THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HIGH COURT CRIMINAL SESSION CASE NO.0134 OF 2006

UGANDA:: PROSECUTOR

VERSUS

1. **MBIRINDE ABDU**
2. **SEGANE DAN**
3. **KAJJUGUZI ALUBERTO}::::::::::::::::::::::::::::::::ACCUSED PERSONS**
4. **KAKOOZA DAVID**
5. **SSEKIDDE WILSON**

Before: Justice E. S. Lugayizi

JUDGMENT

The indictment:

This judgment is in respect of an indictment for murder that the State laid against the above named. In its original form, but with a slightly edited touch the indictment reads as follows:

"STATEMENT OF OFFENCE

Murder contrary to sections 188 and 189 of the Penal Code Act (Cap. 120)

PARTICULARS OF OFFENCE

MBIRINDE ABDU, SEGANE DAN, ANGUYO CHARLES, KAJJUGUZI ALUBERTO, KAKOOZA DAVID, SSEKIDDE WILSON and others at large, on the14th day of April 2005 at Nakigalala village, Ssisa sub-county in Wakiso district murdered one SEGUJA JOSEPH KAWULU"

Arraignment of accused persons etc:

When the case finally came before this Honourable Court for hearing one of the accused persons **(Anguyo Charles)** was absent. However, the Director of Public Prosecutions was not deterred. He proceeded with the matter in the absence of the said accused. Actually, the Director of Public Prosecutions should have put in an amended indictment excluding Anguyo Charles. All the same, for purposes of this judgment Court will not mention the named of the above accused again.

When Court arraigned the remaining accused persons, each of them denied the indictment. Court, then, selected two assessors and proceeded to try the five accused persons. However, along the way, one of the assessors defaulted in attending Court proceedings. For that reason, Court decided to drop him and continued hearing the case with the help of the remaining assessor (Mr. Khauka). Court did so, by virtue of the authority it has under **section 69 of the Trial on Indictments Act (Cap. 23).**

The hearing of the case:

In a bid to prove the indictment the State led evidence from five witnesses. Those witnesses were as follows: Agnes Namuli Mukasa (PW1), Sekandi Dominicas (PW2), No. 26275 Detective Constable Bwonyo Julius (PW3), Assistant Inspector of Police Muhwezi Jackson (PW4) and Dr. Victoria Nekesa (PW5). In a nutshell the above witnesses' testimony was as follows:

On 14th April 2005 at around 9.00 p.m. Agnes Mukasa and some members of her family who included her sons Sekandi and Kawulu were at home at Nakigalala village. At that point in time, a group of people that included Mbirinde (Al), Segane (A2) and Ssekidde (A5) came looking for Kawulu. They alleged that Kajjuguzi (A3 - i.e. the chairman of the Local Council 1) had ordered Kawulu's arrest on account of a complaint that was made against Kawulu. There was some verbal exchange between the group and Agnes Mukasa. Finally, the group arrested, assaulted and whisked Kawulu away. Early, the following morning Agnes Mukasa began looking for her son. To her surprise, when she went to Kajjansi Police station where she expected to find him, the police denied that they had him in their custody. However, because the police knew that Kajjuguzi (A3) had reported to them the previous evening an assault case involving Kawulu, they became suspicious when they learnt that Kawulu was missing. Therefore, they went with Agnes Mukasa and arrested Mbirinde (AI), Segane (A2), Kajjuguzi (A3), and Kakooza (A4). At that point in time Ssekidde (A5) had disappeared from the village. All the same, the police took the four accused persons whom they had managed to arrest. They locked them up at Kajjansi Police station. Mbirinde (A1) and Segane (A2) revealed to the police that they participated in killing Kawulu. They, then, led the police to a forest at Nakigalala village where the police recovered Kawulu's body in a ditch. The police took Kawulu's body to the mortuary at Mulago hospital; and a doctor carried out a post-mortem examination upon it. Subsequently, Kawulu's relatives buried his body; and the lower court remanded the accused persons on a charge of murder.

In their respective defences each of the five accused persons made an unsworn statement denying the indictment and insisting that the State case against them was a frame up. In addition, Mbirinde (A1) called Peter Mutemberezi (DW1) as his witness. Ssekidde (A5) also called Kamugisha Moses (DW2) as his witness.

In very brief terms the above two witnesses testified that Mbirinde (A1) and Ssekidde (A3) were not local council authorities in Nakigalala in 2005.

