

UGANDA / JUDGMENT

Uganda v Musekuula alias Haguma (Criminal Case 204 of 2022) [2024] UGHC 889 (30 August 2024)

[2024] UGHC 889

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Criminal Case 204 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA HOLDEN AT KYANGWALI CRIMINAL CASE NO. 0204 OF 2022

UGANDA ::::::::::::::::::::::::::::::

VERSUS

MUSEKUULA ALOYZ alias HAGUMA ::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- The accused Musekula Aloys alias Haguma stand indicted with the \$[1]\$ offence of **Murder C/ss 188 & 189 PCA**. It is alleged that during the night of 23rd day of April 2021 at Kyebitaka village in the Kikuube district. the accused assaulted Twagiravesu Kamuzungu Njonjogoro who eventually died on the \$2[^]{nd}\$ day of May 2021. The accused pleaded not guilty to the offence.
- \$[2]\$ The prosecution case is that at around the midnight of \$23/4/2021\$, the deceased, Twagirayesu Kamuzungu who was known to be violent whenever he is drunk, came to the accused's place and demanded for his son, Ezekiel Twagirayesu who had taken refuge at the accused's place because of his father's violence. When the accused opened the door for the deceased to enter, both of them picked a quarrel and in the process, the accused picked a mingling stick which he used to hit the deceased on the back, chest and belly/stomach until the deceased became weak and fell down. The accused and his wife dragged the deceased to the road where an ambulance organized by police later in the morning picked him and

took him to Kituti-Kyangwali Health Centre IV. The deceased's condition deteriorated and as a result, he was transferred to Mulago hospital where he died from on the 2nd of May 2021.

- [3] In his sworn statement to court, the accused explained that his other name "Haguma" is his father's name. As regards the charge of murder levied against him, he explained that on the fateful night, at around midnight, he heard the deceased bang his door open and when he confronted the deceased, he found the deceased armed with a knife and a mingling stick and stated that he was looking for his children. That the deceased was drunk and violent and the accused felt that the deceased was going to hurt him. As a result, the accused sent his wife to the chairman, Mr. Mateso Kwizera who came and the accused handed over to him the big knife and the mingling stick he had disarmed the deceased. That the accused explained to the chairman how the deceased had attacked him and destroyed his door which he had kicked open. The accused explained further that later, the chairman took the deceased to his (deceased's) place and on the following morning, he went and reported at Kasonga police how the deceased attacked him the previous night and while armed with a deadly weapon i.e, a big knife, the deceased destroyed his door. It was later at around noon that he saw police come and arrest him on the allegations of assaulting the deceased.
- [5] It is the contention of the accused that he later learnt that the deceased was actually assaulted by the chairman and his defence secretary as to what later led to his death.

Counsel legal representation

[6] The prosecution was represented by Ms. Seera Becky of the Office of the Director of Public Prosecutions, Hoima while the accused person was represented by Ms. Dorothy Mushabe of the Refugee Law Project and Mr. Asasira Benjamin of Justice Centres, Hoima.

Burden and Standard of proof

- [7] It is a cardinal principle of criminal law that the burden of proving 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 reason doubt. The burden never shifts to the defence except in a few exceptions provided for by the law which do not apply to the instant case. The prosecution is enjoined to prove all the ingredients of the offence to the required standard, see *Woolmington Vs DPP* [1935] AC 462 and *Leonard Aniseth Vs R* [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.
- [8] 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 person was indicted has been proved to the required standard. Evidence is evaluated as a whole, *Abdu Ngobi Vs Uganda*, S. C. Crim. Appeal No.10 of 1991.

- [9] At trial, pursuant to S.66 TIA, a memorandum of agreed facts was drawn and the following documents were received in evidence by agreement.

i) Post Mortem Report of the deceased admitted as P. Exh.1.

ii) P. F.24 in respect of the accused person as P. Exh.2.

Ingredients of the offence of murder.

[10] In a charge of murder, the prosecution must prove 4 essential ingredients of the offence;

1. Death of the deceased person named in the indictment
2. Unlawful causation of death
3. Causation of death with malice aforethought
4. Participation of the accused person in causing or contributing to death, see *Mukombe Moses Vs Uganda*, S. C. Crim. Appeal No.12/95.

- [11] In the present case, the three ingredients of the offence i.e death, unlawful causation and malice aforethought were not contested and therefore, court finds that they have been satisfactorily proved by the prosecution as discussed below.

- [12] It is trite law that 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 *Uganda Vs Anyao*, H. C. Crim. Session No.5 of 2017. Regarding the death of the deceased Twagirayesu Kamuzungu Njonjogoro, the prosecution adduced the evidence of the post mortem report (P. Exh.1) and that of his wife **Furah Muhawe** (PW2) who testified that her husband, the deceased died from Mulago hospital where he had been referred to, though the post mortem Report was prepared at Kyangwali health centre. In the absence of any contest about the deceased's death, the st ingredient of the offence is accordingly found to be proved.

- [13] As regards the nd ingredient of the offence, i.e., the unlawful nature of the death of the deceased, it is trite law that every homicide is presumed to be unlawful unless it is accidental or it occurred in the circumstances which make it justifiable. The circumstances that make death excusable include accident, or defence of person or

property, *Gusambizi S/o Wesonga Vs R* [1948] EACA 65. In the instant case, the accused did not raise the defence of self defence and of property but attributed to the death to the deceased to the L. C1 chairperson and his defence secretary, and as I directed the assessors during summing up to the assessors, it reasonably arises from the defence.

