

UGANDA / JUDGMENT

Uganda v Kule Joseph and Others
(Criminal Sessions Case 129 of 2024)
[2025] UGHC 391 (15 May 2025)
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COURT
High Court of Uganda

BEFORE
David S.L. Makumbi, J

CASE / FILE NUMBER
Criminal Sessions Case 129 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CR-SC-0129-2024

UGANDA===== PROSECUTION

VERSUS

- KULE JOSEPH
- MBUSA MOSES
- KULE JOSEPH KIBAKULIRA AKA KATHONO=====ACCUSED

BEFORE: HON. JUSTICE DAVID S. L. MAKUMBI

JUDGMENT

The Prosecution was jointly represented by Chief State Attorney Harriet Adubango and State Attorney Beth Agita while the Accused persons were jointly represented by Counsels Geoffrey Mishele and Geoffrey Chan Masereka on State Brief.

The Accused persons in this matter stand indicted for the offence of murder contrary to Sections 171 and 172 of the Penal Code Act.

The Prosecution case is that on the 24th of March 2024, Kule Joseph, Mbusa Moses and Kule Joseph Kibakulira aka Kathono unlawfully killed Mumbere Landus at Nyamabuka II village in Kasese district.

According to the time-honoured case of **Woolmington v DPP (1935) AC 462**, the Burden of Proof in criminal trials is always on the Prosecution. In that regard the Prosecution always has the duty to prove each of the ingredients of the offence and generally speaking the burden never shifts onto the accused except where there is a statutory provision to the contrary.

The Standard of Proof in criminal trials is proof beyond reasonable doubt and is met when all the essential ingredients of the offence are proved beyond reasonable doubt. The guiding precedent in Uganda to date is the case of **Miller v Minister of Pensions (1947) 2 All ER 372** wherein Lord Denning stated at Pages 373-374 that,

“The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with a sentence: ‘of course it is possible but not in the least probable’, the case is proved beyond reasonable doubt; but nothing short of that will suffice.”

The legal standard in the determination of whether or not the burden and standard of proof has been properly met will be done in accordance with the Supreme Court decision in **Abdu Ngobi v Uganda – Criminal Appeal No. 10 of 1991** where it was held that,

“Evidence of the prosecution should be examined and weighed against the evidence of the defence so that a final decision is not taken until all the evidence has been considered. The proper approach is to consider the strength and weaknesses of each side, weigh the evidence as a whole, apply the burden of proof as always resting upon the prosecution, and decide whether the defence has raised a reasonable doubt.”

For the Accused person to be convicted of Murder, the prosecution must prove each of the following essential ingredients beyond a reasonable doubt.

1. Death of a human being occurred,
2. The death was caused by some unlawful act,
3. That the unlawful act was actuated by malice aforethought, and
4. That it was the accused who caused the unlawful death.

Death may be proved by the production of a post-mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body (See **Kimweri v Republic [1968] EA 452**).

Prosecution relied upon a post-mortem report on Police Form 48B from Bwere Hospital dated 24th March 2024 received in evidence as Prosecution Exhibit No. 2 (PEX 2). According to the form the deceased was identified by Mbusa Bumeza, grandfather and Muhindo Meliko as Mumbere Landus.

PEX 2 was received as part of the agreed facts in the preliminary hearing and the Defence never contested the findings contained therein.

PW2 Turyasingura Onesmus testified as Medical Officer confirming the findings in the post-mortem report.

PW1 Bwambale Zibidayo Mudondo testified that he witnessed the deceased being killed on 22nd March 2024.

PW3 D/C Akullu Zubaid testified that on 25th March 2024 he received a report about murder of Mumbere Landus from one Biira Beatrice. He had then proceeded to the scene in Nyamambuka village where he witnessed the body laid face up with a lot of blood on the body with cuts on head and stomach.

PW4 D/C Mumbere Wilberforce testified as Scene of Crime Officer (SOCO) that on 24th March 2024 he accompanied PW3 to the scene of crime and witnessed the deceased's body at the scene of crime.

In light of the foregoing evidence I find that the Prosecution has proved beyond reasonable doubt that Mumbere Landus died.

The Prosecution is also expected to prove that the death of Mumbere Landus was the result of an unlawful act. Any homicide (the killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental or it was authorized by law (see **R v. Gusambizi s/o Wesonga (1948) 15 EACA 65**).