The burden of proof and the standard of proof:

One of the cardinal principles of our law is that in criminal proceedings the burden of proving that an accused person committed a given offence lies on the prosecution. This burden known as *"the burden of proof"* does not shift upon the accused person unless statutory law clearly says so. **(See Woolmington v DPP (1935) AC 462; and Bigirwa Edward v Uganda Criminal Appeal No. 27 of 1992 (Unreported)).**

Another important principle of our law is that the standard of proof in criminal cases is *"beyond reasonable doubt."* Although such standard is a very high standard it does not mean that in order to meet it the State must adduce such evidence as would prove its case to the hilt i.e. beyond any shadow of doubt. Instead, it means that in order for the State to succeed in its

case against an accused person it must present a strong case that reflects a high degree of probability that the accused committed the offence in question. In **Miller v Minister of Pension (1947) 2 All ER 372 at pages 373-374**, the judge pointed out that where the evidence against a man is so strong as to leave only a remote possibility in his favour, which can be dismissed with the remark that *"Of course it is possible but not in the least probable* ", then the State has proved its case.

Other important general principles of law that are relevant to this case:

There are a number of other general principles of law that are relevant to this case but, at this point, Court will mention only two of them. Firstly, 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 (Uganda, 1943) quoted at pages 538 and 541 of A Sourcebook of the Criminal Law of Africa by Robert B. Seidman.)**

The ingredients of murder:

The following are the ingredients of murder that the State must prove, beyond reasonable doubt, if its case against an accused person were to succeed.

a) That the victim is dead;

b) That the death of the victim was unlawful;

c) That the victim's death was motivated by malice aforethought;

d) That the accused person or persons caused the victim's death.

Failure to prove any of the above ingredients would mean failure to prove the indictment on the part of the State.

Court will take each of the above ingredients, in turn, and discuss them in the light of the law and the evidence on record with a view to determining whether the State discharged its burden.

The first ingredient (i.e. that Segujja Joseph Kawulu is dead):

The law:

Often the fact of death of the victim might only be proved where the victim's body has been found and properly identified as his or her body. **(See Kella and Another v Republic (1967) E.A 809).** It follows, therefore, that the identifying person ought to be some one who knows the victim well; and is capable of identifying him or her positively. Such person could be a relative or close friend.

The State's case:

In the instant case, the State relied on the testimony of the following witnesses in a bid to establish the fact that Kawulu is dead: Agnes Mukasa (PWl), Detective Constable Bwonyo (PW3), Assistant Inspector of Police Muhwezi Jackson (PW4) and Dr. Victoria Nekesa (PW5).

Briefly, the above witnesses as follows:

In mid April *2005* two suspects led the police to a trench in a forest at Nakigalala village where the police recovered Kawulu's body. Thereafter, Dr. Nekesa carried out a postmortem examination at Mulago hospital mortuary on a body of a person whom Corporal Irumba (the in-charge of the above mortuary) identified as Kawulu. Finally, on 18th April *2005* Agnes Mukasa participated in Kawulu's burial at Kamengo in Mawokota.

The accused persons' respective defences:

In his defence Mbirinde Abdu (A1) did not dispute the fact that Kawulu is dead. Segane Dan (A2) did the same. Kajjuguzi Aluberto (A3) also did the same. Kakooza David (A4) did the same. Ssekidde Wilson *(A5)* followed suit.

The decision of Court:

In deciding whether Kawulu is dead Court will begin with Dr. Nekesa's testimony. **In** her testimony Dr. Nekesa referred to Corporal Irumba who identified to her the dead body of a person he called Kawulu as simply ***"the in-charge of Mulago hospital mortuary".*** Therefore, it is implicit from Dr. Nekesa's evidence that Corporal Irumba was neither Kawulu's relative

nor Kawulu's close friend. Accordingly, Corporal Irumba was not competent to identify the person he allegedly called Kawulu to Dr. Nekesa for the purposes of the post-mortem examination she carried out on I5th April *2005.*

For the above reasons, Dr. Nekesa's testimony falls short of confirming that the postmortem examination she carried out upon some dead person's body on I5th April *2005* was, truly, in respect of Kawulu's body. Curiously, the State did not even bother to put the alleged post-mortem report on record as an exhibit.

In view of the foregoing, therefore, Court thinks that it was unsafe for the State to rely on Dr. Nekesa's evidence with a view to proving that Kawulu is dead. Court has, therefore, no choice, in this case, but to ignore Dr. Nekesa's evidence wholly.

The above leaves only the evidence of Kawulu's mother (i.e. Agnes Mukasa), Bwonyo and Muhwezi's evidence on record for Court to consider in respect of this ingredient; and Court has this to say in respect thereof:

Court is satisfied that Agnes Mukasa, Bwonyo and Muhwezi's evidence referred to above is reliable; and it confirms the fact that Kawulu is dead. In the circumstances, Court must find that the State succeeded in proving, beyond reasonable doubt, that Segujja Joseph Kawulu is dead. In any case, the accused persons did not seem to dispute that fact.

