

UGANDA / JUDGMENT

Uganda v Owor Phillip (Criminal Case No.67 Of 2004) (Criminal Case No.67 of 2004) [2005] UGHC 76 (6 January 2005)

[2005] UGHC 76

COURT

High Court of Uganda

CASE / FILE NUMBER

Criminal Case No.67 of 2004

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sections}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 188 ad 189 of the Penal Code Act. It was stated in the particulars to the ch

arge that Owora Phillip, on the 7th day of May 2001 at Namukuma village, in Kayunga District murdered Nyaburu Peredasi. The accused denied the charge and was represented by Tumwine Robert while the prosecution w}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid7668615 as led by M/s Farida Nakayiza.

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\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 I wish to men

tion here that the accused was both deaf and dumb. Such person is called }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 '93Kasiru'94 }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 in Luganda. The proceedings were conducted with the aid of two sign language interpreters, namely Awori Micheal Patrick and Alima Akomere from Uganda National Association of

the Deaf and Action on Disability respectively. These sign language interpreters were in addition to the English/Luganda interpreter who interpreted for the other witnesses. \line }{\rtlch\fcs1 \af0 \ltrch\fcs0

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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 The prosecution relied on nine witnesses to prove its case. The }{\rtlch\fcs1 \af0 \ltrch\fcs0

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accused}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 lived with his wife and his gran}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5470716 d-daughter called Nyaburu Federe}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 si. Nyaburu had returned to her parents after her marriage failed. At}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid7668615

about 7.30 p.m. On the 7/5/200}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 1 Margaret Akong (PW5) wife of Stephen Owino (PW4) and a close neighbour, was attracted by the sou

nd of a bang at the house of the accused. She went to accused\rqoute

s house. Accused was holding a blood stained hoe with which he threatened to hit her. The deceased was lying on the floor, semi conscious. She called her husband Owino (PW4), who with other people from the camp, managed to ove

power and arrest the accused. Federe

si lay on the floor bleeding and speechless.

Accused

and the deceased were taken to Busana Police Post

by Byansi, the Vice-Chairman LC

1, Owino (PW4) and other people who had responded

to the alarm. Both accused and the Federesi were handed over to No. 28083 P. C. Mutinye Samuel (PW2) but the deceased died on arrival at Busana Police Post. P. C. Mutinye received a blood stained hoe from Byansi (PW6), which hoe he handed over to D/Sergeant

Odwar (PW8) who collected both the body and accused from Busana Police Post.

D/Sgt, Odwar brought the deceased, accused and hoe to Kayunga Police Station. He h

anded the hoe to the store man,

P. C. Nyeyambe Isaac (PW9) who exhibited it in court as exhibit P.4.

The body of the deceased was examined by Dr. Matovu who put his findings on P. F. 48b

(Exh. P1). The same doctor examined the accused and put his findings on exhibit P2. This doctor did not make any finding about the age and mental state of the a

The same doctor examined the accused and put his findings on exhibit P2. This doctor did not make any finding about the age and mental state of the a

ccused. I directed that the accused be examined as to his age and mental condition. The report came in long after the close of the case. The report states his age to be about 40 years and a person of normal mental state.

In his defence, the accused chose to say nothing. He said he was leaving it to God to decide his fate.

In every criminal trial, the burden of proof rests on the prosecution to prove the offence with which the accused person is charged beyond reasonable doubt. This burden does not shift to the accused person at any stage except in a few statutory exceptions, but this being none of such exceptions. The prosecution must succeed on the strength of its evidence. Any weakness in the defence or lies told by an accused shall not be relied upon to bolster the prosecution case or be a basis for convicting the accused. If there is any doubt created by the evidence, that doubt must be resolved in favour of the accused, and he must be acquitted. I explained the assessors as I now warn myself what the burden of proof means, the test to be applied in criminal cases and what the reasonable doubt means.

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doubt means.

