

UGANDA / JUDGMENT

Uganda v Bakesigaki and 6 Others (Criminal Case 50 of 2022) [2024] UGHC 894 (30 August 2024)

[2024] UGHC 894

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Criminal Case 50 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

CRIMINAL CASE NO.50 OF 2022

UGANDA

VERSUS

- \$1)\$ BAKESIGAKI ABEL

- \$2)\$ KIIZA BRUNO

\$\\mathcal{Z}\$

- HANGANA ALEX \$3)\$

- \$4)\$ TUSHABOMWE SILVANO

- \$5)\$ KIWANUKA WILLY

- \$6)\$ NAMARA PIUS

- KASIGAIRE DAMIANO \$7)\$

Before: Hon. Justice Byaruhanga Jesse Rugyema.

JUDGMENT

Introduction

- In this case, the accused, Bakesigaki Abel (A1), Kiiza Bruno (A2), \$[1]\$ Hangana Alex (A3), Tushabomwe Silvano (A4), Kiwanuka Willy (A5), Namara Pius (A6) and Kasigaire Damiano (A7) stand charged with the offence of Murder contrary to contrary to Ss. 188 & 189 PCA. The particulars of the offence are that on the 12th day of March 2018, at Katikara West village in Kakumiro district, the accused persons murdered a one Nsigazi Ivan. The accused persons denied the offence save for Kiwanuka Willy (A5) who was reported dead. The charge against A5 in the premises accordingly abates.
- \$[2]\$ The prosecution case briefly is that during the night of 12th March 2018 at around 11:30pm, at the borehole in the valley of Nyakabungu-Katikara Road, the deceased Ivan Nsigazi was hacked to death by unknown people while riding a motor cycle on his way home from Katikara Trading Centre. The deceased was picked from the scene by a one Asinguza Micheal who together with Mwebembezi Amon and Tugume placed him in a one Muhumuza's premo vehicle and took him to the nearby clinic of a one Byaruhanga of Katikara Trading Centre for help. At the clinic, because of his poor state of condition, they were advised to first take him to police for a report. It is at the police station that the deceased finally breathed his last. According to Asinguza Micheal, the deceased made a dying declaration naming Hangana (A3), Abel (A1) and Pius (A6) as the people who hacked him to death. These 3 suspects were sought by police and the rest of the accused persons were tracked by a police sniffer dog that was introduced at the scene of the crime. It was also reported that the death of the deceased was linked to a land wrangle that existed between the deceased and his brothers, A3 and A6. A1 was the area L. C1 chairperson, A2 was his labourer and the rest were neighbours of the deceased.
- The accused persons' defence is majorly alibi. They appeared to claim \$[3]\$ that they are suspected of killing the deceased because of the land wrangles that existed between the deceased and A1, A3 and A5.
- The prosecution was represented by Ms. Seera Becky of the Office of the \$[4]\$ Director of Public Prosecutions, Hoima while the accused persons were represented by Mr. Simon Kasangaki of M/s Kasangaki & Co. Advocates, Masindi.

Burden and Standard of Proof

It is a cardinal principle of the criminal law that the burden of proving \$[5]\$ the charge beyond reasonable doubt is on the prosecution. The prosecution must prove each and every ingredient, which constitutes an element of the offence. It is thus trite that the burden of proof is upon the prosecution to prove the guilt of the accused person beyond reasonable doubt. The burden never shifts to the defense except in a few exceptions provided for by the law. The prosecution is enjoined to prove all the ingredients of the offence to the required standard, (See Woolmington vs The DPP [1935] AC 462 & Leonard Aniseth vs. Republic [1963] EA 206). Furthermore, the

accused ought not to be convicted on the weakness of the defence but on the strength of the prosecution case. (see *Uganda vs, Oloya* [1977] HCB 4). The accused person is presumed innocent until proved guilty or otherwise pleads guilty. It is not for the

\$2\$ | Page

\$\overline{a}\$

accused to prove his innocence; he only needs to call evidence that may raise doubt of his guilt in the mind of the court. Any doubt in the prosecution case must be resolved in favour of the accused person.