The second ingredient - (i.e. that the death of the victim was unlawful):

The law:

The law in this area is as follows: Every homicide is presumed unlawful, unless it is ***"accidental or excusable"*. (See Gusambizi s/o Wesonga v R (1948) 15 EA CA 65; and Rex v Tubere s/o Ochen (1945) 12 EACA 65).**

Be that as it may, **Collins English Dictionary and Thesaurus at page 8** defines the word *"accidental"* as follows:

> "**Occurring by chance, …..,... or unintentionally…"**

Consequently, a homicide is ***"accidental"*** where it occurs by chance or unintentionally. However, a homicide is ***"excusable"*** where, among other things, a person commits it in execution of a lawful sentence that a competent court of law has imposed or in self defence. The former does not require much explanation. It is a lawful service to the State, but what amounts to ***"self defence"*** under our law needs some explanation.

Our law of self defence is basically English law. This becomes very clear on reading **section 15 of the Penal Code Act (Cap. 120) that** provides as follows:

> ***"Subject to any express provision in this Code or any other law in force in Uganda, criminal responsibility -***

a) ***for the use of force in the defence of a person …***

(b) **…**

Shall be determined according to the principles of English law."

Under English law (and therefore under our law) a person may lawfully kill another where that other person feloniously attacks him or her and places him or her in such situation where he or she perceives (rightly or wrongly) that he or she might suffer death or grave bodily harm and has no opportunity to retreat or think of another way of warding off the attack, but to strike with whatever means available. However, in other situations where one kills when attacked, the defence of self defence is only available if one used reasonable force in the circumstances of that particular case to ward off the attack. (**See State v Marshall, 208 N.C. 127, 179 N.E. 427; Rex v Hele, 1947 (1) S.A. 272; and Regina v Onyeamaizu (1958) N.R.N.L.R. 93 (High Court) cited at pages 127 to 130 of A Sourcebook of the Criminal law of Africa by Robert B. Seidman).**

The State's case:

In the instant case, the State relied on the testimony of Agnes Mukasa (PWl), Segujja Dominicas (PW2), No. 26275 Detective Constable Bwonyo Julius (PW3) and Assistant Inspector of Police Muhwezi Jackson (PW4) in a bid to prove that Kawulu's death was unlawful (i.e. ***"not accidental or not excusable"***).

In a nutshell, Agnes Mukasa, Segujja, Bwonyo and Muhwezi's testimony was as follows:

In the night of 14th April 2005 a number of people visited Agnes Mukasa's home at Nakigalala village. They arrested Kawulu, beat him up and whisked him away. Thereafter, Kawulu disappeared. Eventually, the police recovered Kawulu's body in a forest at Nakigalala. It had a big cut wound on the neck and other wounds in the area of the abdomen that exposed the ribs. Kawulu's hair on the head looked burnt; and he had marks on his hands showing that he had been tied up.

The accused persons' respective defences:

In his defence Mbirinde Abdu (A1) did not deny the above story. Segane Dan (A2) also did not deny the above story. Kajjuguzi Aluberto (A3) did the same. Kakooza David (A4) did the same. Ssekidde Wilson (A5) also followed suit.

The decision of Court:

Agnes Mukasa, Sekandi, Bwonyo and Muhwezi's testimonies recounting Kawulu's capture in the night in question; his disappearance; and the recovery of his body in a forest, in a state showing he had been tied up and partly burnt, strongly suggest that Kawulu's death was not ***"accidental"***. Equally so, the above testimonies strongly show that Kawulu's death did not happen as a result of the execution of a lawful sentence a court of law had passed or in the process of self defence i.e. where some one was defending himself against an attack from Kawulu.

For the above reasons, Court is satisfied that the State succeeded in proving beyond reasonable doubt that **Kawulu's death was unlawful**.

The third ingredient -
(i.e. that the victim's
death was motivated
by malice aforethought):

In dealing with this ingredient Court will first of all endeavour to explain what malice aforethought is. It will then layout the evidence that the State led in a bid to establish that ingredient. Finally, Court will proceed to explore whether or not the State succeeded in proving the ingredient under consideration.