See: (1) Woolmington vs. D. P. P. (1935) A. C. 462

(1) Woolmington vs. D. P. P. (1935) A. C. 462

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\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 Oketh, Okale & others vs.
Uganda (1965) EA 555 }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
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\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The accused is charged with murder which consists of four }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid5470716\charrsid7668615 ingredients, namely}
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, the person named in the indicted is dead, that the death of that person was caused by an
unlawful act or omission, that the act causing the death of that person was accompanied by
malice aforethought, that it is the accused who c

aised the death of that person acting alone or with other person or persons with whom he was
sharing a common intention. }{\rtlch\fcs1 \af0 \ltrch\fcs0
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\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 See: }

\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid5470716\charrsid5470716 \tab }{\rtlch\fcs1 \ab\ai\af0
\ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 (1) Uganda vs.
Harry Musumba (1992) 1 }

\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716
KALR }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid5470716\charrsid5470716 83.

\par \tab }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 (2) Kimw}{\rtlch\fcs1
\ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5470716\charrsid5470716 eni vs.
Republic (1968) EA 452

\par }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5594626

\par }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Death:}{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5470716

\par }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 The death of }{\rtlch\fcs1
\ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 a }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 person is caused w

hen the offender commits any of the acts listed in section 196 of the Penal Code Act and such act
or acts are committed within a period of one year and a day prior to the death. }{\rtlch\fcs1
\ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 (Section 198 of the Penal Code }
{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5470716 Act)

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5470716 The deceased in this case,
Federesi Nyaburu was assaulted on the evening of 7/5/2001 and}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 died the same night at Busana
Police Post. Her death was testified upon by Owino (PW4). Byansi (P){\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid5594626

W5) and Mufunye Samuel (PW7)){\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 were at Busana Police Post
when the deceased, who had been brought there,

in a semi-conscious state, died. Her body was taken to Kayunga Police Station by D/Sgt Odwar.
Her body was examined by Dr. Matovu }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 (PW1) and a postmortem report - }{\rtlch\fcs1
\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 exh. P.1 was
prepared by the said doctor on P. F. 48B. His burial }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid7668615 was}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 later
witnessed by Owino and Byansi PW4, and PW5 referred to above. The prosecution has therefore
pr}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 oved Nyaburu Federesi is dead.

\par

\par {\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Every homicide is unlawful unless authorised under some law. In this regard, there is no doubt, that whoever battered Nyaburu\rqquote s head had no legal excu

se or justification to do so. I therefore find that Nyaburu\rqquote s death {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5594626 was caused by an unlawful act.

\par {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 See: {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626 \tab {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 (1) R. v{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid5594626 s. Sharmal Singh (1962) EA 13

\par {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626 \tab } {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 (2) Uganda vs. Kulabako Night {\rtlch\fcs1 \af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 - {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 Crim. Sess. Case No.61/91 {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid5594626

\par {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5594626

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\lin0\lin0\itap0\ipgp1\pararsid5594626 {\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

Section 191 of the Penal Code Act lists out {\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid7668615 circumstances}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

where malice aforethought is presumed to exist. In order to establish the existence of malice aforethought the court may be guided by{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid5594626 the following considerations: }

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 the type of weapon used \emdash whether lethal or deadly, \line the nature and gravity of the{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 injuries inflicted, }\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

the part of the body on which the injuries are inflicted, the conduct of the accused, before and or
 after t}\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5594626 he
 commission \line of the offence.

\par }\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 See:}\rtlch\fcs1 \ab\ai\af0
 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626 \tab }\rtlch\fcs1 \ab\ai\af0
 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 (1) R. vs. Tubere }\rtlch\fcs1
 \ab\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 s/o }
 {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid5594626 Ochen (1945) 12 EACA 63

\par }\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626 \tab }
 {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626 (2) Uganda vs. John Ochieng
 (1992-3) HCB 80 }\rtlch\fcs1

\ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid5594626

\par }\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5594626

\par }\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The injuries on Federesi were inflicted on the head, a delicate and vulnerable part of the body.
 They were inflicted using a hoe, though used for domestic use, can be a lethal weapon when used
 for offensive purposes. The injuries on her were described by

Stephen Owino (PW4) and Byansi Mustafa, (PW6). Dr. Matovu observed two extensive scalp
 wounds which extended inside and damaged the skull. Naturally, this must have caused brain
 damage and death. I am left in doubt that, whoever inflicted the injuries ob

s}\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5594626 erved on the
 deceased by PW}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 1, PW5, PW5 and PW7 must
 have don}\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5594626 e so with malice aforethought.