In order to establish the death as a homicide, direct or circumstantial evidence must sustain a causal link between an unlawful act attributed to another human being and the eventual death of the deceased. The evidence must establish attribution of causal responsibility for the resultant death to the unlawful act of another human being as a preliminary step towards the eventual attribution of criminal culpability to that person. The evidence should rule out the possibility of an accidental, suicidal or natural death.

According to the post mortem report PEX 1, the deceased's cause of death was severe haemorrhagic shock secondary to deep scalp wound to the left temporal area. PW2 testified concerning the post mortem report and revealed that the body had multiple lacerations on chest wall and deep wounds on the scalp. He further testified that the cause of death was severe acute blood loss.

PW1 testified that he had witnessed the deceased being cut by a brother to A1 and A2 using a panga and that he had used sticks to hit the head and speared the neck. PW1 went on to testify that he watched the deceased fight back as his voice got weaker until PW1 concluded he had died.

PW3 No. 346956 D/C Akullu Zubaid testified that he had responded to the scene with PW4 No. 64207 D/C Mumbere Wilberforce to the scene. PW3 testified that he had seen the body with cut wounds lying in a pool of blood. PW4 similarly testified that he had seen the body and it bore a deep cut to the head and lying in a pool of blood.

The Defence agreed with the Prosecution that the death of the deceased was the result of an unlawful act. I therefore find that the Prosecution has proved beyond reasonable doubt that the deceased died as a result of an unlawful act.

It is also the duty of the Prosecution in this case to prove that the cause of death was actuated by malice aforethought. Malice aforethought is defined by Section 174 of the *Penal Code Act* 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 (see ***R v. Tubere s/o Ochen (1945) 12 EACA 63***).

Furthermore, in the case of **Mumbere v Uganda – Supreme Court Criminal Appeal No 15 of 2014**, the Supreme Court held that,

“The elements of malice aforethought are well set out under Section 191 of the Penal Code Act as follows:”

“Malice aforethought shall be deemed to be established by evidence providing either of the following circumstances—”

(a) an intention to cause the death of any person, whether such person is the person actually killed or not; or

(b) knowledge that the act or omission causing death will probably cause the death of some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not, or by a wish that it may not be caused.”

We also wish to note that this Court in **Nandudu Grace & Another v. Uganda, Criminal Appeal No.4 of 2009** reiterated the ratio in the earlier decision of this Court in **Francis Coke v. Uganda [1992-93] HCB 43** that the existence of malice aforethought is not a question of opinion but one of fact to be determined from the available evidence.

We also hasten to add that in determining whether the prosecution has proved malice aforethought, the Court has to examine the circumstances surrounding each case. These circumstances include:

- the nature of the wounds inflicted;
- the part of the body injured;

3. *the type of weapon used;*
4. *the conduct of the accused person immediately before and after the injuries causing death were inflicted; and,*
5. *the manner in which the weapon was used-whether repeatedly or not.”*

According to the postmortem report PEX 2, the deceased's body had multiple external injuries including a deep scalp wound to the left temporal area of the head which was determined to be the cause of death.

The fatal wound to the deceased's head was also witnessed by PW3 and PW4 the police officers sent to investigate the matter.

PW1 testified that he witnessed the brother to A1 and A2 ordering them to get sticks to beat the deceased. He had then got a panga and cut the deceased. PW1 further testified on cross-examination that he witnessed the deceased pleading for his life while he was being cut.

The Defence agreed with the Prosecution position that the deceased was killed with malice aforethought.

Having evaluated the evidence with regard to malice aforethought I do agree that the deceased was killed with malice aforethought. The fact that he was cut with a panga and had a wound to the head left no doubt that whoever assaulted the deceased did so either with intent to kill or out of callous disregard of the possibility that the injuries inflicted on the deceased could result in death.

I therefore find that the Prosecution has proved beyond reasonable doubt that the deceased was killed with malice aforethought.

In order to prove the final ingredient in the offence of murder the Prosecution should provide credible direct or circumstantial evidence placing the Accused at the scene of the crime as an active participant in the commission of the offence.

In this matter one of the key pieces of evidence that the Prosecution places reliance upon are the confessions of A1 and A2 as obtained from Charge and Caution statements that they recorded. During the course of trial PW3 D/C Akullu Zubaid testified that he had arrested A1 and A2 and that they had confessed to being in possession of bloodstained clothes belonging to their brother who PW1 had seen assault the deceased. He further testified that he arrested A3 after he had been mentioned in a confession by A2.

