

UGANDA / JUDGMENT

Uganda v Ongodia (Criminal Session Case 215 of 2020) [2025] UGHC 326 (19 May 2025)

[2025] UGHC 326

COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Criminal Session Case 215 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI
CRIMINAL SESSION CASE NO. 0215 OF 2020 UGANDA :::::::::::::::::::::::::::::::
VERSUS ONGODIA STEVEN :::::::::::::::::::::::::::::::::::::::

Before: Hon. Justice Boniface Wamala

JUDGMENT

Introduction

- [1] The accused person in this case is indicted of Murder \$C/S\$ 188 and 189 of the Penal Code Act [now sections 171 & 172] of the Penal Code Act (PCA) Cap 128. It is alleged that the accused on the 16th day of January 2020 at Atapar Village in Serere District with malice aforethought unlawfully caused the death of Isenero George William. The accused pleaded not guilty to the offence and the case proceeded for hearing.

Representation

- [2] At the hearing, the state was represented by Ms. Adero Doreen from the Office of the Director Public Prosecutions (ODPP) while the accused was represented by Mr. Olobo James Felix and Mr. Justine Okwalinga, counsel on state brief. The assessors in this case were Mr. Erwaku Lawrence and Mr. Oriada David. Neither the accused, his lawyers nor the state objected to the assessors' appointment.

The Burden and Standard of Proof

[3] In criminal cases, an accused person is presumed innocent until proven guilty or until he or she pleads guilty; as provided for under Article 28(3)(a) of the Constitution of the Republic of Uganda. As such, the burden of proving each and every ingredient of an offence is always on the prosecution and never shifts onto the accused. See: *Woolmington v DPP* [1935] AC 462*. The accused person is only convicted on the strength of the prosecution case and not

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because of weaknesses in his defence. See: *Ssekitoleko v Uganda* (1967) EA 531. Each essential ingredient of the alleged offence must be proved beyond reasonable doubt. However, proof beyond reasonable does not mean proof beyond a shadow of doubt. The standard is satisfied once any evidence suggesting the innocence of the accused person, at its best, only creates a mere fanciful possibility but not any probability that the accused is innocent. See: *Miller v Minister for Pensions* [1947] 2 ALLER 372.

The evidence in this case

Agreed facts

[4] The prosecution and defence signed a memorandum of agreed matters wherein some facts were agreed upon, namely that;

- a) The accused is a biological son to the deceased and they lived together in the same homestead;
- b) The deceased Isenero George William died;
- c) The deceased's death was unlawful; and
- d) The death was caused with malice aforethought.

[5] The following documents were also agreed upon in the said memorandum, namely;

- a) The post mortem report (PF48);
- b) The accused's medical examination report (PF24A);
- c) The sketch map of the scene of crime; and
- d) A set of photographs of the scene and the deceased.

[6] The memorandum of agreed matters was tendered and admitted in evidence in accordance with section 67 of the TIA. The agreed documents were admitted in evidence and marked as PE1, PE2, PE3 and PE4(A-J) respectively.

The witnesses

- [7] The prosecution led evidence of six witnesses while the defence led evidence of one witness (the accused). PW1 was Edibu Moses, a male adult aged 18 years, a student of Mechanics and Jinja Technical School. He stated that he knew the deceased as he used to see him at Adawudi Trading Centre and was a father to the accused person. On the fateful day, as he delivered grass (cattle feed) to a one Idebe's place, he saw the accused coming from the side of his home with a panga and an axe, going towards the swamp. After delivering the grass, and on his return, he heard the accused screaming "the bicycle has killed daddy". He then saw the accused run and started pressing his father on the chest and shaking his shoulders. PW1 observed that the accused looked like someone who was very tired after a struggle. The panga and the axe were lying aside. The panga had a black handle and the axe had a wooden handle. PW1 was with his brother at the time, Oloro Nathan, and they decided to leave the scene lest the police could come and arrest them. PW1 was 12 years by then. In cross examination, PW1 stated that he did not hear the deceased screaming at the material time and did not see the accused cut his father. The blood he saw at the scene was not new as it was making some clots. The panga had blood stains but the axe did not. The bicycle appeared just placed near the roadside. The accused was the only person he met around the scene.
- [8] PW2 was Oloro Nathan, aged 17 years, a student in S.1 at Kateta Hill View S. S. He stated that he knew the deceased as he lived within the same community although on a different village. The deceased's home was about one kilometre from theirs. He also knew the accused as a son to the deceased. On the fateful day, he and his brother (Edibu Moses) were carrying grass from the swamp to Idebe's place between 9:00 am - 10:00am when they met the accused carrying a panga and axe taking the direction of the swamp. After offloading the grass, they took about 5 minutes eating sweet potatoes and then left. They then met the accused trying to clean a panga with some leaves and
- saw the old man lying down on the road side. When the accused saw them, he got scared and went towards his father, knelt down and started screaming saying the bicycle had pricked his father. PW2 observed that the deceased had a deep cut and blood was spilling from the cut wound. The bicycle was lying on the side. There was some blood on the bicycle but it appeared as if it was just smeared. The axe was at the scene and it had no blood. PW2 and his brother only found the accused and deceased at the scene. The two left shortly thereafter fearing to be arrested by police.
- [9] PW3 was Onaba John Silver, a male adult aged 63 years and a clan brother to the deceased. He stated that a day before the incident, the deceased called him and asked him to go and settle a dispute between him and his son (the accused) which had generated a quarrel. PW3 promised to go to the deceased's place the following day and resolve the issue. On the fateful day, PW3 left his place at about 10:00 am and when he reached Adawudi Trading Centre, he received information that someone had been killed by a bicycle. PW3 went to the scene where he found people gathered. He saw the deceased lying down with blood flowing from