The law:

Under our law, malice aforethought is defined as the intention to kill or knowledge that the act or omission causing death will probably cause the death of some person. **(See section 191 of the Penal Code Act (Cap. 120) and Uganda v Waswa Stephen and Waswa Sadic High Court Criminal Session Case No. 20 of 1994 (Unreported)).**

Ordinarily, the requisite intention or knowledge is not an altogether easy thing to pinpoint. However, case law has provided a few guidelines that might help in solving the problem. For example, where a deadly weapon such as a gun, a spear, a knife, a machete, a big stick, a metal bar, etc, is applied against a vulnerable part of the victim's body e.g. the head, the stomach, the chest, etc, courts have been quick to infer the requisite intention or knowledge. Even the conduct of an accused person before, at or after the offence in question might some times give an insight into whether the accused person had the requisite intention or knowledge. **(See Rex v Tubere s/o Ochen (supra); and Uganda v C.B. Ntusi and another High Court Criminal Session Case No. 111 of 1976 at page 64 (Unreported**)).

The State's
case:

In a bid to prove the ingredient under consideration, the State largely relied on the evidence of the following witnesses: No. 26275 Detective Constable Bwonyo Julius (PW3) and Dr. Victoria Nekesa (PW5).

However, before proceeding further Court wishes to remind everyone concerned that under the first ingredient it formed the view that Dr. Nekesa's evidence was of no value. Indeed, Court has not changed its mind about that evidence. Consequently, that leaves only Bwonyo's testimony for Court to consider under this ingredient.

Briefly, Bwonyo’s testimony was as follows:

In mid April 2005 some people led him and a few others to a forest at Nakigalala village where he found Kawulu's body. It was lying in a trench; and it had a big cut wound on the neck and other cut wounds in the area of the abdomen that exposed the ribs. The hair on Kawulu's head was burnt; and his hands gave the impression that they had been tied.

The accused persons'
respective defences:

In his defence Mbirinde Abdu (A1) denied the above story. Segane Dan (A2) also denied the above story. Kajjuguzi Aluberto (A3) did the same. Kakooza David (A4) did the same. Ssekidde Wilson (A5) also followed suit.

The Decision of Court:

The injuries Bwonyo described above are serious injuries, for they affected very sensitive parts of Kawulu's body i.e. the neck, the abdominal area and the head. In Court's opinion, therefore, it is reasonable to infer that whoever inflicted the above injuries upon Kawulu's body either intended to kill him or knew that such injuries would cause his death.

All in all, therefore, Court is satisfied that **the State proved beyond reasonable doubt that Kawulu's death was motivated by malice aforethought.**

The fourth ingredient - (i.e. that the accused persons caused the victim's death):

With regard to this ingredient Court will start with the State case against Mbirinde Abdu (A1) and go on in numerical order until the last case (i.e. the State case against Ssekidde Wilson (A5).

The State's case against Mbirinde Abdu (A1):

The State case against Mbirinde Abdu (A1) consists of evidence from the following witnesses: Agnes Mukasa (PW1), Sekandi Dominicas (PW2), No. 26275 Detective Constable Bwonyo Julius (PW3) and Assistant Inspector of Police Muhwezi Jackson (PW4).

The said witnesses as follows:

On 14th April 2005 at around 9.00. p.m. Mbirinde Abdu (A1) and some other people visited Agnes Mukasa's home at Nakigalala. They arrested Kawulu, beat him up and whisked him away. Agnes Mukasa and Sekandi insisted that they were able to recognize Mbirinde (A1) because at the time of Mbirinde's visit there was electric light out side their home. Therefore, they saw Mbirinde (A1) very clearly. They also knew him before as a village mate; and Agnes Mukasa knew his voice. Thereafter, Kawulu disappeared. The following day Agnes Mukasa went to Kajjansi Police Station and reported the matter. The police arrested Mbirinde (A1) and others as suspects. Mbirinde (A1) confessed to having participated in causing Kawulu's death. He then led the police to a forest at Nakigalala village where they recovered Kawulu's body.

Mbirinde's defence:

In his defence Mbirinde (A1) denied that the above evidence was true. He maintained that it was a frame up.

The decision of Court in
respect of Mbirinde (A 1):

In Court's opinion the confession Mbirinde (A1) allegedly made to Bwonyo is of very questionable value. Firstly, Bwonyo as a mere Detective Constable of Police was not competent to receive such confession while Mbirinde (A 1) was in his custody with a view to proving it against Mbirinde (A1) later. This is so, because under the law only ***"a police officer of or above the rank of assistant inspector"*** may receive such confession. **(see section 23(1) (a) of the Evidence Act (Cap. 6))**. Secondly, among other things, Bwonyo's testimony does not reveal whether he administered any caution to Mbirinde (A1) before Mbirinde (A1) made the alleged confession.

For the above reasons, Court thinks that the confession Mbirinde (A1) made to Bwonyo alleging that he caused Kawulu's death was irregular. Therefore, Court cannot lawfully use it as evidence against Mbirinde (A1) in the proceedings that are the subject of this judgment.

