's failure first, to address and consider adequately the appellants' defences of *alibi*, especially in light of our observations in **Moses Bogere v. Uganda**, Criminal Appeal No. 1 of 1997, (S.C) (unreported). Secondly, the court failed to properly evaluate or reevaluate the defence evidence as a whole. Thirdly, the Court of Appeal erred in law and fact in holding that there was a common intention between the appellants. According to counsel, the prosecution failed to prove that there was common intention amongst the appellants to murder the deceased. Counsel contended further that the evidence about the weapons used to kill the

deceased which was about bricks and wood was at best inconclusive. Therefore, counsel contended that on that basis, the appellants should be given the benefit of the doubt. Mr.

Okwonga supported the convictions of the appellants and found no fault in the way the courts below handled the evidence and applied the law. He contended that there was sufficient evidence to convict the four appellants.

Having heard counsel for the appellants and the respondent and perused the record of proceedings, we agree with the learned Justices of Appeal that the trial court erred in failing to consider the defences of ***alibi*** and the issue of a grudge pleaded by some of the appellants. We note however that the Court of Appeal, being the first appellate court dealt with the two matters complained of under Rule 29 of its Rules and found that there was no merit in the allegation of the grudge while on the ***alibis***, the learned Justices of Appeal themselves scrutinized the whole evidence of both the appellants and respondent and came to their own conclusion that the ***alibis*** had been disproved by the prosecution.

We are satisfied that the appellants were rightly convicted. In our view, there was ample evidence for the trial court to convict the appellants. We are satisfied that the learned Justices of Appeal judiciously considered and resolved correctly all the issues concerning this case and were right to uphold the convictions of the appellants.

We find no merit in any of the grounds of appeal advanced by counsel for each of the appellants. Accordingly, these appeals are dismissed. We confirm the convictions of the appellants for murder.

However, in conformity with our decision in **Philip Zahura v. Uganda**, Criminal Appeal No. 16 of 2004 (unreported), we postpone confirmation

of the death sentences under Article 22 of the Constitution until the determination of the appeal against the decision of the Constitutional Court in **Constitutional Petition No. 6 of 2003**.

Dated at Mengo this 15th day of February, 2006.

A.H.O. Oder

JUSTICE OF THE SUPREME COURT

A.N. Karokora

JUSTICE OF THE SUPREME COURT

J.N. Mulenga

JUSTICE OF THE SUPREME COURT

G.W. Kanyeihamba

JUSTICE OF THE SUPREME COURT

B. Katureebe

JUSTICE OF THE SUPREME COURT