

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

**(CORUM: ODOKI,CJ.,ODER,TSEKOOKO, KAROKORA, AND
KANYEIHAMBA,JJ.S.C.)**

CRIMINAL APPEAL No.6 OF 2003.

BETWEEN

KASAIJA EMMANUEL APPELLANT

AND

UGANDA RESPONDENT

[Appeal from a Judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Mpagi-Bahigeine and Berko, JJ.A.) dated 17th February, 2003, in Criminal Appeal 59 of 2001]

REASONS FOR THE JUDGMENT OF THE COURT

KASAIJA EMMANUEL, the appellant, unsuccessfully appealed to the Court of Appeal against his conviction, by the High Court, of murder. Hence this appeal.

The facts accepted by the two courts below are simple. The appellant was a resident of Mubuku Trading Centre where he, Edson Kule (PW2) and Wamala John (PW.3) were engaged in the business of repairing bicycles. The deceased lived in a different subcounty called Bughoye, but for a week before his death on 2/6/1998, he was operating a red motorcycle in ferrying passengers in a business popularly known as bodaboda in Mubuka Trading Centre, among other places.

For about a week, Edson Kule saw the appellant sharpening a knife which he had fabricated from a handle of a metallic pail apparently to be used for his own security. The knife was about a foot long. The appellant wrapped the fabricated knife in a cloth and rubber straps. On 2/6/1998, Kule and Wamala were with the appellant in the Trading Centre during the afternoon. It is not clear when exactly the appellant left their company. But about 7.00 p.m the deceased went to the Trading Centre looking for the appellant who owed him shs 500/=. Wamala directed the deceased to the appellant who was in a hotel. It appears that Kule advised the deceased to go home. At about 7.30 p.m. Kule and Wamala saw the appellant carried by the deceased on the latter's motor cycle driving in the direction of the home of Imelda Kabasita (PW4). Soon thereafter the deceased ran to the home of Imelda while making an alarm declaring that he had been stabbed by the appellant. He was bleeding profusely and his intestines had come out of the abdomen through a cut wound around the umbilical area. He was in pain and crying. He declared that he was cut by the appellant. He requested Imelda and Jane Nahori(PW5) to be taken to hospital. Both Imelda and Jane Nahori who lived in the same homestead, provided cloths with which the wound of the deceased was covered by the people who answered the alarm. The deceased was then taken to hospital. Apparently he died on the way. The appellant disappeared from the village.

At the trial the appellant denied the offence and put up an alibi. In his unsworn defence, the appellant claimed that on 5/5/1998, he joined the ADF rebel Movement and went to the bush in Kamwenge District in Western Uganda from where he was captured by UPDF soldiers on 4/6/1998, taken to Muhoti Army Barracks in Fort Portal, from which he was taken to Kasese Army Officers Mess on 12/6/1998.

The learned trial judge believed the prosecution evidence on the basis that there was ample circumstantial evidence against the appellant. He disbelieved the appellant's defence and convicted and sentenced the appellant to death. His appeal to the Court of Appeal was dismissed. He has now appealed to this Court. The memorandum of appeal contains two grounds of appeal. However, Mr. Ddamulira-Muguluma, counsel for the appellant, abandoned the second ground, quite properly in our view, because that ground which was a complaint about evaluation of evidence, was similar to ground two in the

Court of Appeal where it had been abandoned. We think there was no merit in that complaint.

The remaining ground one reads as follows: -

"That the learned Justices erred in law and fact for upholding that the appellant participated in the murder of the deceased".

We heard Mr. Ddamulira-Muguluma, counsel for the appellant, and Mr. Vincent Wagona, Principal State Attorney, for the respondent, and dismissed the appeal. We promised to give our reasons for our decision. We now give those reasons.