Clearly, this leaves on record two pieces of evidence that tend to implicate Mbirinde (A1) in Kawulu's death, i.e. the evidence of Agnes Mukasa and her son Sekandi relating to Kawulu's arrest on 14th April 2005; and Bwonyo and Muhwezi's evidence relating to the recovery of Kawulu's body in a forest at Nakigalala village.

As far as Agnes Mukasa and Sekandi's evidence is concerned Court is of the view that it is reliable. The said evidence came from the mouths of two witnesses who appeared truthful in what they said. In addition, they knew Mbirinde (A1) before as a village mate. They saw him at very close range in the night in question (**i.e. they were 5 metres away from him**); and there was ample electric light that enabled them to identify him. Besides, Agnes Mukasa knew Mbirinde's voice. For those reasons, Court is satisfied that the said witnesses could not have been mistaken in identifying Mbirinde (A1) as one of the people who arrested, beat up and whisked away Kawulu in the night in question.

Court is also satisfied that Bwonyo and Muhwezi were truthful in saying that Mbirinde (A1) led them to a forest at Nakigalala village where they recovered Kawulu's body.
In essence, Agnes Mukasa and Sekandi's evidence boils down to this: It reveals that Mbirinde (A1) and others who went to Agnes Mukasa's home in the night in question were the last persons to be seen with Kawulu when he was still alive. At that point in time Kawulu was in their hands as a captive; and his captors clearly expressed a common intention to harm him by assaulting him and taking him away against his will.

In Court's opinion, the above scenario coupled with Bwonyo and Muhwezi's evidence to the effect that Mbirinde (A1) led the police to a forest at Nakigalala where the police recovered Kawulu's body must lead to this conclusion: Mbirinde (A1) could not have known where Kawulu's body was lying unless he had fully participated in the act of causing Kawulu's death from the beginning to the end.

Despite contradictions here and there in the State case relating to dates, time, etc, Court is of the opinion that the said contradictions are minor and do not affect the substance of the evidence that stands against Mbirinde (A1). (**See Sabuni v Uganda 1981 HCB page 1)**

All in all, therefore, Court has no choice, but to conclude that **the State succeeded in proving beyond reasonable doubt that Mbirinde Abdu (AI) caused Kawulu's death**.

For the above reasons and in agreement with the gentleman assessor Court hereby finds **Mbirinde Abdu (A1)** guilty of the offence in the indictment; and accordingly convicts him.

The State's case against Segane Dan (A2):

The State case against Segane Dan (A2) is very similar to the case against Mbirinde Abdu (A1). It also consists of evidence from the following witnesses: Agnes Mukasa (PW1), Sekandi Dominicas (PW2), No. 26275 Detective Constable Bwonyo Julius (PW3) and Assistant Inspector of Police Muhwezi Jackson (PW4).

The above witnesses' testimony was as follows:

On 14th April 2005 at around 9.00. p.m. Segane Dan (A2) and some other people visited Agnes Mukasa's home at Nakigalala. They arrested Kawulu, beat him up and whisked him away. Agnes Mukasa and Sekandi insisted that they were able to recognize Segane (A2) because at the time of Segane's visit there was electric light out side their home. Therefore, they saw Segane (A2) very clearly. They also knew him before as a villagemate; and Agnes Mukasa knew his voice. Thereafter, Kawulu disappeared. The following day Agnes Mukasa went to Kajjansi Police Station and reported the matter. The police arrested Segane (A2) and others as suspects. Segane (A2) confessed to having participated in causing Kawulu's death. He then led the police to a forest at Nakigalala village where they recovered Kawulu's body.

Segane's defence:

In his defence Segane (A2) denied the above story. He maintained that it was a frame up.

The decision of Court in respect of Segane (A2):

In Court's opinion (like in Mbirinde's case) the confession Segane (A2) allegedly made to Bwonyo is of very questionable value. Firstly, Bwonyo as a mere Detective Constable of Police was not competent to receive such confession while Segane (A2) was in his custody with a view to proving it against Segane (A2) later. This is so, because under the law only ***"a police officer of or above the rank of assistant inspector"*** may lawfully receive such confession. **(See section 23(1) (a) of the Evidence Act Cap. 6).** Secondly, among other things, Bwonyo's testimony does not reveal whether he administered any caution to Segane (A2) before Segane (A2) made the alleged confession.

For the above reasons, Court thinks that the confession Segane (A2) made to Bwonyo alleging that he caused Kawulu's death was irregular. Therefore, Court cannot lawfully use it as evidence against Segane (A2) in the proceedings that are the subject of this judgment.