[6] This court is also mindful of its duty to evaluate all the evidence on record, both for the Prosecution and for the Defence, to be able to determine as to whether the offence for which the Accused persons were indicted has been proved to the required standard. Evidence is evaluated as a whole. The Court considers evidence of both the prosecution and the defence relating to each of the ingredients before coming to a conclusion, See *Abdu Ngobi vs Uganda*, S. C. Cr. Appeal No. 10 of 1991,

Agreed facts.

- At trial, pursuant to section 66 of the Trial on Indictments Act Cap 23, \$[7]\$ a memorandum of agreed facts was drawn, and the following documents received in evidence by agreement;
- Postmortem Report admitted as P. Exh.1 i.
- A set of Police Forms 24 of A1, A2, A3, A4, A6 & A7 admitted as P. \$ii\$. \$Exh.2\$, and
- Government Analytical Laboratory (GAL) Report admitted as P. iii. \$Exh.3.\$

Ingredients of the offence of murder.

- In a charge of murder, the prosecution must prove four essential \$[8]\$ ingredients of the offence:
- Death of the deceased named in the indictment. \$1)\$
- Unlawful causation of death. \$2)\$
- Causation of death with malice aforethought. \$(3)\$
- Participation of the accused person(s) in causing or contributing to \$4)\$ the death. \$\overline{a}\$

(See: Also, *Uganda versus Kalungi Constance* HC Criminal case No. 443/2007 and *Mukombe Moses Bulu versus Uganda* SC. Criminal Appeal 12/95.)

- In the present case, the \$1^{\{st\}}\$ three ingredients death, unlawful causation, \$[9]\$ and malice aforethought appear not to have been contested as discussed below:

- (a) It is trite law that death may be proved by production of a postmortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body, (See Uganda versus Anyao Milton H. C Criminal Session No. 5 of 2017). Regarding the death of the deceased, it is the evidence of the prosecution that Nsigazi Ivan was murdered on the 12th of March 2018. This has been corroborated by the existence of a Postmortem report (P. Exh. 1) and the evidence of both the prosecution and the defence witnesses who all testified that indeed Nsigazi Ivan died on the 12th day of March 2018 and was buried the following day. Defence Counsel did not contest this ingredient and I therefore find that the Prosecution has proved this ingredient beyond reasonable doubt.
- (b) Regarding to the 2nd ingredient, the unlawful nature of the death, it is trite law that every homicide is presumed to be unlawful unless it is accidental, or it occurred in circumstances which make it justifiable. It therefore follows that a homicide unless accidental, will always be unlawful except if it is committed in circumstances which make it excusable. The circumstances that make death excusable include accident or defence of person or property, (Gusambizi S/o Wesonga Vs R (1948) EACA 65 and Uganda Vs Okello [1992-1993] HCB 68). There is nothing to show that the death of the deceased fell into the exceptions above. Death arising out of torture and severe injuries to the head of a person is not justified at all. It is unlawful. The Postmortem report (P. Exh. 1) of the deceased shows that the deceased had deep cuts on his head that could have been inflicted upon him using a sharp object. The Postmortem report further states that the deceased had a shattered cranium with exposed brain tissue, right jaw cut and both ears cut. It is these wounds inflicted upon the deceased that resulted in his death. Such circumstances of death were not accidental. Defence Counsel did not contest this ingredient. It is clear from the evidence that the deceased's murder was not authorized by any lawful order, and neither was it accidental. I therefore find that the Prosecution has proved this ingredient beyond reasonable doubt.
- (c) Thirdly, the prosecution was required to prove that the cause of death was actuated by malice aforethought. According to Section 191 of the **Penal Code Act**, malice aforethought is defined as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death. This may be deduced from circumstantial evidence. It is trite law that a person accused of the offence of murder will not be convicted of that offence unless it is proved that the death was caused with malice aforethought. Malice aforethought is a state of mind which is hardly ever proved by direct evidence, or knowledge that the act or omission causing death will probably cause the death of some person, (See Section 186 of the Penal *Code Act*.) This intention or knowledge will invariably be inferred from the circumstances under which the death occurred. The court has set down the circumstances, which ought to be considered before making the inference whether malice aforethought was made out from the evidence, (See Tubere S/O Ochen vs. R (1945) 12 EACA

63);

