

UGANDA / JUDGMENT

Uganda v Nsubuga (HCT-17-CR-SC-0090-2022) [2024] UGHC 1256 (11 September 2024) [2024] UGHC 1256

COURT

High Court of Uganda

BEFORE

Wolayo, J

CASE / FILE NUMBER

HCT-17-CR-SC-0090-2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKASEKE

HCT-17-CR-SC-0090-2022

NKSK-AA-087-2022

NKSK CRB 240 -2022

UGANDA..... PROSECUTION

V

NSUBUGA GODFREY ALIAS MALOBBA.....ACCUSED

BEFORE LADY JUSTICE HENRIETTA WOLAYO

JUDGMENT

Introduction

1. The accused person Nsubuga Godfrey alias Malobba is indicted with murder c/s 188 of the Penal Code Act. It is alleged that on 14.5.2022, the accused person caused the death of Mubiru Tendo with malice aforethought.
2. On 5.6.2024, the accused person appeared before me for plea taking and when the indictment was read to him, he pleaded not guilty. Thereafter, Tumukunde Evas and Serunjogi Muhammed were appointed assessors to whom the accused had no objection to their appointment.

3. Upon the assessors taking the assessors' oath, the trial of the accused person commenced on 11.7.2024. Prosecution was represented by Bashabe Peace, Chief State Attorney while the accused was represented by Damba Emmanuel on state brief.

Burden of proof

1. The state had a duty to prove the following ingredients beyond reasonable doubt:
 1. Death occurred.
 2. It was caused unlawfully.
 3. It was intentionally caused with malice aforethought or without caring if the act or conduct will cause death.
 4. Participation by the accused person.

Whether a death occurred

1. It was an agreed fact as between the prosecution and defense that Mubiru Tendo, aged five years was examined on 14.5.2022 at Nakaseke Hospital by a medical officer who recorded findings in PF48B. The medical officer found bruises on the scalp and abdomen; previous burns and scars on the upper limbs and scalp. He determined the cause of death as internal hemorrhage due to a recent assault. It therefore follows that Mubiru Tendo died on 14.5.2022.

Whether the death was caused with malice aforethought and whether the accused participated in the death.

1. The state relied upon both medical evidence and oral testimonies of witnesses to prove these two ingredients. Buzza Yahaya, aged 47 years, resident of Sensula Zone, Nakaseke district has known the accused person since the accused was a child. Furthermore, the accused was a neighbor. Buzza also knew Tendo the deceased who was the son of the accused. Buzza described Tendo as aged five years at the time of his death.
2. It was not challenged by the defense that the child lived with Namasaka, a close neighbor to Buzza. According to Buzza, the old lady was not related to the accused and she stepped in because the accused had neglected the child. Buzza did not know if the accused had a wife but he knew that the accused was not living with the child's biological mother.
3. It was Buzza's testimony that on 14.5.2022, a Saturday, he returned home from work at about 5.40 p.m and as he approached home, a five year old girl Nakawesa who had been playing in his compound with other children, ran to him and reported that Tendo had been beaten. Buzza then inquired from his 14 year old son Lukyamuzi what had happened and the later confirmed that Tendo had reported to him that his father had beaten him and burnt him with a flat iron while demanding for the boy's sandals.

4. Buzza then went to the hospital looking for Tendo and his father and he next saw Tendo at Nakaseke police station when he was dead and it is him who identified the body.
5. It was further Buzza's evidence that the accused used to assault the child often and would pick him from Namasaka to assault him. He had seen the accused beat the child from Namasaka's place. The said Namasaka was a close neighbor who lived next door. According to Buzza, at the time of the child's death, the accused had picked the child from Namasaka to celebrate Idd.
6. In cross-examination, Buzza's evidence was that before the child died, he had not seen him for about 17 days. At one point, Buzza intervened when the accused was assaulting the child. He also confirmed that at the time of the incident, the accused lived with the child and his wife.
7. Buzza was supported in his evidence by PW2 Mubarak Lukyamuzi, aged 14 years, his son. Lukyamuzi confirmed the accused was a village mate whom he knew well. He also knew Tendo, the deceased who was son to the accused person. According to Lukyamuzi, on a Saturday 14.5.2022 at about 11 a.m before his death, Tendo disclosed to him that his father, the accused, had beaten him and burnt him with a flat iron. Lukyamuzi observed injuries on the head, chest, hips and legs. Lukyamuzi saw mother of Tendo pick him, beat him and then took him to their home where his father also assaulted him for losing his sandals. At other times, Tendo was beaten for not bathing.
8. According to Lukyamuzi, Tendo was beaten until he got weak and died. Luyamuzi saw him bleeding from the head and there was blood on his shoulders.
9. When all this happened, Lukyamuzi was at home with other children, namely, Nakawesi, Nakate, Muwesi and Bamuta.
10. Lukyamuzi clarified that Tendo was assaulted from a place he could see across the road and he heard him crying and the time was about 1 p.m.
11. In cross –examination, the testimony of Lukyamuzi is that Tendo was assaulted from their home. Furthermore, that he had seen the accused assault Tendo from the grandmother's home (Namasaka). He confirmed that at the time of Tendo's death, his father had taken him from the grandmother's place to celebrate Idd.
12. From the foregoing analysis, it is evident that there is direct evidence of from Lukyamuzi of how the accused assaulted the deceased so badly on 14.5.2022 between 11 a.m and 1 p.m that he was pronounced dead on the same date at about 7 p.m by the medical examiner of Nakaseke hospital. Although Buzza had testified the home of the accused is about 1km away from his home, and Lukyamuzi testified the accused assaulted the child from their home, Lukyamuzi clarified that he could see the place from where the accused was assaulting the child until the child collapsed.