The foregoing leaves on record two pieces of evidence that tend to implicate Segane (A2) in Kawulu's death, i.e. the evidence of Agnes Mukasa and her son Sekandi relating to Kawulu's arrest on 14th April 2005; and Bwonyo and Muhwezi's evidence relating to the discovery of

Kawulu's body in a forest at Nakigalala village.

As far as Agnes Mukasa and Sekandi's evidence is concerned Court is of the view that it is reliable. The said evidence came from the mouths of two witnesses who appeared truthful in what they said. In addition, they knew Segane (A2) before as a village mate. They saw him at very close range in the night in question (i.e. they were 5 metres away from him); and there was ample electric light that enabled them to identify him. Besides, Agnes Mukasa knew Segane's voice. For those reasons, Court is satisfied that the said witnesses could not have been mistaken in identifying Segane (A2) as one of the people who arrested, beat up and whisked away Kawulu in the night in question.

Court is also satisfied that Bwonyo and Muhwezi were truthful in saying that Segane (A2) led them to a forest at Nakigalala village where they recovered Kawulu's body.

In essence, Agnes Mukasa and Sekandi's evidence boils down to this: It reveals that Segane (A2) and others who went to Agnes Mukasa's home in the night in question were the last persons to be seen with Kawulu when he was still alive. At that point in time Kawulu was a captive; and his captors clearly expressed a common intention to harm him by assaulting him and taking him away against his will.

In Court's opinion, the above scenario coupled with Bwonyo and Muhwezi's evidence to the effect that Segane (A2) led the police to a forest at Nakigalala where the police recovered Kawulu's body must lead to this conclusion: Segane (A2) could not have known where Kawulu's body was lying unless he had fully participated in the act of causing Kawulu's death from the beginning to the end.

Despite contradictions here and there in the State case relating to dates, time, etc, Court is of the opinion that the said contradictions are minor and do not affect the substance of the evidence that stands against Segane (A2). (**See Sabuni v Uganda (1981) HCB page 1)**

All in all, therefore, Court has no choice, but to conclude that **the State succeeded in proving** beyo**nd reasonable doubt that Segane Dan (A2) caused Kawulu's death**.

Segane's defence, therefore, is an afterthought which court hereby rejects.

For the above reasons and in agreement with the gentleman assessor Court hereby finds **Segane Dan (A2**) guilty of the offence in the indictment; and accordingly convicts him.

The State's case against
Kajjuguzi Aluberto (A3):

The State case against Kajjuguzi Aluberto (A3) largely rested on three pieces of evidence from the following witnesses: Agnes Mukasa (PWl), No. 26275 Detective Constable Bwonyo Julius (PW3) and Assistant Inspector of Police Muhwezi Jackson (PW4).

The above witnesses' testimony was as follows:

In the night of 14th April 2005, some people visited Agnes Mukasa's home at Nakigalala village. They arrested, beat up and whisked Kawulu away. They alleged that Kajjuguzi (A3) had given them the orders to do so. Thereafter, Kawulu disappeared. The next day the police received a report that Kawulu had disappeared. The police immediately suspected Kajjuguzi (A3) to be behind the said disappearance, for he had on 14th April 2005 reported to them that

Kawulu had assaulted him. Therefore, the police arrested Kajjuguzi (A3) and some other persons (who included Mbirinde (A1) and Segane (A2) as suspects. Mbirinde (A1) and Segane (A2) confessed to Bwonyo that they caused Kawulu's death on A3's orders.

Kajjuguzi's defence:

In his defence Kajjuguzi (A3) denied the above allegations and insisted that the State's case was a frame up.

The decision of Court in respect of Kajjuguzi (A3):

Court believes that Agnes Mukasa was a credible witness. However it will not take at face value what the people who arrested Kawulu in the night in question told her (i.e. that they were acting on Kajjuguzi's orders.) This is so, because the above allegation came from the mouths of accused persons who appeared to be exonerating themselves from any blame in the matter; and in turn laying it all upon the head of a third party (i.e. Kajjuguzi (A3)).

Earlier on, Court thought that before it could act on the above evidence it required corroboration for it. However, after Court read the case of **Ezera Kyabanamaizi and Ors. v R (1962) E.A. 309** it was satisfied that Agnes Mukasa's evidence referred to above was simply useless; and cannot lawfully implicate Kajjuguzi (A3). Consequently, there was no need to look for corroboration for such evidence.

Be that as it may, it is possible that Kajjuguzi (A3) revealed to some of his village mates that Kawulu had assaulted him on 14th April 2005. However, that does not necessarily mean that Kajjuguzi (A3) sent the above people to arrest Kawulu. It is a well known fact that many Ugandans have a misguided zeal for mob justice. Usually, it is the people who are not directly concerned with a matter of this nature that might turn out to pursue it with greater zeal than the complainant himself or herself!

