

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CRIMINAL SESSION CASE NO. 269 OF 2011

5

UGANDA.....PROSECUTOR

VERSUS

10 **MWESIGWA IVAN.....ACCUSED**

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

15

JUDGMENT

The Accused is charged with Murder c/s 188 and 189 of the penal Code Act.

20 It is alleged that the Accused on 8/5/2011 at Wakitaka ‘B’ village in Jinja Municipality with malice aforethought murdered Wakabi Arthur.

The brief facts are that the deceased and the Accused were brothers.

25 On the material day, between midnight and 1.00am, their mother, heard a scuffle in the deceased’s room. When she went to investigate she found the Accused with a hoe which he hit the deceased with on the head, causing deep cuts on the head of the deceased.

30 The mother made an alarm. The deceased was carried to Jinja Hospital where he died. The Accused was arrested the next day hiding in his mother’s bedroom.

The Accused denied the charges and during the trial, raised the defence of insanity.

5 At the beginning of the trial, the Post Mortem Report and the statement of the mother Wakabi Gertrude were admitted under agreed facts as provided by Section 66 of the T.I.A.

10 The Post Mortem Report shows that the deceased died as a result of excessive bleeding caused by the deep cut wounds on the head which had penetrated the skull.

15 Gertrude Wakabi's statement narrates the events of the fateful night when the mother found the Accused and the deceased having a scuffle whereby the Accused hit the deceased with a hoe on the head.

20 When she tried to intervene, he almost cut her as well. She further narrated that the Accused suffers from a mental illness from 2007 and that she even ever took him to Butabika Hospital for treatment. Further that she has been taking him regularly for treatment in Jinja Hospital. And that the Accused killed his brother because of his mental illness.

25 The prosecution also relied on the evidence of Dr. Katende who examined the Accused and reported on PF.24 that he was mentally normal which was exhibited as P.Exh.3.

PW2 DIP Magoola Henry recorded a Charge and Caution statement of the Accused which was exhibited as P.Exh.4.

30 Therein, the Accused stated that he had a misunderstanding with his brother who attacked him with a panga. In self defence he got a hoe and defended himself, and in the process cutting the deceased on the head. That he then ran away and only learnt of his brother's death at the police station.

The Accused in his defence stated that he cannot recall what happened on the material day as he was not in his right mind. That he had some mental disturbance and only came to understand when he was in prison after some treatment.

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On cross-examination he stated that he had had the mental illness for some 2 years before the incident.

That he has intermittent attacks which affect his understanding or appreciation of what is going on.

10

That when he is on treatment, he is able to have a relatively stable mental condition and that even now he is on treatment.

He admitted making a statement at the police but that he was not fully lucid mentally when he made it.

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Jude Isabirye, a Psychiatric Clinical Officer testified to having treated the Accused for a mental illness in 2010 before the offence.

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He had a history of treatment at Butabika Hospital in 2008. He stated that the Accused has a mental condition known as “Bipolar Affective disorder – with manic features”.

It is a lifelong condition one lives with and is only reduced with medical treatment and social support and continuous counselling. That it manifests itself when the victim fails to concentrate, fails to control himself and becomes argumentative and aggressive.

25

On cross examination however, he revealed that he did not know whether at the time of the offence the Accused was on treatment or whether he was normal or abnormal.

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It is from the above evidence that the Court has to determine whether the 3 ingredients of the offence of murder are proved beyond reasonable doubt namely:

- The deceased is dead.
- 5 - The Accused caused the said death.
- The Accused caused the said death with malice aforethought.

Ingredient No.1 and No.2 are proved by the evidence of the mother in her statement (P.Exh.1), the Port Mortem Report – (P.Exh.2) and the evidence of
10 PW2 the Police Officer who recorded the Charge and Caution statement admitted as P.Exh.3. The fact of death and the cause thereof are not disputed so I consider those proved beyond reasonable doubt.

**Ingredient No.3 on whether the death was caused with malice
15 aforethought:**

Malice aforethought is defined as the intention to cause death. It is a mental element that can be inferred from the circumstances surrounding the offence. (See Uganda Vrs. KassimObura).

20 In the case of **R. Vrs. Tubere s/o Ochen (1945) EACA 63**, the Court held that malice aforethought may be inferred from:

- The weapon used.
- The part of the body targeted and nature of injuries.
- The conduct of the Accused after the commission of the offence.

25 In the instant case, the Port Mortem Report establishes the injuries and the part of the body which was targeted. The deceased died as a result of excessive bleeding into the brain caused by the wounds inflicted by the Accused.