- (d) The court must consider the type of weapon used, the nature of the injuries inflicted, the part of the body affected, whether vulnerable or not, and the conduct of the accused before, and after the attack, See *Uganda vs. Turwomwe* (1978) HCB 182. In the instant case, the Postmortem Report revealed the cause of death to be excessive deep wounds inflicted on the deceased's head, face and right arm. The Postmortem report further suggests that these wounds were a result of sharp objects such as a panga. The head and face which were cut are very vulnerable parts of the body. Any injury to such parts is life threatening. The injuries were multiple, and deep causing extensive bleeding from which death ensued. The only inference one draws from the above is that whoever inflicted those injuries upon the deceased did so with the intention of causing death. The defence did not contest this ingredient. I find that whoever inflicted these injuries upon the deceased must have intended him to die. The element of malice aforethought within the meaning of S.191 PCA is therefore accordingly proved.

Participation of the accused

- Lastly and most importantly, the Prosecution is required to prove beyond \$[10]\$ reasonable doubt that it is the accused that caused the unlawful death of the deceased. This is done by adducing direct and/or circumstantial evidence, placing the accused at the scene of the crime as the perpetrator of the offence. It is the element of participation of the accused in the murder of the late Nsigazi Ivan that is heavily contested by the defence. All the accused persons raised the defence of alibi. An accused person who raises a defense of alibi does not have a burden of proving it, See *Festo Asenua Androa & Anor Vs Uganda* (1988) and *Sekitoleko Vs Uganda* (1970) EA 42. The only duty placed on the accused is to account for so much of the time of the transaction in question as to render it impossible to have committed the imputed act, (See *R vs Chemulon Wero Olango* (1937) 4 EACA 46 and *Cissy Ggibwa Kalibbala and 2 others vs Uganda* UGCA 297 of 2022).
- In the case of *Bogere Moses and another vs Uganda* SCCA No.1 of 1997, \$[11]\$ the Supreme Court held inter alia, that putting an accused person at the scene of crime means proof to the required standard, beyond reasonable doubt, that the accused was at the scene of the crime at the material time. To hold that such proof has been achieved, the court must base itself upon the evaluation of evidence as a whole. It therefore follows that the burden to disprove the alibi rests on the prosecution. The prosecution discharges this burden by placing the accused at the crime scene at the material time. The accused, when he sets up an alibi as a defence, he or she does not thereby assume any responsibility of proving the alibi. The prosecution is under a duty to negative the alibi by evidence. See also *Kibale Isoma vs. Uganda* S. C Cr. App. No. 21 of 1998 [1999] 1 EA 148. To do so, the prosecution must produce evidence which places the accused squarely at the scene of crime. In *Bogere Moses & another vs. Uganda* (supra) the court gave what amounts to putting the accused at the scene of crime. It held that;

"What then amounts to putting an accused person at the scene of the crime?.....the expression must mean proof to the required standard that the accused was at the scene of crime at the material time. To hold that such proof has been achieved, the court must not base itself on the isolated evaluation of the prosecution evidence alone but must base itself upon the evaluation of the evidence as a whole. Where the prosecution adduces evidence showing that the accused person was at the scene of crime, and the defence person was elsewhere at the material time, it is incumbent on the court to evaluate both versions judicially and give reasons why one and not the other version is accepted. It is a misdirection to accept the one version and then hold that because of that acceptance per se the other version is unsustainable."

In this case, proof of the fourth ingredient depends on the identification of the all the accused at the scene of crime.

Analysis of evidence on participation

[12] The prosecution relied primarily on witness testimony to place the accused at the scene of the crime at the material time. Prosecution led evidence through Ziribagwa Siraji (PW1) who told court that he was not at the scene when the deceased was killed and never went to the scene even after the death of the Nsigazi Ivan. He only knew the deceased as they were neighbours. He also knew Hangana Alex (A3) and Namara Pius (A6) as the deceased's relatives. This witness testified that;

> "Upon his [deceased] demise, the Police introduced a sniffer dog at the scene i.e, at the borehole, and it followed the trail of murderers to the accused persons.... The police sniffer dog found the trail to A1 and A3's place. An axe stained with blood was found in A1's house while at A3's place a panga was recovered stuck in a banana tree. It had a blood-stained handle. Then A3 was found putting on jacket with blood stains. Police arrested them and drove them to police for interrogation. As police took away the suspects. A3 felt that we would halt their transportation and lynch them. He pleaded thus: 'Forgive me, I did it without knowing the consequences' [Emphasis added]

This was also the evidence of Turyahikayo Johnson (PW2) and of Tumusiime Charles (PW3), the police arresting officer of some of the suspects including A3.