All in all, the foregoing leaves only two pieces of evidence on record that tend to implicate Kajjuguzi (A3) in Kawulu's death. They are Bwonyo's evidence on the one hand and Muhwezi's evidence on the other.

Bwonyo's evidence to the effect that on arrest Mbirinde (A1) and Segane (A2) confessed to him, among other things, that they killed Kawulu on Kajjuguzi's orders was of no value against Kajjuguzi (A3). This is so, because earlier on Court decided that Bwonyo had illegally received the above confessions from Mbirinde (A1) and Segane (A2). Since such confessions could not implicate the makers thereof (i.e. Mbirinde (A1) and Segane (A2)) in Kawulu's death, in the same vein they could not implicate a third party (i.e. Kajjuguzi (A3)) in that death.

Turning to Muhwezi's evidence (i.e. that he arrested Kajjuguzi (A3) on suspicion because Kajjuguzi (A3) had before Kawulu's disappearance reported to the police that Kawulu had assaulted him) the law in this area is very clear. Mere suspicion is not a good basis for a case against an accused person. **(See Israili Epuka s/o Achieto (1934) 1 E.A.C.A. 161 at page 168.)** Besides, the fact that Kajjuguzi (A3) reported a case of assault to the police implicating Kawulu on 14th April 2005 would, in Court's opinion, only increase doubts as to whether after making the said report Kajjuguzi (A3) could have, then, turned round (like a mad man) and decided to take matters in his own hands!

All in all, in Court's opinion the foregoing reveals that there is insufficient evidence on record implicating Kajjuguzi Aluberto (A3) in Kawulu's death. In the circumstances, Court is satisfied that **the State failed to prove beyond reasonable doubt that Kajjuguzi Aluberto** (A3) **participated in causing Kawulu's death.** For that reason and in agreement with the gentleman assessor Court hereby finds **Kajjuguzi Aluberto (A3)** not guilty of the offence in the indictment; and accordingly acquits him.

The State's case against
Kakooza David (A4):

The State case against Kakooza David (A4) wholly rested on the evidence of No. 26275 Detective Constable Bwonyo Julius (PW4).

Briefly, the said witness' testimony was as follows:

After Kawulu's disappearance in mid April 2005 the police arrested Mbirinde (A1) and Segane (A2) as suspects. Mbirinde (A1) and Segane (A2) in turn confessed to Bwonyo that they had caused Kawulu's death with others who included Kakooza (A4).

Kakooza's
defence:

In his defence Kakooza denied the State case; and called it a frame up.

The decision of Court in respect of Kakooza (A4):

As Court earlier on pointed out, Mbirinde and Segane's confessions are not useful against their alleged makers or anyone else the alleged makers implicated in Kawulu's death; and this includes Kakooza (A4). This means, therefore, that there is no evidence on record implicating Kakooza (A4) in Kawulu's death.

All in all, therefore, Court is satisfied that **the State failed to prove beyond reasonable doubt that Kakooza David (A4) caused Kawulu's death.** For that reason and in agreement with the gentleman assessor Court hereby finds **Kakooza David (A4)** not guilty of the offence in the indictment; and accordingly acquits him.

The State's case against
Ssekidde Wilson (A5):

The State case against Ssekidde Wilson (A5) was made up of evidence from the following witnesses: Agnes Mukasa (PWI), Sekandi Dominicas (PW2), No. 26275 and Detective Constable Bwonyo Julius (PW3).

Briefly, the above witnesses' testimony was as follows:

On 14th April 2005 at around 9.00. p.m. Ssekidde (A5) and some other people visited Agnes Mukasa's home at NakigalaIa. They arrested Kawulu, beat him up and whisked him away. Agnes Mukasa and Sekandi insisted that they were able to see Ssekidde (A5) and to identify him as one of the people who took Kawulu away because at the time of Ssekidde's visit to their home there was electric light out side the house. They also knew Ssekidde (A5) before as a village mate; and Agnes Mukasa knew Ssekidde's voice. Thereafter, Kawulu disappeared.

The following day Agnes Mukasa went to Kajjansi Police Station and reported the matter. The police went out to arrest Ssekidde (A5) and others as suspects. Ssekidde (A5) disappeared from his home and place of work. Therefore, the police did not arrest him until five months later. In the mean time, the police arrested Mbirinde (A1), Segane (A2), Kajjuguzi (A3) and Kakooza (A4). Mbirinde (A1) and Segane (A2) confessed to having participated in causing Kawulu's death with others who included Ssekidde (A5).