\par

\par }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 The }{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid7668615 participation}
{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 of the accused: }{\rtlch\fcs1
\ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5594626

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 The accused, the deceased and
his wife were alone in the accused\’s house. After Akong (PW5) heard a bang in the
accused\’s

s house, she called her husband Owino who went to the accused\’s house. The accused was
holding a blood-stained hoe }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 with his foot on the deceased. }{\rtlch\fcs1 \af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5594626

\par }{\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalp
ha\aspnum\faauto\adjustright\ri0\lin0\itap0\ipgp1\pararsid7668615 }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The deceased was lying on the floor in a semi-conscious state. The accused was, by his signs,
threatening to finish off the }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626\charrsid7668615 deceased}{\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 . The accused tried
to fight off Owino and to run away, but he was overpowered and arrested by Owino (PW4)
assisted by other people from the camp who had come to the accused

\’s house in response to the alarms and call by Ako}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 n}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 g (PW5).

On the basis of the evidence of Owino (PW4) Akong (PW5) and Byansi (PW6) the prosecution has
proved that it was the ac}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5594626 cused who killed the deceased.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Although the prosecution need
not prove motive in every criminal trial, it can be a relevant consideration as part of the facts }
{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid1997297\charrsid7668615 proceeding}{\rtlch\fcs1 \af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 or subsequent t}
{\rtlch\fcs1 \af0 \ltrch\fcs0

o the commission of an offence. Thus, section 8(3) unless otherwise expressly declared, the motive by which a person is induced, to do or omit to do an act or to form an in

of the Evidence Act provides:

(3) unless otherwise expressly declared, the motive by which a person is induced, to do or omit to do an act or to form an in

tention is immaterial so far as regards criminal responsibility. Motive is relevant in this case in as far as it goes to establish the reason why the accused bartered his grand-daughter. It was, said, though I must observe, it was hearsay evidence by Akon

g (PW5) that the accused killed his granddaughter

for selling his children without his permission. This evidence makes the killing revengeful. It is a fact in support of malice forethought on the part of the accused.

The act of revenging for the steali

ng his chicken is yet another circumstantial evidence which implicates the accused in the killing of the deceased besides showing an intention to kill on his part.

An accused person is entitled to al the defences availed to him.

These defences may be those e

xpressly pleaded by him or can be deduced

from the prosecution evidence.

\par }\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\lin0\lin0\itap0\ipgp1\pararsid1997297 {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid1997297 See: (1) D. Kabagenyi vs} {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid1997297\charrsid1997297 . Uganda (1978) HCB 216 (C. A.) }{\rtlch\fcs1 \af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid1997297\charrsid1997297

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\lin0\lin0\itap0\ipgp1\pararsid1997297 {\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid1997297 (2) Mafabi s/o}{\rtlch\fcs1

\ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid1997297 Mafabi vs. R. (1956-5 7) 8 ULR. 59 (C. A.) }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid1997297\charrsid1997297

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid1997297

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Although the accus}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 ed did not make any defence,} {\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 four defences arise from the p} {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 rosecution evidence. They are:

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Denial of the charge }

{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526\charrsid7668615 pursuant}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 to his plea of not guilty to the char}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 ge.

\par Diminished responsibility

\par Provocation

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Intoxication \line }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\asppalpha\aspnum\faauto\adjustright\lin0\lin0\itap0\ipgpl\pararsid12014526 {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 It is a cardinal }}

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526\charrsid7668615 principle}}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 that when the accused pleads not guilty to the charge

the prosecution has the burden to prove his guilt beyond reasonable doubt. The prosecution in this case relied on the evidence of Owino (PW4) Akong (PW5) and Byansi (PW6). I believe their testimony. They found the accused at the scene, holding the blood-s

tained hoe with the deceased lyin}}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 g on the ground unconscious.