his neck. The bicycle was lying near the body without any problem or stains. PW3 went to Kateta police post and returned to the scene with police officers. PW3 turned the body and observed that the deceased's neck had a cut wound. A medical officer was called by the police and he examined the body from the scene. The police then allowed them to take the body for burial. PW3 stated that he did not talk to the accused about the incident but established from the family members that the accused was not respecting his father and would threaten to kill him.

- [10] PW4 was Aluka Angella, a female adult aged 46 years, peasant, resident of Atapar village, Kateta parish and Sub-County in Serere District. She stated that she was a neighbor and granddaughter to the deceased. She stated that the deceased was her paternal grandfather and a father to the accused. On the

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fateful day, while she was at her home peeling potatoes, which is near the roadside, she heard someone screaming saying "the bicycle has killed my father". She ran to the road where she found the old man lying down and the bicycle lying aside at some distance. She found the accused alone at the scene. She did not get near the body but observed that the deceased was bleeding from a cut around the neck. She did not look at the bicycle closely but there was also an axe and panga at the scene of crime. The panga looked wet and sticky as if it had been used to cut a human being. She called a boy called Opio John Peter and sent him to the deceased's place to call the deceased's wife and inform her that a bicycle had killed the old man. People from the deceased's home came and the accused remained at the scene crying. The LC defence secretary first kept the panga and axe at her home from where they were picked and given to police on the same day.

- [11] PW5 was Adeke Betty, a female adult aged 26 years, peasant, resident of Atapar village, Kateta parish and Sub-County in Serere District. She stated that the deceased was her father and the accused is her biological brother who follows her. On the fateful day, she came from the garden with her parents and the accused and served them tea at about 9:00 am. The deceased told her that he was going to get sacks to pack their maize from Adawudi Centre. The accused said he was going to cut some firewood from the swamp for sale. The deceased left first and shortly after, the accused also left with a panga and an axe and went towards the swamp. Shortly later, about 20 minutes from the time the accused left, a child came to their home running and told her that her father had fallen down on a bicycle and had most probably died. PW5 ran to scene and found some people and the accused screaming that "the bicycle has pierced daddy". The deceased was lying down and the eyes were not moving. The bicycle was at a distance as well as the panga and axe. The items were from their home. She observed that the deceased's body had a cut wound on the right side of the neck. The bicycle was intact. She stated that she did not

bother observing the panga and axe since her head was not working well at that time after seeing the state of her father. The panga had been used to cut jackfruit earlier at home and it was sticky. The panga had a black handle while the axe had a wooden handle. Many people gathered at the scene and the police came at about 3:00pm with a doctor who examined the body at the scene and the deceased was buried the following day. The bicycle was taken back home immediately. She did not know who picked the panga and axe. She stated that the accused had a grudge with the deceased as accused used to go to the Trading Centre to make mandazi and refuse to go to the garden as ordered by their father. However, on the fateful day, there was no quarrel between the accused and the deceased.

