

UGANDA / JUDGMENT

Uganda v Nabukenya and Others (HCT-17-CR-SC-0124-2024) [2024] UGHC 1247 (28 August 2024) [2024] UGHC 1247

COURT

High Court of Uganda

BEFORE

Wolayo, J

CASE / FILE NUMBER

HCT-17-CR-SC-0124-2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKASEKE

CRIMINAL SESSION CASE NO. HCT-17-CR-SC-0124-2024

(ARISING FROM NAKASONGOLA AA. NO.14 OF 2023)

(NAKASONGOLA CRB NO. 081 OF 2023)

UGANDA PROSECUTION

V

1. NABUKENYA REGINA
2. BETUNGURA SILVER
3. BARAHUKAYO KENNETH
4. NYANZI DAVID..... ACCUSED

BEFORE LADY JUSTICE HENRIETTA WOLAYO

JUDGMENT

Introduction

1. The four accused persons were indicted with murder c/s 188 of the Penal Code Act Cap. 120. It is alleged that on 10.2.2023, the four accused persons caused the death of Vicent Kato with malice aforethought.

2. On. 6.3.2024, the indictment was read to the accused persons to which they all pleaded not guilty. Assessors appointed were Nambi Winnie and Sejjemba Seryato Ben who took the assessor's oath on 27.3.2024 when hearing commenced. Peace Bashabe appeared for the prosecution while the accused persons were represented by Kajuga Paul and Boniface Lukwago on private brief.
3. At the end of the prosecution case, I acquitted Nabukenya Regina and Barahukayo Kenneth after determining that the prosecution had not made out a prima facie case against them and I undertook to give my reasons in the judgment. This judgment therefore is not only in respect of Betungur Silver and Nyanzi David but it also gives reasons for the acquittal of Nabukenya and Barukayo.
4. The prosecution had a duty to prove beyond reasonable doubt the g with ingredients of murder:
 1. Death occurred.
 2. It was caused intentionally or the perpetrator did not care if death resulted from his or her actions.
 3. Participation by the accused persons.
 5. Both counsel filed written submissions that I have carefully considered.

Death occurred

1. Prosecution relied upon medical evidence in PF48B reveals that the body of the deceased was examined on 11.2.23 by clinical officer Balondemu Dennis and found with abrasions on posterior trunk and neck. Dr. Balondemu testified as PW3 and he clarified that the body had external injuries, abrasions on the trunk and neck area which he attributed to trauma. He determined the cause of death as a non-penetrating neck trauma.
2. The defense suggested that the cause of death was indeterminate because medical officer Balondemu did not open the body. They called DW3 Dr. Okecha Tony, a pathologist working with the Uganda Cancer Institute in support of their analysis. According to Dr. Okecha, it was impossible to ascertain cause of death without opening the body as is the standard practice.
3. On the other hand, PW1 Senkula Lamuka, 64 years, resident of Kalagala, Wobusana, Wakyato, Nakaseke district received a call from his son Wasswa on 11th February 2023 informing him that his other son Kato had been killed.
4. From the foregoing analysis, the fact that the body had abrasions in the neck and trunk areas and as the medical officer who examined the body confirmed, cause of death was due to external injuries and non-penetrating trauma in the neck area. For these reasons, the death of the deceased was not by natural causes but it was unlawfully caused.

Malice aforethought and participation

1. The state relied upon four witnesses to prove these ingredients.

According to PW2 Det. Const. No. 56139 Wachiku Robert, he knew all the four accused persons as workers of pastor Sozi but after investigations, he ascertained that they were workers of pastor Senyonga. In the morning of 11.2.23, he was on counter duty at Katogo police station when at around 6 a.m, Betungura Silver and Nyanzi (A2 and A4) came to the station to report how they had tried to arrest a thief caught stealing bananas in their home , he tried to run away and in the process, they beat him to calm him down. It was Wachiku's testimony that the duo told him how they tied up the deceased with a rope and made him to sit down but that as they tried to bring him to the police station, he collapsed. It was further Wachiku's testimony that the two came to the police station with a motor cycle and a bunch of bananas.