\par

\par }}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 After considering all the prosecution evidence, there is no doubt that it was the accused who inflicted the injuries} {\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid12014526 on the deceased with the hoe - }}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 exhibit P4. It is the injuries he (accused) inflicted on the deeces}}{\rtlch\fcs1

\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 ed that resulted in her death.

\par

\par }}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Diminished responsibility: } {\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid12014526

\par }}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Diminished responsibility } {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 is } {\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 a }}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 defence}}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 to murder because of its existence, the accused is not found guilty of murder but with diminished responsibility, which condition inc

apacitates him so that he does form the specific intention required in murder charges. {
{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526\charrsid7668615 See}
{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 section 194(1) of the Penal
Code Act). But in order to avail himself of this defence, the defence must plead and prove it. The
burden placed upon the defence to pro}{\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 ve -}{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 this defence is on the balance
of probabilities. \line }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid2449499 See: }{\rtlch\fcs1 \ab\ai\af0
\ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 R. vs. Byrne (1960) }
{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 2 }{\rtlch\fcs1 \ab\ai\af0
\ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid2449499 Q. B. 396

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Rose}{\rtlch\fcs1 \ab\ai\af0
\ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid2449499 vs. R. (1961) A. C.
496 (P. C.)

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 R. vs. Terry (1961) 2 Q. B. 314 }
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{\rtlch\fcs1

\ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid2449499 (CCA)

\par R. v}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 s. }{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Gomez }{\rtlch\fcs1
\ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 48 Crim. Appeal Reports 310
(CCA) }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
\i\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid2449499

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 The defence in this case did
not raise or }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 e}
{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid12014526\charrsid7668615 ndeavour}}\rtlch\fcs1 \af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

to prove circumstances which would tend to show the accused was acting under diminished
responsibility. Can the court avail this defence to the accused even if }}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid12014526

the defence has not pleaded it?}}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 I am very reluctant to hold in
the positive though the assessors held the accused was acting under diminished responsib}}
\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid12014526 ility when he killed
Nyaburu. }}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The assessors did not direct their minds on who had to raise this defence and the required
standard of proof before they could avail that defence to the accused. }}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 At page }}\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 1594 of Archbold
1997-Edition-paragraph 1967 }}\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid12014526 the learned author stated:

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 The case of R. }}\rtlch\fcs1
\ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 vs. Kookon
74 Crim. Appeal Reports 30 }}

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 was
followed in R. }}\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 vs. Campbell 84 Crim. Appeal
R. 255 }}

\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 - C.
A. their Lords in the Court of Appeal observed it was the defence to raise and prove the defence}
\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499 of diminished responsibility.

\par

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 The learned author made t}
\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 he following
observation \emdash (p.1594)

\par }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 '93The judge\quote s
knowledg}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 e of the
evidence available in }{\rtlch\fcs1

\ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 relation to
the issue of diminished responsibility would inevitably be li}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid2449499

mitted, and if he did more that }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 their Lordships had ind}
{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499

icated, he might cause serious }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 damage to a defen}{\rtlch\fcs1
\ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499

ce which had been put forward, }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526 without}{\rtlch\fcs1 \ab\af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 adding anything to the case\quote .

\par

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faaauto\adj
ustright\rin0\lin0\itap0\ipgp1\pararsid2449499 }{\rtlch\fcs1 \af0 \ltrch\fcs0
\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid12014526

The evidence we have from PW4, PW5 and PW6 - (Owino, Akong and Byansi respectively)}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

is that the accused was prone to violence and using deadly/lethal weapons when he was either
drunk or annoyed. He was generally regarded as a cruel and fearful person in his community. He
would fight at the slightest incitement as he could not

control his anger. All these, in my view, do not amount to diminished responsibility. I am further
fortified in my findi}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499
ng that the accused was not }{\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 affected by any
disease of mind by the evidence of the same witnesses (above) who stated that the accu

sed was a happily married man who went about his duties normally. Finally, the medical report,
which was belatedly sent to the court, describes him as mentally normal. For those reasons I find
the defence, of }{\rtlch\fcs1 \af0 \ltrch\fcs0

diminished responsibility was, not only raised

by the defence but there are no circumstances upon which the court can conclude that such a state of mind existed in the accused.