13. Lukyamuzi also heard from Tendo himself that same day that his father had burnt him with a flat iron and Lukyamuzi observed injuries on the head, legs, hip and chest. This was a dying declaration which is admissible in evidence because the child died the same day he disclosed to Lukyamuzi the assault by the accused.
14. I also find that the accused had been assaulting the child prior to the death to the point that Buzza one time intervened in defense of the child. This would happen at the home of Namasaka who was a neighbor to Buzza. Lukyamuzi also witnessed these assaults. Evidently, the accused subjected the child to physical abuse over a period of time until the assault of 14.5.2022 that killed him. The medical examiner found scars on the scalp, and bruises.
15. PW3 Det. AIP Lubogo Francis was attached to Nakaseke Police station in 2022. It was his evidence that he received a report of murder on 14.5.2022. He proceeded to the scene in Sensula Zone and established that the accused and his wife Sophia had been torturing the child. He proceeded to Nakaseke hospital where he took pictures of the body.
16. The pictures which were admitted as Pexh. 3 collectively were admitted in evidence because they were tendered by the officer who took them on his phone, printed them and signed on each print. There are fresh wounds on the hands, clear visible deep scars on the hips, afresh wounds on the leg, fresh wound on the head. The scars are consistent with the evidence of physical abuse attested to by Buzza and Lukyamuzi while some fresh wounds were inflicted on the day he died while others were the burns Tendo suffered before his death when he had been taken to celebrate Idd. The medical examiner determined the cause of death as internal hemorrhage from an assault, a finding consistent with oral testimony of Lukyamuzi.
17. The defense suggested that there was a contradiction in the evidence of Buzza and PW3 AIP Lubogo in as far as Buzza testified that the child died in his hands yet Lubogo testified that the child died while in the custody of the accused person. I find no contradiction here because Buzza went in search of the child after learning of the assault and he went to the police station where the child had been taken by the accused person. In fact, it was taken to Nakaseke hospital by a police officer No. 65479 Tumukamayire Moses 7.20 p.m on 14.5.2022 and examined the next day on 15.5.2022 at 1 30 p.m.
18. In defense, the accused made a sworn statement in which he testified that on the fateful day, he woke up at 6 a.m and went to work at a beer depot until 10 p.m . He admitted that at the time of his death, he was staying with the child and his wife Sophia Nantongo because he had stayed with him three weeks prior and before that, the child lived with Namasaka , a paternal aunt of the accused person.
19. The accused denied assaulting the child and instead accused the wife Nantongo of torturing the child. It was his testimony that he was at work when the wife reported to him that the child was ill whereupon, he went to pick the child and took him to hospital. According to the accused, he left the child in the hospital to inform the aunt and on his return, the child had died and the wife had fled. I find no merit in this defense because the doctrine of common

intention applies. Having been the one who assaulted the child until he collapsed, as attested by Lukyamuzi, the accused is the principal participant in the death of the child.

20. In the three weeks the child stayed with him, the accused denied seeing any wounds on the child because the child shared a bed with the wife and that in any case, he would leave home early and return in the evening.
21. I reject his denials and instead find that the accused is criminally liable for the death of the child having participated in assaulting him not only on the day he died but even prior to that on account of the scars observed on the child's hips. Most importantly, he was identified as the assailant of his own son by Lukyamuzi, hours before the child died.
22. The key question is whether death was caused intentionally with malice aforethought. These two ingredients presuppose pre-planning and deliberate actions intended to cause death. In the instant case, the deep scars on the body of the child and the intermittent wounds on the head, legs, stomach do not disclose an intention to cause death but rather physical abuse intended to inflict pain to the child. Such conduct is unlawful and consistent with manslaughter. I agree with the opinion of the assessors that he is guilty but find that the state proved beyond reasonable doubt that the accused person unlawfully caused the death of the child Tendo. Accordingly, he is convicted of manslaughter c/s 187 of the Penal Code Act Cap.120.

DATED AT NAKASEKE THIS 11TH DAY OF SEPTEMBER 2024

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LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Peace Bashabe chief state attorney for the prosecution

Damba Emmanuel for the accused on state brief.

11.9.2024

Accused present

Kirabo for the state on brief.

Akol for accuse don brief.

Court: Judgment delivered.

State:

* A young life was lost

* The child suffered from physical abuse.

* Pray for a deterrence sentence.

Court:

- * He is a first offender
- * A youth aged 30 years
- * Has two children.

Accused:

- * I plead for leniency

Sentence:

I have considered both aggravating and mitigating factors.

The child died at the hands of the parent who was under a legal duty to protect him from harm. The healed scars were evidence of physical abuse over a period of time not to mention the trauma the child suffered as a result thereof. For the accused to pick the child from his only protector, one Namasaka, only for him to end up dead speaks to the sick mind of the accused. Evidently, he too needs psycho-social counseling while in custody.

Given the loss of an innocent life, appropriate sentence is 12 years.

As the accused has been on remand since 23.5.2022 for two years and four months, he is sentenced to nine years eight months imprisonment.

Wolayo J

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Prepared on 13 October 2026 · Esheria