- [13] This evidence was discredited by the dog handler (PW8) who testified that dog evidence is not effective where the scene of crime was not well preserved as in the instant matter. There is evidence on record that the scene of crime was tampered with before the sniffer dog was introduced. The blood-stained jacket that was allegedly being put on by Hangana (A3) was not produced in court and no forensic examination was conducted to confirm whether the alleged blood stains on the jacket matched the blood sample from the body of the deceased. Lastly, D/ASP Zakumumpa (PW7) who moved with the suspect in the police pickup to the police station following A3's arrest and D/Cpl Mulinde, the investigating officer of the case denied knowledge of the alleged confession of A3 admitting to having participated in the murder of the late Nsigazi Ivan rendering the evidence of PW1, PW2 &

PW3 doubtful. Based on the evidence as a whole, PW1's testimony lacks the requisite probative value to support a conviction of the accused.

- [14] Turyahikayo Johnson (PW2), told court that he was not at the scene when the crime took place. This witness stated that;

"Police brought a sniffer dog which picked the trail of the murderers from the spot where he was "slaughtered" and it proceeded to A5's place and sat on his bed (A5, is now also deceased). It then proceeded to the Chairman's (A1) place and when it entered the house, it sniffed out Kiiza Bruno (A2) hidden under the bed. A panga stained with blood was also recovered from A1's place. The dog proceeded to A1's compound and found A3 putting on boots and it caught him by the boots. A3 was arrested and while being placed on a police pick up. people wanted to lynch him, but he pleaded for his life saying that he should be forgiven for what he did was done with ignorance of the consequences. Police was able to safeguard him and drove off". [Emphasis added]

It should be noted that as per the evidence of Muhanuka Pascal (PW5), a neighbor to the accused persons and the deceased, PW2 marries the daughter of the deceased, a fact that has the potential of rendering his evidence implicating A1, A2 and A3 suspect thus the need for testing it with great care in view of the land wrangles that existed between the

deceased and his brother A3 which somehow involved A1, the area L. C1 chairperson.

- The evidence of this witness was substantially assailed by the defence. [15] There is no evidence from the GAL report on the panga to confirm and link it to the murder of the deceased. D/ASP Zakumumpa (PW7) and D/Cpl Fred Mulinde (PW6) who was the investigating officer during cross examination revealed that the panga found stuck in the banana tree in A1's compound had rust and blood stains and when taken for scientific analysis, the return was negative, meaning that the panga was not used in the commission of the offence. The canine evidence was discredited since the scene of crime was tampered with. Police did not record the alleged confession of A3 in a charge and caution statement to cloth it with the necessary safeguards during trial. What transpired next after the alleged confession by A3 regarding his involvement in the murder is not known. Why police did not follow this clue in their investigations of the murder is very disturbing.
- Further doubt of this alleged confession is from No. 35707 D/Cpl. Fred [16] Mulinde (PW6), the investigating officer who arrested A3 and moved with him on the pickup to the police station in cross examination denied ever witnessing this confession. This creates doubt in the prosecution case. which the law enjoins me to resolve in favour of the accused. PW2 also told court that the deceased had land issues with his relatives which make them suspects in his murder. Aside from this being speculative and only suspicion, it was not evidence capable of proving the charge against the accused.
- **Tumusiime Charles (PW3)**, a police officer, told court that he was at \$71\$ home when he received a call that someone had been killed. He stated that:

