

**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA  
AT MENGO**

*(CORAM: TSEKOOKO, KAROKORA, MULENGA, KANYEIHAMBA,  
KATUREEBE, J.J.S.C.)*

**CRIMINAL APPEAL NO. 03 OF 2006**

**B E T W E E N**

**MUZAYA THOMAS** .....  
**APPELLANTS**  
**MUKASA GEORGE**

**A N D**

**UGANDA** .....  
**RESPONDENT**

*[Appeal from the judgment of the Court of Appeal (Kato, Okello, Twinomujuni, JJA,) in Criminal Appeal No. 9 of 1996, dated 17-12-1999]*

**JUDGMENT OF COURT**

The two appellants, Thomas Muzaya and George Mukasa, were indicted and convicted for the murder of Muzamil Kamamuli contrary to S.183 of the Penal Code Act. They were both sentenced to death. They appealed to the Court of Appeal which dismissed the appeal and confirmed both the conviction and sentences. They have now appealed to this Court.

The facts of this case may be summarized as follows:

Both appellants and one Dan Taligola who was never charged, and the deceased, were all employees of a construction company by the name of Wade Adams

Construction Company. Whereas the deceased was employed as storekeeper, the other three were employed as security guards at the company's premises situated at Bunga, Ggaba, in the District of Kampala. The four employees resided near the company's yard. On or about the 11<sup>th</sup> of July, 1994, the deceased's relatives received information that he was missing from both his place of work and his residence. A number of relatives who included, the deceased's brother-in-law, Hajji Issa Sadala Byansi (PW2), one George Babatya (PW3) and his brother, Patrick Kamamuli (PW4) decided to travel to Kampala and to the deceased's place of residence to find out what had happened to him. They failed to find him and reported the matter to Katwe Police Station.

A search for the deceased was mounted by the police. D/Sgt. Henry Nuwe, (PW5) and D/IP Jonathan Edoku, (PW6) participated in the search. The enquiries carried out by the relatives of the deceased and the police eventually led to the discovery that the deceased had been unlawfully killed and buried in the premises occupied by Wade Adams Construction Company. Further investigations revealed that the two appellants were implicated in the murder of the deceased. The 1<sup>st</sup> appellant confessed that he, the second appellant and Dan Taligola, had participated in the murder of the deceased. He later retracted his confession and both he and 2<sup>nd</sup> appellant

denied the charges of murder against them and pleaded the defence of *alibi*. As already stated, the learned trial judge believed the prosecution's evidence, disbelieved that of the defence and convicted the appellants. The Court of Appeal upheld that decision.

The appellants are represented by different counsel who filed separate Memoranda of Appeal. Counsel also submitted on and argued the grounds of appeal for each appellant separately. The Memorandum of Appeal for the 1<sup>st</sup> appellant contains two grounds which are worded as follows:

1. ***The learned Justices of Appeal erred in fact and law when they upheld the conviction of murder based on a charge and caution statement which had been improperly admitted in evidence basing it on suppositions and presumptions.***
2. ***The learned Justices of Appeal erred in law when they failed to correctly evaluate the evidence on record thus arriving at a wrong decision.***

For the 2<sup>nd</sup> appellant, the Memorandum of Appeal contains three grounds framed as follows:

1. ***The learned Justices of the Court of Appeal erred in law when they misdirected themselves on the quality of evidence adduced against the***

**2<sup>nd</sup> appellant thereby coming to the wrong decision to uphold the conviction.**

2. **The learned Justices of the Court of Appeal erred in law when they upheld the 2<sup>nd</sup> appellant's conviction which was erroneously based on a confession inappropriately recorded by a police officer who had been involved in investigating the same case.**
3. **The learned Justices of Appeal failed in their duty to reappraise the evidence when they overlooked the fact that the first appellant's confession was not corroborated and that its truthfulness could not be guaranteed by the evidence on record.**

We shall first consider the appeal of the 1<sup>st</sup> appellant.

For the 1<sup>st</sup> appellant, Mr. Kafuko contended that the appellant had been tortured and forced to confess and therefore the confession was not voluntary. Moreover, the police officer who recorded the 1<sup>st</sup> appellant's charge and caution statement had been deeply involved in the investigation of the same offence. Counsel therefore contended that the statement had been improperly obtained and should not have been relied on to convict the 1<sup>st</sup> appellant.

On ground 2, counsel submitted that the learned Justices of Appeal failed to or did not properly reevaluate the evidence on record and therefore came to the wrong decision. Mr. Kafuko contended that the 1<sup>st</sup> appellant first retracted his confession, and then proceeded to give evidence of *alibi* in his defence, namely that he had been away in his home village during the period in which it is alleged the murder was committed. Counsel submitted that since this evidence was not contradicted by the prosecution, it should have been believed and the 1<sup>st</sup> appellant should have been acquitted.

For the respondent, Ms. Ddamali Lwanga, Assistant Director of Public Prosecutions, opposed the appeal of both appellants and supported their convictions and sentences by both the High Court and Court of Appeal. Ms. Lwanga submitted that the conduct of the two appellants after the murder of the victim was incompatible with their claims of innocence. She contended that the confession was voluntary and notwithstanding the irregular manner, in which it was recorded, it was still proper to admit it in the trial and the learned Justices of Appeal were correct to confirm the findings and decision of the learned trial judge.