1. Upon getting this report, Wachiku detained the two on the instructions of the OC station. Wachiku and other police officers went to the scene in Kyandigaya and on arrival, they found the deceased already dead lying on the back in front of the rooms of Nyanzi and Barahukayo. It was further the testimony of Wachiku that he found Nabukenya hiding in the last room and saw Barahukayo try to escape so he put them under arrest.
2. At this point, Wachiku's testimony, is that he interviewed Nabukenya who revealed to him that they were asleep when they heard the dog bark and when Betungura emerged from his room, he saw someone run towards the banana plantation. They also saw the person had loaded a bunch of matoke o his motor cycle. According to Wachiku, Nyanzi and Barahukaya joined Betungura to arrest the man and beat him in the process until he died.
1. Furthermore, that Nabukeya had earlier told him how the man was tied with ropes at the hands and legs but these were removed when he died. He recovered the rope, a pair of gumboots, and a cap. Wachiku identified the gumboots and cap as belonging to the deceased explaining that the deceased was his best friend and so were the four accused persons. Worthy of note Wachiku acknowledged he knew the deceased at the end of his testimony but not at the beginning when he found the body.
2. The defense suggested in cross examination that Wachiku did not record the statement of Nabukenya which means what she told him in the interview is mere hearsay as her statement was not tendered in evidence.
3. The matter is further compounded by the police statement of Wachiku which contradicts his oral testimony. For instance, in court, he narrated how Betungura and Nyazi had reported to him at the police station that they had tried to arrest the deceased and he collapsed as they subdued him. In his police statement Dexh. 1, he recorded that the two had told him they found a motor cycle parked in their compound and the owner of the motor cycle had been beaten by a mob who left the deceased unconscious.

4. Although in court he said the deceased was his best friend, in his statement, he records that the body was identified to him by a community member as Kato Vicent.
5. Evidently, the court cannot rely on this witness in as far as he implicates Betungura and Nyanzi through the alleged interview with Nabukenya , a co-accused. Furthermore, by his own written statement, he contradicts his oral testimony in court about what Betungura and Nyanzi reported to him. In these circumstances, the role of the accused persons in the death of the deceased has not been well established save for the fact that the deceased was killed in their compound, and to their credit, they reported the death to the police without delay.
1. The other witness the state relied upon was PW4 AIP Bavule Robert, the scene of crime officer. According to AIP Bavule, he recovered a rope at the scene from Nabukenya which is quite incredible because PW2 Wachiku testified that he recovered the rope from the house and handed it to the SOCO. PW5 No. DC 59817 DC Ajau Peter was the storeman and his role was to tender exhibits recovered at the scene of crime, namely, a cap, gumboots, a rope. While PW2 Wachiku recovered these three items, he did not mention recovery of knives found at the scene and therefore these will be expunged from the evidence.
2. Although the standard of proof in criminal cases is not beyond a shadow of a doubt. With that said, in the instant case, while it has been proved that the deceased was killed in the compound of the accused persons, I cannot assume that they are responsible without any credible evidence pointing to their culpability especially when the key witness in his police statement attributes the killing to a mob. As already found, what Nabukenya told Wachiku on the role of Betungura and Nyanzi, is hearsay and therefore I will not rely upon it especially when the same Wachiku exonerates the accused persons in his own police statement.
3. In defense, Betungura A2 made an unsworn statement in which he stated that on 10.2.2023, he was sleeping with his wife when he heard the dog bark at about 2 a.m and also heard an alarm. He joined a group of people outside who were saying the person had stolen bananas from someone's plantation. He asked the people to take the person to police so he rode to the police station with the motor cycle of the deceased reaching there at 3 a.m. It was his testimony that he sat at the police station with the co-accused until 6 a.m when they were subsequently arrested.
4. DW2 Nyanzi David made an unsworn statement in which he stated that at 2 a.m, he heard an alarm outside and on reaching there, he found his co-accused and other people had arrested someone for stealing bananas. According to Nyanzi, he left for the police at 3 a.m to get help and at 6 a.m the police officer saw them and as they were about to set off for Kyandayiga, someone came to report that somebody had been killed. Nyanzi denied telling Wachiku that they had admitted to beating the deceased.
5. Having found the key prosecution witness Wachiku unreliable and given that his evidence on participation is hearsay, I find that the state has failed to prove beyond reasonable doubt participation of the four accused persons in the killing of the deceased. I therefore

respectfully disagree with the guilty opinion of the two assessors that Betungura and Nyanzi. Instead, I find them not guilty of the offence indicted and they are acquitted accordingly acquitted. Both Betungura Silver and Nyanzi David are released from custody unless lawfully held in connection with some other charges.

DATED AT NAKASEKE THIS 28TH DAY OF AUGUST 2024.

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LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Peace Bashabe, Chief State Attorney for the prosecution

Kajugo Paul and Lukwago John for the accused persons on private brief.

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