[12] PW6 was D/ASP Aisu John Francis, a police officer attached to East Kyoga Regional Police Headquarters in Soroti City in the forensics department. He stated that in 2020, he was attached to Serere Central Police Station as the scenes of crime officer (SOCO). On 16/01/2020, the District CID Officer asked him to move with him to Kateta police post where they joined D/Sgt Orone and moved to the scene of crime at Atapar village. The scene was along a village foot path covered by bush. The deceased was lying on the side of the path and was full of blood with a deep cut wound on the neck. There was a bicycle about 2 meters away. PW6 took photographs of the crime scene and the OC CID made a call to the doctor who carried out a postmortem examination at the scene. The police officers were informed that the first responders had picked a panga and an axe about 50 meters away from the crime scene which they went and picked from the home of PW4. PW6 observed that the panga appeared to have been cleaned. PW6 took the panga and axe and handed them to the store man at Soroti CPS after marking them and making an exhibit slip. The panga had a black handle and the axe had a wooden dry handle. The bicycle was clean with no signs of stains and was handed back to the relatives.

[13] In the defense, the accused, **Ongodia Steven** testified as DW1. He was aged 24 years and was a resident of Kateta village, Kateta sub county in Serere District. The deceased was his father, who died on 16/01/2020. He did not know what killed his father. On the fateful day, he and other family members went to the garden at about 8:00am and returned home at about 9:00am. His sister Adeke Betty gave them breakfast but his father left without taking the porridge since he claimed that it was very hot. He said that he was going to pick money and sacks from a nearby trading centre. The accused also left home at about 10:00am and went to the swamp to pick some firewood. On his way, he got his father lying down dead and he screamed and people came. He found the bicycle on top of the deceased, removed it and put it aside. He did not see a panga or an axe at the scene. He was not carrying anything when he was going to collect firewood since the firewood was already cut. He stated that there were people who had bad feelings about their family in regard to land. He further stated that he could not have killed his own father. In cross examination, the accused stated that when he removed the bicycle, he found out that it lacked a peddle and the sharp metal had pierced his father. He also stated that he was not able to see if the injury on his father was a cut or a piercing.

Submissions by Counsel

[14] Counsel for the prosecution and the defence made and filed written submissions which I have adopted and considered in the determination of the matter before the Court.

The law and ingredients of the offence

[15] Section 171 of the Penal Code Act Cap 128 provides that;

"Any person who with malice aforethought causes the death of another person by an unlawful act or omission commits murder". Under Section 172 of the Act, any person convicted of murder is liable to suffer death.

[16] In the instant case, for the accused to be convicted of Murder, the prosecution must prove each of the following essential ingredients/ elements beyond reasonable doubt;

- a) The death of a human being occurred;
- b) The death was caused by some unlawful act;
- c) The unlawful act was actuated by malice aforethought; and
- d) It was the accused person who caused the death.

Resolution by the Court

The death of a human being occurred

[17] Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased, saw the dead body and attended the burial. See: *Kimweri v Republic* (1968) EA 42. In this case, it was agreed between the prosecution and the defence that the late Isenero George William (the deceased) died. A post mortem report was produced and admitted in evidence as PE1. The body of the deceased was identified by Onaba John Siver (PW3), a clan brother to the deceased, who took it for burial after the post mortem examination. In their testimonies, PW1, PW2, PW3, PW4, PW5 and PW6 all stated that they physically saw the body of the deceased at the scene of crime. Photographs of the scene of crime, some of which showed the body at different angles, were admitted on record and marked as PE4 (A-J). Defence counsel did not contest this element of the offence. I find sufficient evidence proving this element of the offence beyond reasonable doubt.

The death was caused by some unlawful act

[18] It is the law that any homicide is presumed to have been caused unlawfully unless it was accidental or it was authorized by law. See: *\$R v\$ Gusambuzi s/o Wesonga* (1948) 15 EACA 65. In the instant case, it was an agreed fact between the prosecution and defense that the death of the deceased was unlawful. The post mortem report that was admitted in evidence as PE1

established the cause of death as "severe hemorrhage secondary to deep cut wound on right side of neck". I have looked at the set of photographs of the dead body taken at the scene, PE4 (A-J), illustrating the extent of the injury and the amount of blood flow on the ground where the body was lying. I have considered the testimony by PW1 to the effect that the bicycle appeared just placed near the bush and that of PW5 to the effect that the bicycle had nothing on it indicating that it was involved in an accident. This element of the offence was not contested by defence counsel. I find that the evidence on record rules out the possibility that the death of Isenero George William was accidental. The prosecution has proved this ingredient of the offence beyond reasonable doubt.

The unlawful act was actuated by malice aforethought

[19] Malice aforethought is defined by Section 174 of the Penal Code Act Cap 128 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. Malice aforethought is the state of mind of the accused person at the time of commission of the offence. In the case of *Nanyonjo Harriet & Anor v Uganda Supreme Court* Crim. Appeal No. 24 of 2002, the supreme court held that in case of homicide, the intention and or knowledge of the accused person at the time of committing the offence is rarely proved by direct evidence. More often than not, the court finds it necessary to deduce the intention or knowledge from the circumstances surrounding the killing, including the mode of killing; the weapon used – whether lethal or not; the manner in which the weapon was used – whether repeatedly; the part of the body injured – whether vulnerable; and the conduct of the accused before, during and after. 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.