We shall first consider ground 2. In our view, it was wrong for the same Police Officer who investigated the murder to

also record the charge and caution statement of the accused. However, it is also our opinion that both the trial Court and the Court of Appeal were correct to hold that this error was not fatal to the case of the prosecution.

After the 1<sup>st</sup> appellant retracted his confession, the learned trial judge, conducted a trial within a trial to determine whether or not the confession had been made voluntarily.

The trial judge concluded:

***“Prima facie the prosecution evidence from D/IP Edoku and Cpl Kakaire would tend to show that the accused volunteered to explain the circumstances under which the deceased died. As the defence medical evidence does not tally within trial (sic.), the defence objections are overruled. The statement made to D/IP Edoku shall be admitted in evidence, especially as the deceased’s body was discovered as a result of his statement made to the police.”***

The learned Justices of the Court of Appeal reevaluated the evidence and agreed with the trial court regarding the beating of the 1<sup>st</sup> appellant when he concluded that at the trial within trial medical evidence was adduced by the defence and according to the findings of Dr. Sema Were, the first accused

(1<sup>st</sup> appellant) had healing bruises at the back due to beating, but his mental condition was normal. His allegation that he was beaten every day for five days until he was forced to make the charge and caution statement is not borne out by the medical evidence. The learned trial judge believed the prosecution evidence and held that the 1<sup>st</sup> appellant told lies in his testimony about the police beating him. The Court of Appeal upheld the finding of the trial judge.

We think that both the trial judge and the Court of Appeal were correct in relying on the confession statement. In our view, ground 1 of the appeal of the 1<sup>st</sup> appellant ought to fail.

On ground 2, the record shows quite clearly that the learned Justices of Appeal properly and adequately reevaluated the evidence before reaching their own decision. For instance, on the failure of the police to record the statement of the 1<sup>st</sup> appellant in the language he understood, the learned Justices of Appeal went to great lengths to examine the law and correctly relied on authorities such as **Androe Asenua v. Uganda, C.A No. 1/98 (S.C) and Section 137** of the Trial on the Indictments Decree before concluding that the omission to record the statement in the language the accused understands is not fatal. They evaluated the defence of *alibi* and evidence on whether the body which was exhumed was that of the

deceased. We find that there is no merit in the 2<sup>nd</sup> ground of appeal. In the result, the appeal of the 1<sup>st</sup> appellant fails.

We now turn to grounds of appeal for the 2<sup>nd</sup> appellant.

For the 2<sup>nd</sup> appellant, Mr. Mubiru argued the three grounds together. He contended that since the charge and caution statement made by a co-accused was the main evidence upon which the 2<sup>nd</sup> appellant was convicted it should not have been relied upon without ample corroboration. Counsel cited the cases of **Gopa & Others v. R**, (1953) 20 EACA 318 **and Karaya & 7 Others v. R**, (1953) 20 EACA 321 for the proposition that it is incorrect to regard a confession made by one accused as a basis for convicting a co-accused.

Mr. Mubiru reiterated Mr. Kafuko's submission for the 1<sup>st</sup> appellant that the confession of 1<sup>st</sup> appellant had been obtained through torture and had been recorded by a police officer who had also investigated the murder and all this rendered the confession inadmissible. Mr. Mubiru contended further that the explanation given by the 2<sup>nd</sup> appellant as to why he had disappeared from the workplace was reasonable and as it was not contradicted, it should have been believed by both the trial court and the Court of Appeal. Lastly, counsel for



the 2<sup>nd</sup> appellant emphasized that the confession of the 1<sup>st</sup> appellant and a co-accused was insufficient to sustain the conviction of the 2<sup>nd</sup> appellant.

In our view, not only did the Court of Appeal direct itself correctly on the law applicable but it reappraised the evidence as the first appellate court. The court reappraised the evidence on the manner in which the charge and caution statement was made and on the necessity for a confessional statement of a co-accused implicating another accused to be corroborated. Their view with which we agree is that it should be based on some other independent evidence only to be corroborated by the confession itself. We note that as a result of the confession of the 1<sup>st</sup> appellant, the place where the body of the deceased was buried was found. He must therefore have participated in the murder for it is only participants in the commission of the offence or witnesses who know where the body of the deceased is buried. In this particular case, the circumstantial evidence accepted by both the trial court and the Court of Appeal shows clearly that the 2<sup>nd</sup> appellant was a participant in the acts that killed the deceased.

Both the learned trial judge and the Court of Appeal considered the acts and behaviour of the 2<sup>nd</sup> appellant after

the murder of the deceased which they deemed sufficient to implicate him in its commission. The 2<sup>nd</sup> appellant inexplicably fled from the areas of both his workplace and residence. He also told lies about his whereabouts after the murder. The lower courts held that these acts and incidents of behaviour were adequately corroborated by the confession of the 1<sup>st</sup> appellant. We agree that the *nexus* between the murder and the 2<sup>nd</sup> appellant was amply established by the circumstantial evidence. Consequently, ground 1 and 3 must also fail.

In the result, this appeal is dismissed.

Dated at Mengo this 30<sup>th</sup> day of May 2007

J.N.W TSEKOOKO

**JUSTICE OF THE SUPREME COURT**

A.N. KAROKORA

**JSUTICE 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**