"I know the Accused persons. I participated in their arrest on murder charges of Ivan Nsigazi. On 13/03/2018 at around 1.00 a.m. I was at home and a one PC. Taremwa called me on phone and told me about the murder of Ivan Nsigazi. I rushed to the Police Post and found the deceased at the Police Post. He breathed his last in my presence. We took the body of the deceased to his place where the postmortem was done. At around 6.00 a.m. the LC III Chairman of the place called Aryampa Jackson came and directed that I arrest the **Chairman** (A1) who according to him, there was credible evidence about *his participation in the murder. The canine section of* Hoima brought a Police dog. It was introduced at the scene, and it led us to the homes of \$A5\$, \$A3\$, then to \$A1\$'s house where A2 was found hiding. As it came out and reached the compound, it found A3 whom it grabbed. The wanainchi wanted to lynch A3 but he pleaded with them to be forgiven. That he did not know the consequences of his act. That this was an act of ignorance. I had to rush him to the Police Post for his safety. I also found when **Namara Pius** (A6) was about to be lynched by the members of the public, this is when I also decided to pick him up and rushed him to police for his safety. Then, the members of the public started claiming that **Kasigaire** was the one who was monitoring the deceased pending his murder. I also arrested him".

PW3 did not give any direct evidence that any of the accused participated \$[18]\$ in the killing of the deceased. He did not cause the recording of a confession from A3 about his participation in the murder of the deceased as alleged. He however told court that the dog handler died through an accident and therefore would not be available to testify.

Asinguza Micheal (PW4), told court that he made his statement at \$[19]\$ midnight. He told court that;

> "On the \$13/03/2018\$ night time I was with a one Robert, a worker of our neighbour called Nalongo Kate coming from a Film Hall going home. As we slopped down towards the borehole, we found 2 young boys whom I never knew their names standing. We asked them why they were idle there/around. They told us that somebody in front had fallen with a Motorcycle. We moved together with these boys and proceeded to where this person was lying. On seeing him, I found that it was Ivan whom I knew. He was in deep pain and calling for help as he groaned in

pain. He was naming Hangana, Abel and Pius as the people who attacked him with the intention of killing him. He was demanding to know why they wanted to kill him. I knew these people, Ivan, the deceased was referring to. At the time, a certain Premo car approached. We stopped it and sought for help to transport him to the hospital. The driver accepted. We had **Ivan** driven to a certain clinic belonging to a one **Byaruhanga** in Katikara. **Ivan** was in a terrible condition and had ceased to talk by the time we reached the clinic. The Doctor at the clinic told us that he could not manage the patient and advised that in this particular case, there was need for us to first alert police. Immediately we reached the Police Station, **Ivan** breathed his last and died". [Emphasis added]

[20] The evidence of this witness which was very important as regards the suspects in the murder of the deceased was heavily discredited when he admitted that he did not disclose the dying declaration of the late **Nsigazi Ivan** to the effect that he had been attacked by ***Hangana*** (A3), **Abel (A1)** ***and Pius(A6)*** in his police statement. His police statement was received in evidence as D. Exh. I. It omits this very critical evidence. Indeed, the other persons, a one Robert, Mwebembezi Amon and Tugume who were with **PW4** did not testify in court about this dying declaration. This omission leads court to the conclusion that it was contrived evidence of **PW4**, and therefore his evidence is not reliable for a conviction of **Hangana (A3)**, **Abel(A1)** and **Namara Pius (A6)**. Also a one **Muhumuza Abdul** who according to D/Cpl Fred Mulinde (**PW6**), is the one who brought the deceased to police in his premo car while with **Asinguza Michael (PW4)** also never testified in court to confirm the deceased's dying declaration.

Muhanuka Pascal (PW5) told court that; [21]

> "On the 12/03/2018, on Monday, at around 11.00 a.m. I was coming from Katikara Trading Centre because it had been a market day. As I descended towards the borehole, the late **Ivan** passed me while on a motorcycle. As I followed him, I had a bang and for me I thought that he has fallen. I continued to move towards **Ivan**. I found him groaning in pain. I met 2 men moving i.e. **Pius (A6)** and a one **Moses** and there were lights of torches flashing around. I got scared. **Ivan** was talking 'Hangana, Hangana, my brother you have killed me?'... There was a bright moonlight. The torches were being flashed on and off. **Pius** also had a torch..... They passed near where I had hidden myself. Since this was a swampy/Kisenyi area and torches were still flashing on and off I joined the bush and fled to the Omukeshanda Trading Centre, I told the people there that somebody had been murdered and that it could be **Ivan** who had first passed me on the motorcycle. I proceeded home. The next day in the morning, information came confirming that **Ivan** had been killed. I went to his place. I told people how I heard **Ivan** scream the name of **Hangana** as the one who killed him and how I met **Moses** and **Pius** running away from the scene. Indeed, when Police came with a sniffer dog. it grabbed **Hangana** among others'. [Emphasis added]