Counsel for the appellant submitted that the Court of Appeal erred when it held that the appellant killed the deceased. He contended that the evidence of Kule and Wamala does not connect the appellant with the murder of the deceased but only shows that the two witnesses saw the appellant in Mubuku Trading Centre. That there is no evidence proving that on the fateful day the appellant was seen bearing the knife produced in Court and exhibited as evidence and that the chain link in handling the knife was broken and the break was not explained. He also argued, in effect, that the dying declaration allegedly made by the deceased to Imelda (PW4) and Jane (PW5) to the effect that it was the appellant who had stabbed him was inconclusive because there is no proof that the two witnesses revealed the dying declaration to the people who answered the alarm or to any police officer, especially D/IP Nambwire (PW8) who visited the scene on 3/6/96. Lastly, learned counsel argued that the learned trial judge was "biased" and misdirected the assessors when he put the question-

"Was the accused authorised to kill?"

in his summing up the evidence and the law to the assessors.

Mr. Vincent Wagona supported the decisions of the Courts below. While conceding that there was no direct evidence, he argued that there was ample irresistible circumstantial evidence proving that it is the appellant who murdered the deceased. He also argued that despite the break in the chain of evidence about the murder weapon, such break is not fatal to the prosecution case. The learned Principal State Attorney, in effect, contended that the dying declaration was credible and the two courts acted properly when they relied on it.

We have no doubt in our minds that there was ample circumstantial evidence to support the conviction of the appellant.

Kule and Wamala had been engaged in the business of bicycle repairing with the appellant. They both knew the appellant very well. There has been no any plausible explanation as to why the two witnesses should say they were with the appellant in the Centre up to just about an hour before the deceased was stabbed and that they saw the appellant and the deceased both riding on the latter's bodaboda driving in the direction of Imelda's home before the deceased ran to that home crying and declaring that he was stabbed by the appellant.

Further these two witnesses and Jane (PW5) were the last persons to see the appellant in the company of the deceased, while the deceased was alive and obviously well because he was riding his motorcycle. Hardly an hour elapsed before the deceased run to the home of Imelda and Jane and named the appellant as his assailant.

Then there is the dying declaration of the deceased made to Imelda (PW4) and Jane (PW5). The appellant in his evidence claimed that the two women have implicated him because the husband, or boyfriend, of Jane was one of the first two suspects to be arrested and as he was released, the two ladies are protecting him. In our opinion this claim by the appellant has no foundation. Jane gave evidence and this specific matter wasn't put to her. Whatever the case whether or not Jane's boyfriend was initially arrested, does not affect the evidence against the appellant. There is no doubt at all from the evidence of Matte Saulo(PW6) the LC Chairman and D/IP Nambwire (PW8) that by 3/6/1998, barely a day after the murder of the deceased, the appellant was the first suspect in the murder of the deceased. D/IP Nambwire started looking for the appellant right on the first day (3/6/1998) after he learnt that the appellant was the suspect and that he had boarded a vehicle heading for Kasese.

The appellant's disappearance from the village cannot be explained on any other reasonable hypothesis than that he was fleeing because of guilty conscience. We think that both the trial judge and the Court of Appeal were fully justified in believing the testimonies of Kule (PW2), Wamala (PW3), Imelda (PW4), Jane (PW5) and D/IP Nambwire.

The evidence of Kule and of Wamala to the effect that on 2/6/1998 at about 7.00 p.m., the deceased went up to them inquiring about the whereabouts of the appellant, who owed him money and that the two witnesses directed the deceased to the hotel where the appellant was coupled with the fact that Kule and Wamala soon thereafter saw the deceased together with the appellant riding away on the deceased's Motorcycle all show that the deceased knew the appellant well and that apparently a person could be sighted and recognised and identified at that time. No where did either Imelda or Jane or indeed Wamala suggest that the deceased was in a state in which he could not recollect anything which happened to him. The combined effect of all this shows that the deceased could not have been mistaken as to the identity of his assailant. Clearly, therefore, the dying declaration was not only credible but was also reliable and the two courts below acted properly in relying on it. We think that the appellant was properly convicted of murder.

Therefore the ground argued before us must fail.

It was for these reasons that we dismissed the appeal.

Dated at Mengo this 22nd day of July 2004.

B. J. Odoki
CHIEF JUSTICE

A. H. O. Oder
JUSTICE OF THE SUPREME COURT

J.W.N Tsekooko
JUSTICE OF THE SUPREME COURT

A.N. Karokora
JUSTICE OF THE SUPREME COURT

G.W. Kanyeihamba
JUSTICE OF THE SUPREME COURT