[20] In this case, the prosecution and the defense in the memorandum of agreed matters agreed that the death of the deceased was caused with malice

aforethought. There is evidence that the body of the deceased had a deep cut wound on the right side of the neck and a panga is suspected to have been used by the assailant. The part of the body targeted was the neck; a vulnerable part of the body which if targeted imputes a malicious intent. The ferocity with which the weapon was used can be determined from the impact as can be drawn from photographs of the body taken by PW6 and collectively marked PE4 (A-J); and from the oral testimonies of PW1, PW2, PW3, PW4 and PW5 who physically saw the body. The postmortem report indicated that the cause of death was "severe hemorrhage secondary to deep cut wound on right side of neck". Counsel for the defence did not contest this element of the offence. The above evidence by the prosecution is sufficient to prove beyond reasonable doubt that unlawful death of the deceased was actuated by malice aforethought.

It was the accused person who caused the death

- [21] For the court to convict the accused, there should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. On the case before me, PW1, PW2, PW3 and PW4 all testified that they knew the accused person as a son to the deceased. PW1 and PW2 saw the accused person with a panga and an axe moving towards the swamp. PW5, a sister to the accused, testified that the accused left home with a panga and an axe going the swamp. PW5 further stated that although the accused and the deceased did not quarrel that day, they had a grudge relating to the accused's refusal to go to the garden. PW3 also told the Court that the deceased had called him the previous day to go and settle a dispute between the accused and the deceased.
- [22] The accused in his defence totally denied having killed the deceased. He stated that he could not kill his father. It was also his evidence that he did not carry the panga and the axe that were found at the scene of crime from their home. He stated that the fire wood he was going to fetch was already cut. It was submitted by defence counsel that the circumstantial evidence adduced by the prosecution linking the accused to the commission of the offence was so weak and the Court should not rely on it to convict the accused person. Counsel stated that according to the accused's evidence, the deceased had grudges based on land disputes with neighbours and it was possible that the deceased was killed by such people.
- [23] I note that there is no direct evidence before the Court linking the accused to the murder of the deceased. The prosecution evidence is basically circumstantial. The law is that where the prosecution case is based on circumstantial evidence, such evidence ought to be strong and reliable. Circumstantial evidence is evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics. For the court to base on circumstantial evidence to convict an accused person, it must be satisfied that there is no other reasonable hypothesis than that the accused person is guilty of the alleged offence. See: *Mulindwa v Uganda* (Criminal Appeal No. 95 of 2009) [2014] UGCA 86 (31 October 2014) citing *Simon Musoke* \$\\nu\$ R [1958] EA 715 and *Tumuhairwe* \$\\nu\$ *Uganda [1967] EA 328.*
- [24] In the present case, there is sufficient proof that the accused left home with a panga and an axe as confirmed with her sister (PW5). PW1 and PW2 also confirmed that they saw the accused moving to the direction of the scene with a panga and an axe. PW4 also found the panga and axe at the scene. PW6 collected the panga from PW4's home where they were first kept, took them and exhibited them. The exhibit slip was produced, tendered and admitted in evidence as PE5. Regrettably, the physical exhibits were not produced in Court on account of apparent poor stores management at police.

[25] However, given the description of the said exhibits by the prosecution witnesses and the unbroken chain of evidence in the way they were handled up to the point of exhibiting them by PW6, I am convinced that the said panga and axe were found and recovered from the crime scene in the manner described by the prosecution witnesses. As such, the denial by the accused that he left home with a panga and an axe and that the said items were at the crime scene has been proved by the prosecution to be a blatant lie. Secondly, the theory advanced by defence counsel that the deceased could have been killed by other persons with whom he had land disputes; is not based on any evidence and is quite speculative. I find that the circumstantial evidence adduced by the prosecution squarely links the accused to the death of his father and thus sufficiently places him at the scene of the crime. The element of participation of the accused person in the unlawful death of the deceased has therefore been proved by the prosecution beyond reasonable doubt.

Decision of the Court

[26] In all, therefore, I am satisfied that the prosecution has proved all the ingredients of the offence of murder against the accused person beyond reasonable doubt. In agreement with the opinion of the gentlemen assessors, I find the accused person guilty of the offence as indicted and I convict him accordingly.

It is so ordered.

Dated at Soroti this 19th day of May, 2025.

Boniface Wamala JUDGE

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