[22] **PW5** appear to have found useful information regarding the suspects who murdered the deceased **Ivan Nsigazi**. The suspects were a one **Moses** and **Hangana (A6)** whom he claim he met fleeing the scene of crime. He however, surprisingly made his statement at police about 3 months after the incident when the people of the deceased had to first look him up. None of the policemen who testified in court i.e, **Tumusiime Charles (PW3)**, **D/Cpl Fred Mulinde (PW6)** who is the investigating officer of the case and recorded the statements of the people who picked and brought the deceased to police and **D/ASP Zakumumpa (PW7)** did not reveal to court that they got information that the deceased made a dying declaration to the effect that **Hangana (A3)** was the one who killed the deceased. Indeed, no other person testified that **Muhanuka Pascal (PW5)** told him about such a dying declaration. The so called dying declaration therefore remained a mystery. One would have expected such a useful witness like **PW5** to make a report at police immediately about the incident but did not do so

and did not give reasons why. He did not make a statement to police before going to Mbarara for allegedly another burial

since he first participated in the burial of the deceased in this case or immediately upon his return from Mbarara.

[23] No. 35707 D/Cpl. Fred Mulinde (PW6), the investigating officer of the case told court that:

> "It was on the 13/03/2018 at around 10.00 a.m. a one **Muhumuza Abdu, a resident of Kisita and a taxi driver** brought the deceased in his vehicle at Police. The deceased was in coma state. **Muhumuza** described how he found and picked the deceased. He found the deceased lying down screaming for help. At the scene there were 3 boys who were trying to help the deceased. The boys were **Tugume, Amon and Micheal [PW4]**. They lifted the deceased to **Muhumuza's** car, and they drove it out of the scene and ended bringing him to Police. The victim was already identified as Ivan.... **Muhumuza** led me to the scene of the crime. I together with other Police officers and a crime preventer cordoned off the scene. There was a lot of blood on the floor. We cordoned off the scene at 1.30 a.m. By the time nobody had reached the scene. When it clocked around 2.00 p.m., a one **Hangana (A3)** came around the scene....

> When it clocked 6.30 a.m., Police came along the dog section. The sniffer dog was to help us secure the suspects because at the time we had no suspects. The dog handler introduced the sniffer dog at the scene. The dog then proceeded through the swamp, the gardens, banana plantation up to the home of the Area LC I Chairperson (A1). It entered inside the bedroom of A1's worker and it sniffed out the worker by the names of **Kiiza Bruno** who was sleeping. The dog also went into the Chairman's home (A1) house and sat on his bed in the master bedroom. The dog proceeded and sniffed others by way of arrest who included **Kiwanuka Willy**, **Kasigaire Damiano (A7)** and **Tushabomwe Silvano (A4)**. The dog sat on A3's door, which was locked and then when he surfaced, it picked him up. It is **Namara Pius** who was not arrested by the Police dog. **Pius** was arrested because of

the land wrangles he was involved in with the deceased. I rushed then to Police to save them from mob justice."

During cross examination, PW6 stated thus:

"I do not recall when **Hangana (A3)** sought for forgiveness as regards the death of Ivan. His defence was that he could not kill his brother."

Then (PW6) further emphasized thus,

"No information was brought to my attention that the deceased mentioned the name of **Hangana (A3)** as the one that killed him."

- [24] This witness contradicted PW1-3 on the evidence that **A3** confessed to killing the late **Nsigazi Ivan** and asked for forgiveness. PW6 instead gave evidence that **A3's** defence was that he could not kill his brother and he was with him from the time of arrest up to the police station. This evidence sharply discredits and puts in doubt the evidence of PW1-3 that **A3**

confessed to killing the deceased and pleaded for forgiveness. This witness also asserted that no information was brought to his attention that the deceased mentioned the name of Hangana (A3) as the one that killed him. This further cast in doubt the evidence of the dying declaration on record since he took the statements of those who reported the incident at police and brought the dying Nsigazi Ivan at police from the scene of crime. PW6 instead corroborates the evidence of Hangana Alex (A3) that he did not participate in the murder of the late Nsigazi Ivan. The fact that Hangana Alex (A3) visited the scene of crime resonates with the findings of the forensic report (P. Exh.3) which matched the soil picked from the sole of his boots and soil samples picked from the scene of crime. I am in the premises unable to find that the presence of soil on the boots of **Hangana Alex (A3)** matching the soil samples from the scene of crime is incapable of innocent explanation and irresistibly points to his participation in the murder of the late Nsigazi Ivan.