- [14] Self defence and defence of property depends on the particular facts and circumstances of the situation and the onus is on the prosecution to establish that the killing was not done in self defence: *Palmer Vs R* [1971] 1 All ER 1077. As guided in the case of *Manzi Mengi Vs R* [1964] EA 289 at 292, for the defence of self defence or defence of property to stand, there

has to be reasonable necessity for the killing or an honest belief based on reasonable grounds that it was necessary and the violence attempted by or reasonably apprehended from the attacker is really serious. Smith & Hogan in "Criminal law, 6th Edition 1988 at p.246 state that it can rarely, if ever, be reasonable to use deadly force merely for the protection of property [or self defence at that].

- [15] In the instant case, the accused claim that the deceased was armed with a mingling stick and a big knife and therefore posed a threat to him. However, Ezekiel Twagirayesu (PW1), the only eye witness testified that the deceased was un armed though violently drunk. It is instead, the accused who sought for a mingling stick and struck the deceased. The accused claim that he disarmed the deceased of the mingling stick and the big knife and handed them over to the L. C1 chairman of the area. Unfortunately, the chairman did not testify in court and the fact of the big knife and the mingling stick is unknown.
- [16] In the circumstances of this case, where the accused did not expressly raise self defence or defence of property (door) coupled with the fact that he attributes the death of the deceased to the L. C1 chairman and his Defence secretary, I find that the defence of his or property is not available to him. In the premises, I find that the death of the deceased was unlawfully caused, the 2nd ingredient of the offence is accordingly proved to the required standard.
- [17] As regards the 3rd ingredient of the offence, court must consider inter alia, the type of weapon used, the nature of the injuries inflicted and the part of the body affected whether vulnerable or not, Uganda Vs Turyomwe [1978] HCB 182. In the instant case, the Post Mortem Report (P. Exh.1) established the cause of death as "severe debilitation due to injuries of cervical/brachial plexus...." The external injuries were indicated as "Internal tenderness at cervical & Thoracic spines with neck tilted to the left." This is evidence of a neck twist. The only inference once draws from the above is that whoever inflicted these injuries upon the deceased did so with the intention of causing death. I find that whoever inflicted the above injuries upon the deceased must have intended him to die. The element of malice aforethought within S.191 PCA is therefore accordingly found proved to the required standard.

Participation of the accused

- [18] Lastly and most importantly, the prosecution is required to prove beyond reasonable doubt that it is the accused who killed or that he caused the unlawful death of the deceased. This is done by adducing direct or circumstantial evidence that the accused is the perpetrator of the offence.
- [19] In the instant case, the prosecution adduced evidence of the sole eye witness, Ezekiel Twagirayesu (PW1), the son of the deceased.

According to him, he witnessed the accused pick a mingling stick, use it to hit the deceased on the back and on the stomach and then, the accused and his wife dragged the deceased to the road to create an impression that he had been beaten by strangers. PW1, a child of tender years aged 10 years gave an unsworn statement to court.

[20] In Patrick Akol Vs Uganda, SC Crim. Appeal No.123 of 1992 citing with approval the opinion of Lord Goddard in the case of R Vs Campbell (1956) 2 All ER 272, the law regarding the unsworn evidence of a child was summarized as follows:

> "To sum up, the unsworn evidence of a child must be corroborated by sworn evidence; if the only evidence implicating the accused is that of unsworn children, the judge must stop the case."

It is also the law under S.40(3) of the TIA that:

"Where in any proceedings any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his or her evidence may be received, though not given upon oath, if in the opinion of court, he or she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; but where evidence admitted by virtue of this sub section is given on behalf of the prosecution, the accused shall not be liable to conviction unless the evidence is corroborated by some other material in support thereof implicating him or her."

Corroboration in evidence means additional independent evidence connecting the accused to the crime as explained by Lord Reading CJ in R Vs Baskerville [1916] 2 KB 658 thus;

"...corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also the prisoner committed it."

- [21] In the instant case, the 2nd prosecution witness Furaha Muhawe (PW2) did not adduce any useful evidence that the deceased was assaulted by the accused save for claiming that the accused and his wife had assaulted the deceased and it is the accused's wife who reported it to the L. C1 chairman. As I have already observed, the prosecution did not lead evidence of the L. C1 chairman. His evidence would have been essential to clarify on the alleged recovery of the big knife or mingling stick the accused claim he handed over to him.
- [22] In my view, the unsworn evidence of PW1 who was the sole eye witness to the commission of the offence against the accused was never corroborated. The case against the accused therefore stand unproved. Therefore, in disagreement with the honorable assessors, I find that the accused is found not guilty of the offence. As a result, he is acquitted and set free unless there are other lawful charges pending against him.

Dated this 30th day of August, 2024.

Byaruhanga Jesse Rugyema JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/889/eng@2024-08-30>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-v-musekuula-alias-haguma-criminal-case-204-of-2022-2024-ughc-889-30-august-2024-unknown-topic-unknown-court-2024--6a3ea4d83b1caa91297e53dc>

Prepared on 12 October 2026 · Esheria