



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0011 OF 2011**

UGANDA ::: PROSECUTOR

VERSUS

SEBAGENZI SEPIRIYA ALIAS RUNIKI ::: ACCUSED

JUDGMENT

BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE

The accused Sebagenzi Sepiriya alias Runika is indicted on the charge of murder. The particular of the offence are that the accused on the 21st day of March 2010 at Muusisa village in Kyangwali Sub-county Hoima District murdered one Nyinahabimana Suzana his wife. Murder is an offence with four ingredients;

1. Death of a human being
2. Unlawful of the death
3. Malice aforethought
4. Participation of the accused person

The burden of prove of all these ingredients lays on the prosecution. In trying to prove these ingredients prosecution adduced evidence of five witnesses.

1. PW1 - Dr. Dennis Bitamazire

2. PW2 - Police Medical Officer Hoima, Police Medical Service
3. PW3 - Detective Inspector Anguyo
4. PW4 - Duniya Kamela Ismail
5. PW5 - Oyese Godfrey

The death of Nyinahabimana Suzana was confirmed by the evidence of the postmortem report prepared by Dr. Dennis Bitamazire. I therefore find that death has been approved beyond reasonable doubt.

Unlawfulness of the death; on the evidence on the record I also find that the death of Suzana was caused by an unlawful act.

On malice aforethought which is defined as the taking of life intentionally. In this case the weapon used was not exhibited neither at the police nor at the court. The nature of the injuries as observed by Dr. Bitamazire were minor bruises in the upper abdominal region of the body. These were found to have led to the rupturing of the deceased's spleen. In agreeing with my assessor I find that the evidence on record does not prove malice aforethought either for home there was no malice aforethought accompanying the death of Suzana Nyinahabimana.

On the participation of the accused, there is no direct evidence on the participation of the accused in the death of his wife. None of the witnesses witnessed the act that led to the death of the victim. The evidence on the record is that John Ndagijimana is the one who is said by the other witnesses to have witnessed the incident but John was not called to give evidence. The accused was found in denial of killing his wife. His version is that she fell while chasing John Ndagijimana for stealing rational bean and selling it in the village. It was the villagers who woke him up and told him that his wife was dead. He was

subsequently arrested and charged with her murder. The 1st prosecution witness Duniya Kamela Ismail told court that he was told by the accused's grandson John that it was the accused who killed the deceased. This is hear say and it is not admissible. Detective Corporal Oyese Godfrey also told court that he was also told by Ndagijimana who related to him what happened. The accused made his defence in unsworn statement in which he denied killing his wife. He told Court that his wife gave chase to their grandson. That is the last time he saw her until police came and arrested her and charged him with her murder.

I have doubts in my mind as to the real cause of Suzana's death. Did she give chase, fall and died, or did her husband beat her and in trying to escape she fell and injured herself leading to her death, or did they have a fight on their way home, the husband beat her and she fell down and died? Was it an accidental death or a killing that was not intentional? The law is that any doubt in my mind must benefit the accused. In keeping with the law I give the benefit of the doubts in my mind to the accused and consequently acquit him of the charge and order his immediate realize. It is so ordered.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013