PW5 D/AIP Ndungu Jackson testified that he had recorded the Charge and Caution statement of A1 Kule Joseph but upon the Prosecution applying to tender in the statement, Defence Counsel objected and informed Court that A1 had denied making the statement. At this point the Court adjourned the main trial and continued to hold a Trial within a Trial.

During the Trial within Trial PW5 testified that he was summoned to record the Charge and Caution statement of A1 Kule Joseph. A1 was then handed over to PW5 by PW3 D/C Akullu Zubaid who left PW5 alone with A1. PW5 went on to testify that he communicated with the suspect in Lukonzo and confirmed that he felt free to communicate with him before going on to explain to him the purpose of the statement and that the statement may be used at trial. He then went on to read the charge to A1 and A1 had confirmed that he understood the charge and signed accordingly. PW5 had then proceeded to administer the caution that whatever A1 said would be recorded and could be used in Court to which A1 had indicated he understood and had signed while PW5 countersigned the statement.

PW5 went on to confirm that he was not armed and was not wearing uniform and that A1 was not under any duress. He went on to state that A1 was lying about not making the statement and that the statement had been read back to the Accused in Lukonzo.

PW5 further confirmed that he had not been part of the team conducting investigations.

During cross-examination PW5 confirmed having recorded Charge and Caution statements from both A1 and A2 on different dates having been given instructions by the Division CID officer. He further pointed out that he was the only officer at the station above the rank of AIP at both times. He went on to confirm that he had recorded both statements in English as he was conversant with speaking Lukonzo but not writing it. He then went on to testify that he was not aware that A1 and A2 were illiterate and had thumb-printed their statements.

For his part A1 testified that he had never made any statement and denied signing any statement. He went on to claim he had studied only up to Primary 4 level and that he only knew the Lukonzo language. He insisted that he was incapable of signing.

PW5 went on to testify that he had also recorded the Charge and Caution statement of A2 and he then went on to testify about taking him through the same process as A1. He went on to testify that A2 had confirmed he understood his rights and had counter-signed his statement by printing the name "Moses". He further confirmed that he had communicated to A2 in Lukonzo but had recorded his statement in English and then read it back to him Lukonzo.

PW5 testified further that he had realized A2 was a suspect in the same case as A1 but had still gone on to record his statement on orders of his supervisor as he was the only officer available of the rank of AIP. He went on to state that A2 was lying about not having recorded a statement.

For his part A2 testified during Trial within a Trial and denied making a statement. He went on to claim he had studied up to Primary 4 and that he would not sign but only used a thumb-print.

Prosecution went on to submit concerning the Trial within a Trial that the confessions received from A1 and A2 met the standards established under Section 23(1) of the Evidence Act and were in line with the procedures outlined in the case of **Festo Androa Asenua v Uganda – SCCA 1 of 1998**. Prosecution further argued that the absence of a translated version of the confessions was not fatal given that PW5 knew Lukonzo and had interacted with A1 and A2 in Lukonzo.

Prosecution cited the case of **Segonja Paul v Uganda – SCCA No 42 of 2000** to support this point.

Prosecution further argued that the personal information in the confessions such as the location of the home of A1 and A2 was not information available to PW5 and to that extent they were lying about not having made statements.

As concerns PW5 recording both A1 and A2s confessions, Prosecution argued that the circumstances were such that PW5 had no choice being the only officer of the appropriate rank to receive the confessions. Prosecution invited Court to disregard the lies of A1 and A2 and receive the statements.

Counsel for the Accused argued in reply that the failure to record the confessions in the Lukonzo language went against the standard set on the **Festo Androa Asenua** case. Counsel further argued that the Accused persons were illiterate and could therefore not read anything whether in English or Lukonzo and to that extent the absence of a Lukonzo version of the confessions meant that there was no confession from either A1 or A2.

Counsel for the Accused further argued that to the extent that A1 and A2 had demonstrated they were illiterate then they ought to have signed their confessions by way of thumb-print. Counsel therefore contended that the confessions were a fabrication and that furthermore they ought to be excluded by virtue of Sections 2 and 3 of the Illiterates Protection Act.

In considering whether to admit the confessions of A1 and A2 this Court took into account Section 23(1) of the Evidence Act which provides for confessions to be made in the presence of a police officer of or above the rank of AIP. In this matter it is clear that PW5 was a police officer at the rank of AIP and was therefore competent to receive the confessions of A1 and A2.