Ssekidde's defence:

In his defence Ssekidde (A5) denied the above story. He maintained that it was a frame up.

The decision of Court in respect of Ssekidde (A5):

The fate of the confessions Mbirinde (A1) and Segane (A2) allegedly made to Bwonyo has been thoroughly discussed above. For that reason, Court thinks that it must not spend any more time on that useless evidence.

Therefore, the foregoing leaves only two pieces of evidence on record that tend to implicate Ssekidde (A5) in Kawulu's death; and they are as follows: The evidence of Agnes Mukasa and her son Sekandi relating to Kawulu's arrest; and Bwonyo's evidence relating to Ssekidde's arrest.

Court will below examine those two pieces of evidence with a view to determining whether or not they provide a solid base for Ssekidde's conviction in respect of the indictment that is the subject of this judgment.

As far as Agnes Mukasa and Sekandi's evidence is concerned Court is of the view that it is reliable. The said evidence came from the mouths of two witnesses who appeared truthful in what they said. In addition, they knew Sekidde (A5) before as a village mate. They saw him at very close range in the night in question (i.e. they were 5 metres away from him); and there was ample electric light that enabled them to identify him. Besides, Agnes Mukasa knew Ssekidde's voice. For those reasons, Court is satisfied that the said witnesses could not have been mistaken in identifying Ssekidde (A5) as one of the people who arrested, beat up and whisked away Kawulu in the night in question.

Court is also satisfied that Bwonyo was truthful in saying that Ssekidde (A5) disappeared from his home and place of work soon after Kawulu's death.

In essence, Agnes Mukasa and Sekandi's evidence boils down to this: It reveals that Ssekidde (A5) and others who went to Agnes Mukasa's home in the night in question were the last persons to be seen with Kawulu when he was still alive. At that point in time Kawulu was a captive; and his captors clearly expressed a common intention to harm him by assaulting him and taking him away against his will.

In Court's opinion, the above scenario and Bwonyo's evidence to the effect that Ssekkidde (A5) disappeared from his home and his place of work soon after Kawulu's death lead only to this conclusion: Ssekidde's disappearance was not an innocent act. He deliberately ran away from his home and place of work to evade the arm of the law because he knew that he had played an active part in Kawulu's death from the word go right to the very end.

In **Uganda v Terikabi (1975) HCB 63 and Uganda v G.W. Simbwa Appeal No. 37 of 1995** the Supreme Court held that when a suspect runs away soon after an offence has been

committed the act of running away points more to the guilt of such suspect than to his or her innocence; and it may corroborate some other evidence in the case that might require corroboration.

Despite contradictions here and there in the State case relating to dates, time, etc, Court is of the opinion that the said contradictions are minor and do not affect the substance of the evidence that stands against Ssekidde (A5). **(See Sabuni v Uganda (1981) HCB page 1**)

All in all, therefore, Court has no choice, but to conclude that **the State succeeded in proving beyond reasonable doubt that Sekidde (A5) caused Kawulu's death.**

Sekidde's defence is, therefore, an afterthought which Court hereby rejects.

For the above reasons and in agreement with the gentleman assessor Court hereby finds Ssekidde Wilson (AS) guilty of the offence in the indictment; and accordingly convicts him.

Conclusion:

Before Court takes leave of this matter it wishes to point out that the Director of Public Prosecutions ought to have done much better than he did in this case. In Court's opinion it is always a fairly easy job to determine from the statements in the relevant police file whether or not the State has a strong case against an accused person. However, it is only the strong case that the Director of Public Prosecutions is supposed to submit to a magistrate for committal to the High Court for trial. In other words, the Directorate of Public Prosecutions is not simply a conduit of all manner of criminal cases (weak and strong) originating from the police and going to the High Court in order that the High Court would finally sort out the wheat from the chaff!

Assuming that the Director of Public Prosecutions perused the police file relevant to this case before he embarked on the committal process, he ought to have advised the police to drop the case against Kajjuguzi Aluberto (A3) and Kakooza David (A4) a long time ago.

It is a blatant disregard of a person's Constitutional right to liberty to leave him or her to languish on remand when there is almost no plausible case against him or her. Perhaps, the best way out of this quagmire might be this: We should quickly return to the idea of the old summaries of evidence where it was easy to assess whether the Director of Public Prosecutions had a reasonably good case long before trial.

E.S Lugayizi(J)

13/6/2007

Read before: At 2.50 p.m Mbirinde (A1), Segane (A2), Kajjuguzi (A3), Kakooza (A4) and Ssekidde (A5).
Mrs. Rita Matovu (State brief
for all the accused persons)
Mr. Khauka - the assessor Mr.
Kato Ssonko c/c1erk