30 The evidence of the mother in her statement (P.Exh.1) and the Charge and Caution statement reveal that the Accused used a hoe – to inflict the wounds. He then ran away and hid in his mother’s bedroom, where he was arrested the following day.

Ordinarily, the above would establish the fact of malice aforethought.

5 However the Accused has raised the defence of insanity and that he was not responsible for his actions on the material day. That he suffers from a mental condition that sometimes affects his appreciation of events and that he does not remember what transpired that day.

10 The evidence of his mother in Exhibit P.1 shows that he has indeed a history of mental disorders which resulted in his being treated at Butabika Hospital and Jinja Hospital.

The evidence of DW2 also establishes a history of mental disorders and treatment.

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However, that evidence falls short of showing the Accused's mental condition on the day the offence was committed.

20 Secondly, the evidence of PW1 Dr. Katende shows that when he examined the Accused after the offence, he was mentally sound and reported so in PF. 24 which was admitted as P.Exh.2.

25 Thirdly, the charge and Caution statement the Accused made at the police station shows that he was able to recall the events of the material day and described them in detail corroborating the statement of his mother – P.Exh.1.

Insanity is described in Section 11 of the Penal Code as:-

30 **“A person is not criminally responsible for an act or omission if at the time of doing the act or omission, he or she is through any disease affecting his or her mind – incapable of knowing that he or she ought not to do the act or make the omission; But a person may be criminally responsible for an act or omission, although his or her mind is affected by the disease, if that disease does not in fact produce upon his or her mind,**

one or other effects mentioned in this section in respect of the act or omission.”

5 Once the Accused raised the defence of Insanity then it was up to him to prove the said defence, although the standard is not that of proof beyond reasonable doubt. Ref: **R. Vrs. Peterson (1962)1 ALL ER 340.**

10 In the instant case, the Court must be satisfied that the Accused was **‘insane’** at the particular time he committed the offence and therefore not responsible for his actions.

15 I have considered the circumstances of the offence as shown in the evidence outlined. I have considered the medical examination by Dr. Katende and PF. 24 that shows the Accused was mentally normal at the time of examination, I have also considered the information in the Charge and Caution statement (P.Exh.3) which was clear and is similar to that in P.Exh.1 – the mother’s statement. I have also been observing the demeanour of the Accused throughout the trial and during his defence. I came to the conclusion that the Accused is mentally alert and capable of appreciating his actions and their
20 consequences.

25 On the other hand, for one to benefit from the defence of insanity, there must be evidence that the Accused was at the time of committing the offence incapable of appreciating or understanding what he was doing.

The medical evidence produced shows that the Accused has ever had treatment for mental disorders. No evidence was led to show that the Accused had occasional lapses where he became either aggressive or committed similar offences or acts. There is no evidence that the Accused is
30 still undergoing treatment for his mental issues or was so doing at the time he committed the offence.

The Assessors gave an opinion that the Accused was not capable of appreciating his actions at the time he committed the offence. This is for the

simple reason that he was arrested within the same premises and therefore his conduct was not that of a guilty mind.

5 I must respectfully disagree with the opinion in that all the ingredients of the offence are clearly shown and there is no other evidence to show that at the material time the Accused was incapable of appreciating the consequences of his activities.

10 I have come to the conclusion that he was lucid and mentally capable at the time of committing the offence.

I find that the accused killed the deceased with malice aforethought.

15 I accordingly find the Accused guilty of the offence of Murder, contrary to Sections 188 and 189 of the Penal Code Act and convict him accordingly.

Godfrey Namundi

20 **Judge**

11/11/2013

25

11/11/2013:

Accused in Court

Prosecution: Kitimbo

Wagira for defence

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Court: Judgment read in open Court.

Godfrey Namundi

Judge

10 **11/11/2013**

15 Kitimbo: I have no previous report on the convict. The offence of murder attracts a maximum sentence of death. The deceased was deprived his life when he was still young. He did not deserve to die. Pray for a deterrent sentence. He should be sentenced to life imprisonment.

20 Wagira: The convict has no past criminal record. He is still young and has been on remand be taken into consideration. Maybe a year or 2.

25 Court: The Court has taken into account the period the Accused has been on remand. The fact that he is a young man. The fact that he requires treatment for his mental condition, the plight of his family.

30 I find a sentence of 12 years imprisonment appropriate in the circumstances.

Godfrey Namundi

Judge

11/11/2013

Court: Right of appeal explained.

5 **Godfrey Namundi**
Judge
11/11/2013