This therefore only left the issue of whether the Charge and Caution Statements or confessions attributed to A1 and A2 were authentic and validly recorded.

Counsel for the Accused contested the authenticity of the confessions on two primary grounds those being that the signatures on the confessions were not those of his clients. He then also contested the validity of the confessions on the basis that there was no Lukonzo translation. I note though that these two arguments appear contradictory because on the one hand Counsel for the Accused and indeed the Accused persons themselves argue that they never made the confessions. To that extent it appears contradictory to then go ahead and argue that the confessions are not valid on the grounds that there is no Lukonzo translation. The absence of a Lukonzo translation would presuppose that the English versions of the confessions had been made by A1 and A2. However, I shall still proceed to address the arguments and treat them as arguments in the alternative.

I note from both the submissions of Counsel for the Accused and A1 and A2 themselves that their main contention is that they never made the confessions attributed to them. This therefore means that they are in essence repudiating the statements entirely as opposed to retracting them as statements made under duress or inducement. The circumstances under which the statements were made is therefore not in issue. As concerns whether or not the confessions were made by A1 and A2 they basically both claimed that to the extent that they were illiterate they were both incapable of signing their statements. This is an argument further sustained by their Counsel who argued that they qualified for protection under the Illiterates Protection Act. However, Section 1 of the Illiterates Protection Act provides that the term “illiterate” means in relation to any document, a person who is unable to read and understand the script or language in which the document is printed.

In this matter the issue is not so much the inability to understand the language in which the confessions were printed but rather the language in which they were translated to the Accused persons. In both confessions it is recorded therein that the statements were read back to A1 and A2 in Lukonzo the language of their understanding as reflected also in this Court’s own record when they took plea. There is therefore no doubt that to the extent that they both indicated that they were conversant with Lukonzo they had understood the verbal translation rendered to them by PW5. As concerns denying signing the confessions, A1 stated that the signature on the confession was not his and that he does not sign while A2 stated that he also does not sign and usually uses thumb-print.

Both A1 and A2 claimed to have studied only up to Primary 4.

I have considered both A1 and A2s claims not to have made the confessions as they were both incapable of signing being illiterate. It is my considered view that A1 and A2 both lied about not being capable of signing because having studied until Primary 4 as they claimed it would be highly unlikely that they would be incapable of some basic form of writing. There is actually proof of this on the Court record in the form of the Memorandum of Agreed Facts where A1 and A2 both applied written signatures as opposed to thumb-prints. There are even visible similarities between some of the letters used to sign the confessions and those appearing on the Memorandum of Agreed Facts. It is also pertinent that in this regard A1 and A2 do not even contest the issue of whether the signatures match but attempt instead to distance themselves altogether from the signatures by feigning illiteracy. I therefore find that the confessions as recorded by PW5 were in fact made by A1 and A2.

As concerns the absence of the Lukonzo written translation, I have taken into account the requirement among others as laid out in the Supreme Court decision in the **Festo Androa Asenua** case for a charge and caution statement to be recorded in the vernacular and then translated to English. However, I am also mindful that the said requirement presupposes an ideal situation being that there is either a Magistrate or Police Officer of or above the rank of AIP conversant with writing Lukonzo available to record the Charge and Caution Statement of the suspect. Section 23(1) of the Evidence Act provides inter alia that the confession is to be made in the immediate presence of either a Magistrate or a Police Officer of or above the rank of AIP.

The requirements laid out in the **Festo Androa Asenua** clearly stipulate that it should be the Magistrate (or in this case the Police Officer) to record the statement. In the event that the Magistrate or Police Officer cannot speak the suspect's language then an interpreter may be brought in but what seems to be clear is that the Magistrate or Police Officer of or above the rank of AIP records the statement as they are the only ones legally empowered to receive the confession. However, in a situation where there is neither Magistrate nor qualified Police Officer conversant to write the language of the Accused available but capable of understanding the same then it would seem to me only logical to record the statement in English and read it back in the vernacular. This to me does not defeat the primary purpose which is to ensure that the suspect understands what has been recorded despite it being in English.

