

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 69/99

CORAM: HON. S.T. MANYINDO, DCJ
HON. J.P. BERKO, JA
HON. A. TWINOMUJUNI, JA

1. STEPHEN WANZAMA }
2. MAINA JOHN }
3. SEPIRIYA MAKAYI }APPELLANTS
4. CHARLES WALUMOLI }
5. KOPULANO WALUMOLI }

VERSUS

UGANDARESPONDENT

*(Appeal from a judgment of the High Court of Uganda at Mbale
(Mr. Justice Maniraguha) dated 31/5/99
in C.S.C. No. 290 of 1997)*

JUDGMENT OF THE COURT

The five appellants were on 3 1.5.1999 convicted by the High Court of the murder of Kusolo Wamatere (the deceased) contrary to section 183 of the Penal Code Act and sentenced to death. They have appealed against the conviction.'

The prosecution case against the appellants was that on the 19.11.1996, at about 5.30 p.m., the appellants attacked the deceased at Shibamba Trading Centre in Mbale District and beat him to death on the allegation that he was a witch - doctor. The appellants pleaded alibi. The fifth appellant, Steven Wanzama, claimed that at the time the crime was committed he was out in his village, collecting government taxes from his subjects, in his capacity as Parish Chief. Later in the day he took the money collected to the sub- country headquarters after which he went home.

On the way he called on some of his friends at their homes. He arrived home at about 7.30 p.m. All the other appellants claimed that they were at their respective homes at the time of incident. The learned trial judge found as a fact that each appellant had participated in the attack on the deceased which fact destroyed the alibis.

Three grounds of appeal were filed by Mr. Joseph Namutale, Counsel for the appellants. They are:

- “1. The learned trial Judge misdirected himself as to the law and facts of the case and thus came to the wrong decision/conclusion.
2. The learned trial Judge failed to evaluate properly the evidence on record and thus came to the wrong conclusion.
3. The judgment is bad in law and caused a miscarriage of justice”

At the hearing of the appeal Mr. Namutale abandoned the first ground and then argued the remaining grounds together. The thrust of his submission on those grounds is that the testimony of the state witnesses, Mutsentee James (PW1) and Mawuki Stephen (PW2) should not have been accepted as credible as they were children of the deceased and therefore not impartial and as they had been drinking when the incident took place.

Learned Counsel also contended that the evidence of PW1 and PW2 was contradictory. At one stage he argued that the trial Judge had misdirected himself on the law with regard to common intention but later vacated the argument.

We did not have the advantage of hearing counsel for the Director of Public Prosecution as none appeared although they had been served with the hearing notice.

We have considered the evidence on record carefully and given it a fresh evaluation as we are enjoined to do by law, as a first appellate Court. The incident occurred in broad day light. The principal witnesses (PW1 and PW2) knew the appellants well before the day of incident. The attack on the deceased lasted about one hour. We agree with the learned judge’s finding that in those circumstances PW1 and PW2 were able to recognise the appellants as some of the

attackers of the deceased. We do not see that those witnesses were biased or that they were affected by drink. We have not been able to find any serious contradictions in their evidence. All these matters were ably considered by the trial Judge.

The evidence of those two witnesses shows that the fifth appellant addressed the appellants and other people present at the Trading Centre. He read to them a letter purportedly written by the President of Uganda, directing that all witch - doctors' in the area should be killed. The fifth appellant then urged the people to attack the deceased. All the appellants attacked the deceased who was beaten to death. He was assaulted all over the body. According to the medical evidence the cause of death was either loss of fluids due to internal bleeding (hypovolaemia) or the closed head injury.

We have no doubt that the deceased was killed deliberately. There is no evidence that the deceased was a witch - doctor or that he was found with articles of witchcraft. The killing was clearly done with malice aforethought as the trial judge rightly found.

There remains only the question of common intention. Clearly all the appellants had a common intention to kill the deceased. It is immaterial that the first, second, third and fourth appellants were incited by the fifth appellant. Each of them is equally responsible for the death of the deceased. Once the prosecution evidence had placed the appellants at the scene of crime at the material time, their alibis could not stand. They were rightly rejected.

In the result, we hold that the appellants were properly convicted as charged. Their appeals are dismissed.

DATED at KAMPALA this 2nd day of December 1999

S.T. MANYINDO

DEPUTY CHIEF JUSTICE

J. P. BERKO
JUSTICE OF APPEAL

A.TWINOMUJUNI
JUSTICE OF APPEAL