- [25] The prosecution adduced evidence, regarding the recovery of a bloodstained axe from A1's house and a blood-stained panga from his banana plantation. However, forensic analysis did not conclusively link these tools to the crime. The GAL report (P. Exh.3) exhibited is in regard to the boots that were being put on by A3. The soil texture on the boots matched

with the soil texture of the scene of crime. These results, as I have already observed, in my view were expected because as the investing officer, (PW6) testified, at around 2:00am on the night of the murder of the deceased, A3 came around the scene. His boots therefore must have picked the soil from the scene which had to match with the sample GAL analyzed. Besides, neither the axe nor the boots and the allegedly blood stained jacket of **A3** were tendered in evidence for Court to appreciate.

- The prosecution case entirely relied on the evidence of the police sniffer ^[26] dog. In Uganda Vs Muheirwe & Ors, H. C Crim. Session No. 11 of 2012 the dog evidence must be treated with utmost care and caution by court and the preservation of the scene before the introduction of the dog is crucial.
- In the instant case, this court did not have an opportunity of receiving ^[27] evidence from the dog handler, he died before the prosecution of the accused persons. According to Muhanuka (PW5), the incident occurred on 12th March, 2018 at 1:00 am on the road from Katikara Trading Centre. It was market day, signifying that the road was busy. It is therefore inconceivable as **Muhanuka** (PW5) testified that from 1:00pm when the deceased was killed, then taken to police upto 1:30 am as per D/Cpl Mulinde (PW6) when the scene was cordoned off, the scene had not been Indeed, Asinguza Michael, Mwebembezi Amon and tampered with. **Tugume** were at the scene before its being cordoned. A3 came to the scene during the presence of police. There are no details as to what happened at the scene between when the deceased was picked up and when police came to the scene.

- Eventually when the police dog was introduced, the trail led it to A1's place and subsequently caused the arrest of A4, A5, and A7 as per the evidence of the investigating officer, Mulinde (PW6). Nothing tangible was recovered from these accused persons to connect them to the commission of the offence including the alleged blood stained jacket A3 was putting on, the panga and axe from A1's place and indeed none of these items were tendered in evidence or subjected for scientific analysis with positive results so as to connect them to the death of the deceased.
- It is apparent that there was chaos during the investigation and arrest of the suspects. Fear reigned especially for those that had land wrangles

with the deceased. This probably explains the alleged confession of A3 if at all he made it. He must have been trying to save himself from the mob that appeared to have been baying for his blood. The same apply to Kizza Bruno (A2). Being a worker of A1 who had wrangles with the deceased rendered him a suspect and had to hide in the house for his life since the environment was hostile but not because he was guilty. This probably also explains why no charge and caution statement was obtained from A3. He must have denied the allegation. His conduct therefore cannot be taken as evidence of guiltiness in the absence of any other evidence to the contrary.

- This is not a case of identification. The murderers were never identified. There is no eye witness to the murder of the deceased.
- Abel Bakesingaki (A1/DW1) told court that on the fateful day, he was at home and was only informed of the killing of the deceased. After learning of this, he visited the scene with some of his co-accused. He was arrested merely because the public demanded for his arrest. Recall that according to Tumusiime Charles (PW3), the police arresting officer, A1 was arrested upon the orders of the L. C3 chairman, a one Aryampa Jackson who claimed that there was "credible evidence" about A1's participation in the murder. This so called "credible evidence" was never adduced in court for neither the said Aryampa Jackson nor any other witness adduced such required evidence.
- Hanganu Alex (A3/DW2) in his oral testimony told court at the time of the killing of the deceased, he was at home sleeping. He was later told that Ivan Nsigazi had been killed after which he wore his boots and went to the scene. This explains why his boots contained soil matching that of the area around the crime scene. His alibi was corroborated by the testimony of his wife Justin Kasabiti (A3/DW2) and Allen Ngabirano (DW3) his sister testified that A3 was home with her on the night of the murder. He had spent part of the day in town but then returned at about 6pm on the evening of the 12th of March 2018. He was home until he received the news of the killing of his brother. Therefore, the claim by the prosecution that A3 pleaded with the mob that they should not lynch him because he killed his brother because of ignorance also remains a mystery in view of D/Asp Zakumumpa Deogracious (PW7), a senior police detective's evidence during cross examination when he stated that;