In my view the guidelines for the recording of Charge and Caution statements must be interpreted and applied bearing in mind the objective reality on the ground and balancing the same against the rights of the suspect. In this case A1 and A2 are not contesting the understanding of the confessions but rather are denying them entirely which argument this Court has already rejected. PW5 testified that at the time he was the only officer qualified to receive the confessions while at the same time being able to communicate in Lukonzo. The fact that there was no qualified person available conversant with written Lukonzo cannot in my view disqualify the confessions from admission especially in light of the requirement for substantive justice without undue regard to technicalities as stipulated under Article 126(2)(e) of the Constitution. In the absence of any evident violation of the rights of A1 and A2 the substantive justice of the matter required that PW5 proceed to receive the confessions despite being unable to record them in Lukonzo because there was no other suitably qualified person available.

I would apply the same reasoning above to the question of PW5 interviewing both A1 and A2. In the absence of any other suitably qualified person to enable the confessions to be recorded separately then PW5 was duty bound to receive both confessions provided that neither suspect's rights were violated. I did not see any evidence to suggest that the recording of both A1 and A2s confessions by the same person resulted into a violation of their rights.

In light of the foregoing reasoning this Court admitted the confessions of A1 and A2 into evidence as PEX 3A and PEX 3B respectively.

In considering the confessions of A1 and A2 in this matter I bear in mind the decision of the Court of Appeal in **Tuwamoi v Uganda (1967) EA 84** wherein it was held that,

“A trial court should accept any confession which had not been adhered to during the trial with caution and must before founding a conviction on such a confession be fully satisfied in all the circumstances that the confession was true. The same standard of proof was required in all cases and a court would generally only act on a confession if it was corroborated in some material particular by independent evidence. Corroboration, however, was not necessary in law and a court might act on the confession alone if it was fully satisfied, after considering all the material points and surrounding circumstances, the confession could not be true.”

According to A1's confession as recorded in PEX 3A, he stated that on 24th March 2024, he, Moses Mbusa and Thembo Lazaro were woken by their sister at around 1AM to inform them that someone was trying to steal their goats. The person was subsequently apprehended by his brothers Lazaro and Jimmy and A1 continued to state "we started beating him".

A1 continued to state in his confession that, "Jimmy, Muhyana and Lazaro took the man away when he was already unconscious until he met his death along the way".

For his part A2 stated in his confession as recorded in PEX 3B, that on 24th March 2024 at around 1AM he and his brothers Joseph Kule and Lazaro were woken by their sister who informed them about someone trying to steal their goats. He went on to state, "As the thief ran away, we followed him until arrested. As we brought him back at home, we started beating him with the help of other neighbours like Jimmy, Muhyana, Katono and Kabugho Rita."

A2 further stated in his confession that, "When Chairman LCII called Jacob arrived he told us to take the suspect to the LCI Chairman's place – Nzangura. Jimmy, Moses s/o Kanyaha, Katono, Muhyana and Lazaro pulled him (deceased) on ground taking to Chairman but unfortunately he died on the way. Indeed we murdered Mumbere Landus."

The confessions of A1 and A2 were corroborated by PW1 Bwambale Zibidayo Mudondo who testified in chief that on 22nd March 2024 he had witnessed the brother to A1 and A2 get a panga and cut the deceased. He went on to testify that he had been hiding when he witnessed A1 and A2 with their brother who fled to Congo along with their two sisters saying that the deceased should be killed because he was a thief. He testified that he had flashed a torch briefly and had also relied on a phone torch that one of the attackers was using to identify the accused persons. He also pointed out that he was about 5 metres away as he witnessed the attack. PW1 was asked during about inconsistencies in his statement about interacting with the accused and he denied speaking to the accused persons at the scene. He testified though that a colleague of his had tried to stop the accused persons but they had refused to listen and he and his colleague eventually left around 10PM.

PW1 testified that he had never seen A3.

PW3 could not recall when A3 was arrested but testified that he had been arrested by the Chairman LCI Nzangura who had been a witness as LC at the scene of crime. PW3's testimony about the Chairman LCI corroborated A2's confession with regard to what he stated about being told to take the deceased to the same LCI Chairman after the beating.

Prosecution argued that by his testimony PW1 witnessed the attack on the deceased and had identified A1 and A2 at the scene by means of a torch. Prosecution further relied on the testimony of PW3 the investigating officer who stated that they had managed to identify and arrest A1 and A2 who had been identified to them by PW1. PW3 had then proceeded to immediately arrest A2 while A1 had attempted to flee but was chased by police officers arrested.

Prosecution also highlighted PW3s testimony about searching A1 and A2s home from which they recovered blood-stained clothes belonging to A1, A2 and their brother Thembo Lazaro. PW3s testimony was corroborated by PW4 who had accompanied PW3 to the scene. It is on the basis of the foregoing evidence that Prosecution prayed that Court find the A1, A2 and A3 guilty as A1 and A2 had confessed to committing the offence with A3.

A1 testified on oath that he and A2 were in Bwera at a club called Vienna in Bwera on the night the deceased died and that he got back home around 6AM and was informed by Kabugho Rita about the death of the deceased. A1 went on to testify that he had gone to the location where the body was said to be but found it had been removed. A1 further denied recording a charge and caution statement and denied interacting with the officer who recorded the charge and caution statement. He further testified that he had only met A3 in prison and not before.

A2 testified on oath that he was with A1 in Bwera on the night the deceased died. He testified that upon return Kabugho Rita had told them that someone died and they had gone to see the body. He then testified that they had found a body and then they had gone back home.

During cross-examination A2 denied recording a charge and caution statement. He further stated that he was with A1 when he saw the body of the deceased but did not know who died.

A2 further informed court that at the time of his arrest he was at Bwera Demo School in Primary 4. He further stated that throughout the time he was in school from Primary 1 to Primary 4 he was not able to read and write.

Counsel for the Accused contested the participation of the Accused persons on the grounds that the Prosecution had failed to prove that they had participated in the murder of the deceased.

Counsel contended that according to the summary of the Prosecution case the Accused persons had accosted the deceased along the road and beaten him to death on suspicion of being a thief. Counsel contended that this was in contrast to PW3s testimony that the deceased's body was found lying along Nyamambuka Road and the fact that no witness ever testified to having seen the Accused persons abandon the deceased's body along Nyamambuka Road.

Counsel for the Accused further contended that PW1 had been untruthful to the extent that he had stated in during his testimony in chief that he had been alone when he witnessed the deceased being attacked. This was in contrast with what he had stated in his plain statement admitted in evidence as DEX 1 where he had stated that in plural about witnessing the murder with another person. PW1 had further stated that he had left the scene of crime with his colleague who he said had approached the Accused to ask them to stop beating the deceased. Counsel further contended that the plain statement contradicted PW1s narrative as in the statement he never mentioned identifying A2 and A3 at the primary scene or witnessing the deceased die.

Counsel for the Accused contended that the contradictions above cast doubt on PW1s testimony.

Counsel also contested the fact that despite the PW3 and PW4 testifying that evidence was collected at the scene of crime and sent to the Government Analytical Laboratory the said items were never produced in Court. Furthermore Counsel argued that PW1 could not have correctly identified the Accused persons by simply flashing a torch once at the time of the murder. He accordingly argued that Court treat his evidence with the greatest care as a single identifying witness.

When I consider the preponderance of evidence in this matter, I find that by their own charge and caution statements, the A1 and A2 effectively placed themselves at the scene of crime as active participants in the assault that ultimately resulted in the death of the deceased. The Accused persons acted together as persons with a common purpose within the meaning of Section 20 of the Penal Code Act.

Section 20 of the Penal Code Act provides that,

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of that purpose, each of them is deemed to have committed the offence.”

Furthermore, in **Uganda v Sebaganda (1977) HCB 7**, it was held that where there is a common intention it is immaterial who inflicts the fatal injury to the deceased as long as the injury is inflicted when the parties are carrying out a common purpose and that in such a case one is responsible for the acts of the other.

It is therefore immaterial that A1 and A2 were not responsible for the fatal blow. The mere fact that they were present and actively participated in beating the deceased, they are just as guilty as the one who struck the fatal blow or blows.

Counsel for the Defence contested the evidence of PW1 who identified A1 and A2 at the scene on the grounds that it contained a number of material inconsistencies. However, I find that when PW1s evidence is considered alongside the confessions of A1 and A2 it paints a consistent picture of the involvement of A1 and A2. I also note that even after the assault PW3 testified that it was PW1 that helped police identify and arrest A1 and A2.

PW1s evidence of identification of A1 and A2 at the scene is therefore corroborated by the confessions of A1 and A2 and to that extent I found it credible concerning identification at the scene.

