THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODER, TSEKOOKO, KAROKORA, MULENGA KANYEIHAMBA, JJ.S.C)

CRIMINAL APPEAL NO. 55 OF 2000

B E T W E E N

JULIUS MUBANGIZI »»»»»»»»»»»»»»» APPELLANT

VS.

UGANDA »»»»»»»»»»»»»»» RESPONDENT

(Appeal from the judgment of the Court of Appeal (Manyindo. D.C.J.. Kato and Engwau. J.J.A) dated 28th day of November,2000 in (Criminal Appeal No. 98 of 1999)

REASONS FOR THE DECISION OF THE COURT:

On the 20th March. 2002. we heard and dismissed this appeal and announced that we would give our reasons on a date to be notified to the parties. We now do so.

The appellant together with another, Wilberforce Bahati. were indicted, and tried in the High Court at Masindi for murder contrary to sections 183 and 184 of the Penal Code Act. They were convicted and sentenced to death. They appealed to the Court of Appeal against their convictions and sentences which allowed the appeal of Wilberforce Bahati but dismissed that of the appellant. Hence this appeal by the appellant.

The facts of the case may be summarised as follows: On 6/4/1996, at around 5.00 p.m., Vasta Kyampaire (PW3) met the deceased. Shortly afterwards she also met the appellant and Wilberforce Bahati, following the deceased at about a distance of some fifty metres behind. This was on a path going to a nearby well. The following day, the body of the deceased was found with cut wounds and covered with banana leaves, at a distance of some fifty metres from the path where Vasta Kyampaire had met the appellant and Bahati the previous day. The incident was reported to the authorities. The accused were subsequently arrested by the Police and charged with murder. Each of them made a statement in which he admitted having taken part in the murder, but at their trial they retracted the statements and pleaded the defence of alibi. The trial judge rejected their defence and convicted them. As already noted, in the Court of Appeal, Bahati was released after his appeal was allowed by the learned Justices of Appeal. Consequently, the appeal in this court was by the appellant alone.

The grounds of appeal in this court were framed as follows:-

1- ***The learned Justices of Appeal erred in law in relying on the evidence of PW3 and PW4 to convict the appellant***

2- ***The learned Justices of Appeal erred in law and in finding that the offence charged was proved beyond reasonable doubt***

3- ***The learned Justices of Appeal erred in law fact in finding that the confessions of the accused persons were sufficiently corroborated***

4- ***The learned Justices of Appeal erred in law and in fact in finding that the circumstantial evidence against the***

appellant was incapable of explanation upon any other hypothesis than that it was inconsistent with his innocence.

5- The learned Justices of Appeal erred in law and fact in finding that the conviction of the appellant could stand without the confession of the second accused person in the trial.

Mr. Atuhaire, counsel for the appellant, argued ground 1, 4 and 5 separately while combining grounds 2 and 3. In effect, counsel's submissions are to the

effect that because the learned Justices of Appeal did not reevaluate the evidence properly, they came to the wrong conclusion in confirming the conviction of the appellant by the learned trial judge.

Counsel contended that there were some inconsistencies in the evidence of both Vasta Kyampaire, PW3, and Scholar Nyamirere, PW4, which should have been resolved in favour of the appellant and yet neither the trial judge nor the Justices of Appeal did so. Mr. Atuheire further submitted that as the appellant's confession was repudiated, it was essential that having admitted that confession, it should have been corroborated and, neither the High Court nor the Court of Appeal properly considered the requirements of corroboration. It was also contended by counsel for the appellant that without the appellant's confession, the prosecution case depended entirely on circumstantial evidence which evidence was too weak to prove the case against him beyond reasonable doubt.

In our view, the record of proceedings and the submissions of counsel for the appellant were of such a nature that we were satisfied that the Court of Appeal properly evaluated the evidence. Therefore at the conclusion of submissions by appellants' counsel, we decided that we did not need to hear counsel for the respondent.

In our view, the Court of Appeal adequately dealt with the grounds of appeal raised by counsel for the appellant.

As already stated, there were two appellants in the Court of Appeal. The learned Justices of Appeal, having carefully reevaluated the evidence implicating the first appellant, Wilberforce Bahiti, concluded,

> ***"On his part, Mr. Wamasebu, Principal State Attorney, for the respondent, argued that there was a formidable case against the appellants. According to him, the circumstantial evidence against the appellants was such that it excluded the possibility of the deceased having been killed by people other than the appellants. In his view, the appellants' statements had been sufficiently corroborated by the***

evidence of PW3 and PW4. He later on, however, conceded that Bahati's statement does not amount to a confession and it could not support a conviction against him. We agree with Mr. Wamasebu's submission that the statement of the first appellant does not amount to a confession within the meaning of section 24 of the Evidence Act In order for a statement to amount to a confession it must implicate the maker in the commission of the crime he is alleged to have committed "

The learned Justices of Appeal proceeded to reevaluate the evidence against both appellants and having been satisfied that it would be unsafe to uphold the conviction of Bahati, they allowed his appeal because the confession of the appellant in that appeal did not fall within the provisions of section 28 of the Evidence Act which provides that:

"28. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such person is proved, the court may take into consideration such confession as against the person who makes such confession."

However, the learned Justices of Appeal accepted the submission of counsel for the respondent that the charge and caution statement of Bahati did not amount to a confession.

The learned Justices of Appeal next considered the confession of Julius Mubangizi, the present appellant, and agreed with the findings of the learned trial judge that Mubangizi's statement was a clear confession. The statement had been admitted by consent. Both the trial court and the Court of Appeal were satisfied that the appellant's confession that he had killed the deceased in a manner he also described accurately in his confession was fully corroborated by the evidence of Dr. Kakaire.

Dr. Kakaire had examined the body of the deceased and found the injuries which had been inflicted on it to be consistent with what the second appellant had stated in his confession. They also found that the evidence of Kyampaire Vasta, corroborated part of the appellant's confession in so far as it confirmed that the deceased was carrying something wrapped in a banana leaf. We

reiterate the principle established in **Anyangu and Others v. Republic (1968) EACA 239** at p. 240 where the Court of Appeal for East Africa noted that:

> *"A **statement is not a confession unless it is sufficient by itself to justify the conviction of the person making it, of the offence with which he is tried."***

We were satisfied that the trial court and the Court of Appeal properly evaluated and reevaluated the evidence against the appellant who, in our opinion, was properly convicted. It was for these reasons that we dismissed the appeal.

Before we take leave of this case, we would like to draw attention of trial judges and magistrates to our view in respect of admitting confessions of accused persons without objection which we expressed in the case of **Mawanda Edward v. Uganda** Cr. Appeal No. 4 of 1999 (S.C), *(unreported)*, that because of the provisions of Article 28 (3) of the Constitution by which an accused person is presumed to be innocent until proved guilty, an advocate should not concede the guilt of the accused. It should be the accused in person.

Similarly, where a plea of not guilty has been entered, it should be the accused and not his counsel to raise no objection to admissibility in evidence of such a confession as was done in this case.

DATED AT MENGO THIS 12th DAY OF DECEMBER 2002

A.H. O ODER
JUSTICE OF THE SUPREME COURT

J. W.N. TSEKOOKO
JUSTICE OF THE SUPREME COURT

A.N. KARAKORA
JUSTICE OF THE SUPREME COURT

J.N. MULENGA
JUSTICE OF THE SUPREME COURT

G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT