

**Uganda v Musinguzi George and
Another (Criminal Case 165 of 2022)
[2025] UGHC 338 (20 January 2025)**
[2025] UGHC 338

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The two on the second Count are jointly charged with Aggravated Robbery contrary to **Section 285 and 286** of the **Penal Code Act**. The particulars giving rise to the indictment are that Musinguzi George (A1) and Ampeire Ishmael alias Major (A2) and others still at large on the 27/09/2021 robbed Nahabwe Chrispus 30 aka Gadaffi of a motor cycle Bajaj Boxer Reg. UER 908H valued at approximately UgX two million and seven hundred thousand shillings only (UgX 2, 700,00) and 5 at or immediately before or immediately after the said robbery used deadly weapons on the said Nahabwe Chrispus alias Gadaffi causing his death.

Representation.

Mr. Onyango Isaac (State Attorney) appeared for the Prosecution while Mr. Kibulirani Nicholas represented the Accused persons on state brief. At the 10 commencement of this trial the two assessors were Mr. Livingstone Turyamutunga and Ms. Kembabazi Christine.

The trial however concluded with the assistance of the latter as a single assessor. During the preliminary hearing pursuant to **Section 66** of the **Trial on**

15 a) A sketch plan dated 27/09/2021 received as Exhibit P1.

Indictment Act uncontested evidence was admitted as follows:

- b) The post mortem report in Police Form 48B in respect of the Deceased Nahabwe Chrispus received as Exhibit P2.
- c) Police Form in respect of the medical examination of A1 and A2 received as Exhibit P3 and Exhibit P4 respectively.
- 20 d) A log book in respect of Motorcycle Registration number UER 908H received as Exhibit P5.
- e) 6 photographs of the body of the Deceased received collectively as Exhibit P6.
- f) 3 photographs of the recovered Motorcycle Registration number UER 908H 25 received as Exhibit P7.
- g) 4 photographs of the scene received as Exhibit P8.

5 h) 1 photograph of the scene where a weapon was recovered from received as Exhibit P9.

Burden and Standard of Proof.

This being a criminal trial it is one whose proof lies squarely on the Prosecution and the Accused persons have no duty to prove their innocence.

10 It is also proof beyond reasonable doubt. Any doubts unless fully explained must be resolved in favour of the Accused persons and the Accused persons must only be convicted on the strength of the Prosecution case and not on the weakness of the defence case.

See: Ssekitoleko versus Uganda (1961) EA 531.

15 Ingredients of the offence.

As per **Section 188 and 189 of the Penal Code Act** to constitute the offence of murder the Prosecution must prove the following ingredients beyond reasonable doubt.

- 1) **Death of a human being.**
- 20 2) **That the death of the Deceased was caused unlawfully.**
- 3) **That the death of the Deceased was actuated by malice aforethought.**
- 4) **That the Accused participated in causing the death of the Deceased.**

1) **Death of a human being.**

25 Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the Deceased and that they saw the Deceased's body or attended the burial.

- 5 It is the evidence of AIP Mugisha Prosper (PW6) the Scene of Crime Officer in this case that on the 27/09/2021 he together with a team of detectives moved to the scene of crime in Kiburara village where they found a dead body with an Identification Card in the names of Nahabwe Chrispus. This evidence is corroborated by medical evidence in Exhibit P2 the post mortem report dated 10 28/09/2021 that details that Nahabwe Chrispus died as a result of excessive
hemorrhage caused by deep cut wounds.

The Accused persons did not dispute the fact that Nahabwe Chrispus is dead. It was an admitted fact. I therefore find that the Prosecution has proved beyond reasonable doubt that Nahabwe Chrispus is dead.

2) **That the death was caused by some unlawful act.**

The law presumes that any homicide (killing of a human being by another) is presumed to have been caused unlawfully unless it was accidental, excusable or authorized by law.

20 See **R versus Guzambisi s/o Wesonga (1948) EACA 65.**

It is the evidence of Bitomwe Philip (PW1) that on the 27/09/2021 he saw the body of the Deceased with injuries to the head and leg. This is corroborated by the postmortem report in Exhibit P2 that details that the Deceased Nahabwe Chrispus had multiple bruises on the whole body and died as a result of excessive

25 hemorrhage.

There is no evidence on record that suggests the death of Nahabwe Chrsipus was either accidental or authorized by law.

5 It is my finding that the Prosecution has proved beyond reasonable doubt that the death of Nahabwe Chrispus was caused by some unlawful act.

3) That the death of the Deceased was actuated by malice aforethought.

Malice aforethought in murder trials can be ascertained from the weapon used (whether it is a lethal weapon or not) the manner in which it is used (whether it is used repeatedly or the number of injuries inflicted) the part of the body that is targeted or injured (whether or not it is a vulnerable part) and the conduct of the Accused before during and after the incident (whether there was impunity).

See R versus Tubere s/o Ochen (1945) 12 EACA 63.

- 15 It is the evidence of Bitomwe Philip (PW1) that the body of the Deceased Nahabwe Chrispus had injuries to the head and legs. This was corroborated Prosper (PW6) the Scene of Crime Officer in this case. Further corroborative evidence was presented in Exhibit P2 the postmortem report that details that the Deceased Nahabwe Chrispus had multiple bruises on his whole body with a deep cut wound
- 20 on his left ankle, a deep cut wound on the left side of the eye and a smashed head. The cause of death was indicated as resulting from and that his cause of death was excessive hemorrhage caused by cut wounds.

I had the opportunity to view the 6 photographs in Exhibit P6 of the body of the Deceased Nahabwe Chrispus and they do corroborate the medical evidence in

25 Exhibit P2. The head is a vulnerable and sensitive part of the body. The decision of the assailants to target the Deceased's head and other parts of the body inflicting deep cut wounds that led to the Deceased bleeding excessively leaves no

5 doubt in my mind that the intention of his attackers was to cause his death which they ultimately did.

It is my finding that the prosecution has successfully proved beyond reasonable doubt that the unlawful act leading to the death of Nahabwe Chrispus was actuated by malice aforethought.

4) Participation of the Accused.

It is the evidence of DC Sabiiti Erick (PW5) the investigating Officer in this case that his findings revealed that the Deceased Nahabwe Chrispus was killed by a mob on allegations that he had been involved in the theft of pigs in the village of

- 15 Kiburara. This evidence was corroborated by that of AIP Mugisha Prosper (PW6) the District Scene of Crime Officer who testified that he visited the scene and the information he gathered was that the Deceased was heard making an alarm on the 27/09/2021 at around 2:00AM when he was being assaulted and that the version of events he obtained was that a mob assaulted him over theft of a pig
- 20 and that he was a bodaboda rider and the Motorcycle was not recovered at the scene.

According to AIP Mugisha (PW6) a sniffer dog was introduced at the scene and it led the team to a residence in the neighborhood where a piece of a metallic bar and blood stained sticks were recovered. The Motorcycle that was being ridden

25 by the Deceased Nahabwe Chrispus was later recovered in an operation mounted by Byaruhanga Joseph (PW2) together with a team of local leaders.

5 The two Accused persons in this case A1 and A2 in their sworn defence both denied murdering Nahabwe Chrispus on the night of the 27/09/2021 and raised the defence of alibi.

It is trite law that the Accused persons in this case have no duty to prove this defence and the onus is on the Prosecution to discredit this defence and to place

10 the Accused persons at the scene of crime.

See Kyalimpa Edward versus Uganda SCCA No.0010 of 1995.

The evidence presented by the Prosecution in this case is essentially circumstantial evidence.

The Supreme Court in **Byaruhanga Fodori versus Uganda – Criminal Appeal 15 No. 0018 of 2002** held that: -

"It is trite law that where the Prosecution case depends solely on circumstantial evidence the Court must before deciding upon a conviction find that the exculpatory facts are incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The Court

20 *must be sure that there are no other co-existing circumstances which weaken or destroy the inference of guilt"*

See also Teper versus R (1952) AC 480.

The evidence presented by the prosecution witnesses in PW5 and PW6 as highlighted is to the effect that a mob assaulted and killed the Deceased Nahabwe

25 Chrispus. The sniffer dog led the Police to a structure where a metallic bar and blood stained implements were recovered.

5 However, in all these there is no direct link to the two Accused persons. There are no eye witness accounts to the murder of the Deceased.

The only credible link presented by the Prosecution is the recovery of the Motorcycle that the Deceased was riding with the Accused persons. This in itself is not proof that the Accused persons participated in the murder although it

10 points irresistibly to their presence at the scene.

I find the doctrine of recent possession not sufficient to link the Accused persons to the murder of Nahabwe Chrispus who admittedly was killed by a mob and the multiple injuries suffered by the Deceased point to the same. I have not found sufficient credible evidence that the Accused persons did participate in the assault

15 and murder of Nahabwe Chrispus.

For the reasons that I have advanced I disagree with the opinion of the single assessor on Count 1 and find that the Prosecution has failed to prove beyond reasonable doubt the offence of murder against the Accused persons and I therefore find A1 and A2 not guilty and acquit them of the same.

20 Ingredients for Aggravated Robbery.

On this Count the Prosecution must prove the following beyond reasonable doubt.

- 1) That there was theft.
- 2) That during, at or immediately before or after the theft the attacker used or threatened to use violence during the theft.
- 25 3) That the attacker used a deadly weapon in order to retain the thing stolen.
- 5 4) That the Accused persons participated in the commission of the offence.
- 1) Theft.

Section 237(1) of the Penal Code Act defines theft as

10 "A person who fraudulently and without claim of right takes anything capable of being stolen... is said to steal that thing"

under subsection (2) of the above Section the fraud referred to is deemed to exist if a person who takes anything capable of being stolen does so with the intention of permanently depriving the owner of the thing.

15 In the present case the Prosecution relied on the evidence of Mugisha Ivan (PW4) who testified that he knew the Deceased Nahabwe Chrispus and they used to ride boda bodas together before his death.

It is the evidence of Mugisha (PW4) that he had given the Deceased his motorcycle to ride and that in the night of the 26/09/2021 while listening to the news at

20 8:00PM he heard that in Mwendo Parish one Nahabwe Chrispus Gaddafi had been killed and that he suspected that it was the Deceased who he had given his motorcycle to ride.

According to Mugisha on the 27/09/2021 he reported the missing motorcycle at Kabale Police Station. Mugisha (PW4) states that the motorcycle was Registration 25 No. UER 908H Bajaj Boxer Red in colour.

That on the 13/10/2021 at around 10:00AM he received a call from the Police at Kabale that his Motorcycle had been recovered. Mugisha testifies that when he

5 went to the Police Station he found the Motorcycle, the Number Plates had been covered with a "***Kavera***" and when removed it revealed his Registration No. UER 908H and that it was the Motorcycle that he had purchased from one Muhwezi Justus. To this effect the Prosecution tendered to Court a sale agreement for the Motorcycle that was received as Exhibit P2. Mugisha states that he purchased the 10 motorcycle as second hand (used) and that the log book is yet to be changed and registered into his names. According to Exhibit P5 the Motorcycle is registered in the names of Isaac Twesigye. Byaruhanga Joseph (PW2) the LC 1 chairperson of Kinyungusi cell lower Bugongi testified to how he and other locals on night patrol recovered the motorcycle that was in the possession of the two Accused persons 15 in the night during the covid 19 period in 2021 and that the motorcycle was Registration Number UER 908H. According to Byaruhanga (PW2) they handed over the Motorcycle and Accused persons to Kabale Central Police Station. DC Sabiiti Erick (PW5) testified that after the case file had been registered Mugisha Ivan (PW4) reported that his Motorcycle had been robbed and presented 20 documents relating to the ownership of the motorcycle such as the log book and purchase agreement. This was on the 28/09/2021 and that on the 13/10/2021 in the morning hours the Motorcycle and Accused persons were presented to Central Police Station by the LC 1 chairperson of Kinyungusi cell.

According to the witness (PW5) the number plates of the Motorcycle were 25 concealed by "***Kavera***" and when they removed them they found it to be Registration Number UER 908H bearing the same descriptions of that reported by Mugisha Ivan (PW4) an Exhibit slip to this effect was received as Exhibit P10. Photographs of the said Motorcycle were received as Exhibit P3.

5 I accept the evidence of Mugisha Ivan (PW4) that the Motorcycle Registration Number UER 908H Bajaj Boxer red in colour belonged to him as per the sales agreement in Exhibit P12. The fact that Mugisha was in possession of the log book though yet to be transferred into his names corroborates his testimony.

It is his evidence that he gave this Motorcycle to the Deceased Nahabwe Chrispus

10 to ride and that it was on the 13/10/2021 that the Police informed him of its recovery is not contested. The evidence of Mugisha Ivan that he owned the Motorcycle in issue has not been contested by both Accused persons who both denied ownership of the same.

I accept the evidence of Byaruhanga Joseph (PW2) that he and his local patrol 15 team recovered the motorcycle and handed it over to the Police.

It is therefore my finding that the Prosecution has proved theft of the Motorcycle Registration Number UER 908H beyond reasonable doubt.

2) Use of violence.

It is the evidence of Bitomwe Philip (PW1) that he saw the body of the Deceased 20 with injuries to the head and leg. This evidence is corroborated by the medical report in Exhibit P2 that was the medical report which detailed that the Deceased Nahabwe Chrispus had multiple injuries on the whole body and died as a result of excessive hemorrhage.

I have viewed the photographs of the body in Exhibit P6 that is a graphic 25 representation of the amount of violence that was meted out on the Deceased.

5 I therefore, have no doubt that violence was used during the theft of Motorcycle Registration Number UER 809H from the Deceased Nahabwe Chrispus.

It is my finding that the Prosecution has proved the 2nd ingredient beyond reasonable doubt.

3) use of a deadly weapon.

10 **Section 267(3)(a)(i)** defines a deadly weapon to include any instrument made or adapted for shooting, stabbing or cutting and any imitation of such an instrument.

It is the evidence of AIP Mugisha Prosper (PW6) that when the sniffer dog was introduced to the scene it led them to a structure from which they recovered a

- 15 piece of metallic iron bar and blood stained sticks. An Exhibit slip to this effect was received as Exhibit P11. The description of the injuries sustained by the Deceased Nahabwe Chrispus in the postmortem report in Exhibit P2 of multiple bruises on the whole body, a deep cut wound on the left ankle, a deep cut wound on the left side of the left eye and a smashed head are all consistent with the use
- 20 of the iron bar and sticks recovered by the sniffer dog.

It is therefore my finding that the Prosecution has proved beyond reasonable doubt that a deadly weapon was used in the theft of the Motorcycle Registration Number UER 809H.

5 4) Participation.

The evidence presented by the Prosecution in this case is circumstantial evidence and there is no direct evidence linking the Accused persons to the Robbery of Motorcycle Registration Number UER 908H.

I have already cited the guidance of the Supreme Court in one above in 10 **Byaruhanga Fodori versus Uganda (Supra)** I need not reproduce the same here but I will bear it in mind.

The Supreme Court in **Tindigwihura Mbahe versus Uganda criminal Appeal No. 0009 of 1987** held that: -

"*Briefly the law is that circumstantial evidence must be treated with caution and*

15 *narrowly examined because evidence of this kind can easily be fabricated. It is therefore necessary before drawing an inference of the Accused's guilt from circumstantial evidence which would weaken or destroy the evidence"*

On the weight to be attached to circumstantial evidence the Court in **Tumuhairwe versus Uganda** [1967] EA 328 held that "circumstantial evidence"

20 "is very often the best evidence. It is evidence of surrounding circumstances which by intensified examination, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial"

It is the evidence of Byaruhanga Joseph (PW2) that during the Covid 19 time in 2021 as the LC1 chairperson of Kinyungusi cell, in lower Bugongi he and other

25 locals were on patrol at around 2:00AM when a team in front of them informed them that a Motorcycle was approaching them and it was turning its head lamps on and off as it moved.

- 5 According to Byaruhanga they decided to take cover and wait for the Motorcycle and when they tried to stop it the rider and passenger refused to stop so they knew something was wrong and they managed to arrest them. Byaruhanga identified A1 as the passenger and A2 as the rider. The number plate of the Motorcycle was concealed by "akavera".
- 10 He states that when they questioned them A1 at first said that they were going to hospital but could not provide the details of the patient they were going to see and so they decided to take them to Kabale Police Station together with the Motorcycle that he described as having a Registration Number UER 908H. At Police he states they were informed that the said Motorcycle had been stolen and

15 was being searched for.

This evidence is well corroborated by that of DC Sabiiti Erick (PW5) who testified that the Accused persons together with the Motorcycle Registration Number UER 908H whose registration plates had been concealed by a polythene bag were handed over to the Police Station by Byaruhanga Joseph (PW2) the LC 1 20 chairperson of Kinyungusi cell in lower Bugongi.

The two Accused persons in their sworn defence denied the charge. George Mugisha (A1) testified that he does not know the Deceased Nahabwe Chrispus nor A2 who he only heard about in the summary of evidence. He states that the prosecution witnesses told lies against him and that he spent the 27/09/2021 at

25 home until 4:00PM and does not even know the location of Kaburara. It is his evidence that on the day of his arrest he was going to Makanga to check on a patient when a number of people about 6 arrested him at Bugongi as one climbs towards Makanga at around 6:00PM and to date he does not know why he was

5 arrested. The patient that he was going to see according to A1 was his wife. A1 also states that he was arrested at around 6:00PM with a bodaboda man who was not known to him. It is also his evidence that A2 was later brought to the Police cells two hours after he had been detained.

Ampeire Ishmael (A2) in his sworn defence denied the Count of Aggravated 10 Robbery testifying that he did not know the Deceased Nahabwe Chrispus and that he owned a bar and A1 was his customer. It is his evidence that in the night of the 12/10/2021 at around 11:00PM A1 got an accident with his Motorcycle and requested him to take him to hospital and that when they reached Kabale Town on the road to Makanga using the lower Bugongi route they found men who 15 stopped them and according to A2 he was the rider of the Motorcycle and he knew that it belonged A1 and he told the men that A1 was his boss.