However, I noted that the reference to Katono in the confessions of A1 and A2 appears to be the only basis for the arrest and prosecution of A3. PW1 never saw him at the scene of crime and both A1 and A2 denied knowing him prior to their arrest and prosecution. The mere reference to a single name which name does not even appear among his official names on his Driving Licence and National ID both exhibited in Court as DEX 3 and DEX 4 respectively cannot form a sound basis for proving the participation of A3 in the murder of Mumbere Landus.

I also considered Counsel for the Accused's argument that PW3s evidence contradicted the summary of evidence. According to Counsel the summary of evidence presented a narrative suggesting that the Accused persons accosted the deceased along the road and had beaten him up on suspicion of being a thief. He argued that this was in contrast to PW3s testimony that the deceased's body was found abandoned somewhere along Nyamambuka Road and that no-one witnessed the Accused persons abandon the body. With due respect I failed to see the concern here because the summary of evidence is meant to simply outline the salient details of the case for the benefit of pre-trial disclosure. It is not a definitive or conclusive submission of the Prosecution case in the way of Court testimony.

In light of the foregoing I do find that the Prosecution had proved beyond reasonable doubt that A1 and A2 participated in the murder of Mumbere Landus. However, I also find that the Prosecution has failed to prove beyond reasonable doubt that A3 participated in the murder of Mumbere Landus.

I therefore partially agree with the Assessors and I find that the Prosecution has failed to prove beyond reasonable doubt that A3 Kule Joseph Kibakulira is guilty of the murder of Mumbere Landus and I accordingly acquit him.

A3 Kule Joseph Kibakulira is therefore free to go unless held on other lawful charges.

As concerns A1 Kule Joseph and A2 Mbusa Moses I disagree with the Assessors and I find A1 and A2 guilty of the murder of Mumbere Landus contrary to Sections 171 and 172 of the Penal Code Act as indicted and I accordingly convict them of the same.

I disagree with the Assessors in as much as their evaluation of the evidence completely excluded the confessions of A1 and A2 which were admitted into evidence during the hearing of the Prosecution case. The Assessors therefore ended up only evaluating PW1s evidence without taking into account whether it was corroborated in any material respect by the confessions of A1 and A2.

ALLOCUTUS:

The Prosecution presented the following arguments as aggravating factors:

- * Murder is a capital offence.
- * Convicts deprived the deceased of his life at only 23 years.
- * Convicts subjected the deceased to severe injuries being deep cuts which ultimately led to death.

The Prosecution prayed for a deterrent sentence.

Counsel for the Convicts presented the following by way of mitigation:

- * The convicts are first offenders and are young with convict No 1 being 27 years while No. 2 being 18 years.

* The convicts are orphans and were the only ones looking after the home.

Counsel prayed that the court consider the circumstances under which the offence was committed. The offence took place in the middle of the night at 1AM and the convicts participated in defence of their home and the properties there and unfortunately the deceased did not survive. Counsel prayed that Court notes that the convicts have been disciplined and capable of reform. They should be allowed opportunity to get back to their home.

Convicts have both been on remand for 1 year, 1 month and 4 days. It is prayed that Court grant a lenient sentence.

Statement from Convicts:

Convict 1:

I pray for forgiveness to enable us to go back home. We regret what we did.

Convict 2:

I pray for forgiveness to enable us go back home. We pray for lenient sentence.

SENTENCE:

I have considered the aggravating and mitigating circumstances in this matter. The circumstances of the matter involve the taking of life. I have noted that the circumstances seem to suggest that the deceased person was apprehended while attempting to steal from the convicts. However, regardless of this fact nobody is allowed to take the law into their own hands. The issue of mob justice is a very grave concern because it deprives the victim of due process and to that extent there is risk of innocent persons losing their lives. Mob justice is therefore not to be condoned. It is also evident from the nature of injuries sustained by the deceased that he was assaulted quite severely.

In reaching sentence I have also taken into account the fact that the convicts appear to be first time offenders. I have also particularly taken into account the younger age of Convict 2 Mbusa Moses.

In light of the foregoing I do hereby sentence Convict 1 Kule Joseph to serve a term of imprisonment of 20 years less time spent on remand of 1 year, 1 month and 4 days. He will therefore serve a remaining term of 18 years, 10 months and 26 days imprisonment.

I hereby sentence Convict 2 Mbusa Moses to serve a term of imprisonment of 17 years less time spent on remand of 1 year, 1 month and 4 days. He will therefore serve a remaining term of 15 years, 10 months and 26 days imprisonment.

Right of Appeal explained.

David S. L. Makumbi

JUDGE

15/05/25

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