"I was in the cabin that transported the suspects to Kakumiro Police Station. I was seated in the cabin. I did not hear the revelation by the suspect A3 concerning the killing of the deceased"

This witness's evidence corroborated the evidence of PW6 both of whom contradicted PW1-3 on the alleged confession by A3 admitting involvement in the murder of the late Nsigazi Ivan.

- Tushabomwe Silvano (A4) and Kasigaire (A7) both denied being at the [28] scene of the crime at the time of killing of the deceased. The same apply to Namara Pius (A6), a cousin to the deceased who told court that at the time of the killing, he was at home with his wife, Edida Bwongere (DW7). His alibi was corroborated by the testimony of his wife who also told court that indeed she was with her husband in the same bed on the night of the murder incident.
- [29] Where an accused raises the defence of alibi he has no duty to prove it. The duty lies on the prosecution to disprove a defence of alibi and place the accused at the scene of the crime as the perpetrator of the offence, Cpl Wasswa & Anor Vs Uganda, SC. Crim. Appeal No.49 of 1999. The prosecution bear the burden to place the accused persons at the scene of the crime. There remained a doubt whether any of the accused participated in the crime. The defence of alibi which the accused persons put up were not broken. In the criminal law, where a doubt is created in the prosecution evidence regarding an essential ingredient of the offence charged, such a doubt must be resolved in favour of the accused person, because in that case, the prosecution will have failed to prove all the essential ingredients of the offence to that degree set out in **Woolmington* V, The D. P. P. (supra)*. It therefore follows that the prosecution did not prove the ingredient of the participation of the accused persons in the death of Nsigazi Ivan beyond reasonable doubt.
- The prosecution evidence did not sufficiently place any of the accused at [30] the scene of crime, See Okethi Okale & Ors. Vs. Republic (1965) EA 554. Mere speculation and suspicion by the prosecution witnesses that the accused participated in the murder of the late Nsigazi Ivan because of the family land wrangles however strong, without more, are not enough to establish the offence for which the accused are charged. See Cpl. Waswa & Anor. Vs. Uganda (supra) and Kiirya Joseph v Uganda HCCA

No 13 of 2024 for the holding that evidence based on suspicion however strong cannot form a basis for proving a charge.

- [31] The prosecution introduced evidence from a police sniffer dog to link the accused persons to the crime scene. However, this evidence was significantly undermined by the admission that the crime scene was not adequately preserved, which could affect the reliability of the dog's tracking abilities. Moreover, the handler of the sniffer dog had passed away, and his statement was not entered as evidence, further weakening the probative value of the canine evidence.

Conclusion

- [32] Considering the evidence presented and as evaluated, the prosecution has failed to prove beyond reasonable doubt that any of the accused persons participated in the murder of the late Nsigazi Ivan. The alibi evidence presented by the defense remained intact and unchallenged. The lady assessor was of the view that there is no evidence categorically implicating any of the accused persons while the gentleman assessor's opinion was to the contrary. Therefore, in agreement with the lady assessor who found that there is no evidence categorically implicating any of the accused persons beyond reasonable doubt that they participated in the murder of the deceased, considering the doubts raised by the defenses' alibi evidence, this court finds all the accused persons not guilty of the offence of murder contrary to Section 188 of the Penal Code Act.
- [33] Accordingly, the accused persons, Bakesigaki Abel (A1), Kiiza Bruno (A2), Hangana Alex (A3), Tushabomwe Silvano (A4), Namara Pius (A6) and Kasigaire Damiano (A7), are hereby acquitted of the charge of murder. They are to be released forthwith unless otherwise held for lawful cause. The charge against A5 abated upon his death.

Dated at Hoima this 30th day of August, 2024.

Byaruhanga Jesse Rugyema

Judge

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Prepared on 13 October 2026 · Esheria