He states that they were told that they should go to Police and sort things there and that at Police he told them that A1 knows more about the Motorcycle.

It is his evidence that A1 told lies that he did not know him before their arrest.

- 20 I accept the evidence of Mugisha Ivan (PW4) as already laid out that the Motorcycle in issue Registration Number UER 908H belongs to him and that he had given the same to Nahabwe Chrispus alias Gadafi for use and that when Nahabwe was killed the Motorcycle was stolen. I also accept the evidence of Byaruhanga Joseph (PW2) that he and his local patrol team intercepted A1 and
- 25 A2 in possession of the said Motorcycle and handed them together to the Police at Kabale Central Police Station.

5 The evidence to this effect is cogent and consistent. It is well corroborated by DC Sabiiti Erick (PW5). The Prosecution has therefore proved that the Motorcycle Registration Number UER 908H was recovered in the possession of the two Accused persons.

I do not find the defence of A1 believable that he was not arrested in the presence 10 of A2 and that the Motorcycle in issue Registration Number UER 908H is not known to him. The evidence on record to the effect that the two were arrested in possession of the said Motorcycle is overwhelming.

Besides A2 turns the tables on A1 stating that A1 sought his services to ride him to hospital after he had gotten an accident on the night in issue. The cross

- 15 examination of A2 by A1 did not weaken this testimony. The defence of A1 is obviously simply a pack of lies. The defence of A2 that A1 through his girlfriend requested him to ride A1 to hospital on A1's Motorcycle appears to be consistent with the statement that A2 made while at the Police Station. The demeanor of A2 as he testified appeared to be truthful. Questions though rise as to why A2 allowed
- 20 to ride the stolen Motorcycle while turning on and off the head lamps if he did not suspect that it was a stolen item. Surely A2 ought to have been suspicious at this point. A2 denied knowing that the Number Plates were UER 908H.

That said I am nonetheless persuaded by his testimony that the Motorcycle in issue belongs to A1 who he was assisting to ride.

25 The Court of Appeal in **Kaggwa Sadiq alias Gadafi versus Uganda criminal Appeal No. 0097 of 2014** guided that before a Court can apply the doctrine of recent possession, it should take into account the circumstances of the case. The

5 Court proceeded to cite the decision in **DPP versus Nelser (1958) 3 WLR 757** in which it was held that: -

"*The doctrine of recent possession is merely an application of the ordinary rule relating to circumstantial evidence that the exculpatory facts against an Accused person must be incompatible with the innocence and incapable of explanation upon*

- 10 *any other reasonable hypothesis than that of guilt according to particular circumstances. It is open to a Court to hold that unexplained possession of recently stolen articles is incompatible with innocence. But guilt in this context may be either of stealing or of receiving articles in question. Everything must depend on the circumstances of each case. Factors such as the nature of the property stolen*
- 15 *whether it be of a kind that readily passes from hand to hand and the trade or occupation to which the Accused person belongs can all be taken into account, a shop keeper dealing in second hand goods would naturally suggest receiving rather than stealing"

The Supreme Court in **Bogere Moses & another versus Uganda criminal 20 Appeal No. 0001 of 1997** held that: -

"*It ought to be realized that where evidence of recent possession of stolen property is proved beyond reasonable doubt, it raises a very strong presumption of participation in the stealing, so that if there is no innocent explanation of the possession, the evidence is even stronger and more dependable than eye witness*

25 *evidence of identification in a nocturnal event. This is especially so because in variably the former is independently verifiable, while the latter solely depends on the credibility of the eye witness"

5 There is clearly no innocent explanation on record of how A1 came to be in possession of the Motorcycle in issue. The Motorcycle was robbed on the 27/09/2021 and recovered on the 13/10/2021.

This period of time is short and the only presumption open to this Count is that A1 was a participant in the robbery.

10 I have not found co-existing circumstances in this case that would weaken the Prosecution case.

After considering the evidence adduced by the Prosecution and defence together it is my finding that the Prosecution has proved its case beyond reasonable doubt and I accordingly find A1 guilty of the offence of Aggravated Robbery contrary to

- 15 **Section 285** and **286** of the **Panel Code Act** and convict him of the same.
- In regard to A2 it is my finding that the Prosecution has failed to prove its case beyond reasonable doubt against A2 and I find him not guilty and acquit him of the charge of Aggravated Robbery contrary to **Section 285** and **286** of the **Penal Code Act**. I order that he be set free unless liable to being held for some other 20 lawful reason.

Before me,

..... **Samuel Emokor Judge 25 20/01/2025**

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