Provocation is defined in sections 192 and 193 of the Penal Code Act. There is the hearsay evidence of Akong that the accused

hit the deceased for selling his chicken without his consent. The question arises whether the accused was acting under provocation or revenge for his stolen chicken. Generally speaking, the force used in retaliation should be proportionate to the insult

o

r act causing provocation. Where the force used in retaliation is out of proportion to the act causing the annoyance then the defence of provocation ceases to be available to the accused. But there is no hard and fast rule as to what retaliation will be p

roportionate to the annoyance

yance extended to the accused.

I will borrow the words of }

Fuad J in the case of Uganda vs. Nabwegere son of Rovumba (1972) U. L. R, 15.}

'93 Judging the accused by the standard of a reasonable member of the unsophisticated community

to which he belonged, legal provocation had been made out sufficient to reduce the terrible killing to manslaughter⁹⁴. Given the circumstances of the accused the selling of his chicken, the means of his

\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 livelihood}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 , was sufficient provocation to make him los}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499 e his self control.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 Intoxication}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

is not a defence to the offence to a criminal charge per se but it can be a relevant factor to show the presence or absence of the requisite ingredient, necessary to prove the charge of murder. This ingredient is the intent

ion to kill as stipulated in section 191 of the Penal Code Act. Section 12(2) of the Penal Code Act provides that }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 intoxication}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 shall be a defence if the offender, at the time of committing the offence, did not know the act or omission was wrong or did not k}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499 now what he was doing.

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499 See: }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Chem}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499 ingwa vs. R. (1956) 23 EACA 45

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid2449499 Kinuthia s/o}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Ka}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid2449499 mau vs. R. (1950) 17 EACA 137}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499

\par }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Kajumba vs. Uganda (1987) HCB 1 (C. A. U.) }{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499

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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 We have in this case the evidence of Akong who said }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 \93

Accused appeared to be drunk. He was smelling enguli\94 }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Owino stated }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 \93Accused is a habitual drunkard. He was smelling }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499 alcohol}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 on the day he}{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 hit his grandchild-Federesi\94.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 These same witnesses stated th}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 at the accused was prone to }{\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 being violent aggressive and using lethal weapon to fight other people when he was drunk. I believe the evidence of PW4 and 5 that accused had drunk enguli }{\rtlch\fcs1 \ab\af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 (crude waragi) }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499 when he assaulted Federesi.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 It was observed by the Court of Appeal for Eastern African(then) in the case of }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 Chemingwa vs. R. (1956) 23 EACA 45, }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 that \93intox

ication may provide a defence either by enabling the}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

accused to prove temporary insanity or by indicating that he was incapable of forming the intention necessary to constitute the offence. In the first case, the onus is on the accused to show the insanity

. In the second, the onus never shifts from the prosecution}}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 .'94}}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid2449499

\par }}\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 See also: Kinuthia s/o Kamau
 vs. R. (1950) 17 EACA 137. }}\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 As in provocation, once a
 person has lost self control because of being under the influence of }}\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 alcohol}}\rtlch\fcs1 \af0
 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 , such person may
 not have the cap

acity to balance the object of assault he is using and the har}}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid2449499 m it will cause to his victim.

\par }}\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
 \i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499 See: Uganda vs. Robert
 Kanyankore (1984) HCB 23. }}\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0
 \i\lang1033\langfe2057\langnp1033\insrsid2449499\charrsid2449499

\par }}\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid2449499

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Because of the provocation
 extended to the accused coupled with his state of intoxication, the accused was tempo

rarily deprived of his senses to form the required intention for the offence of murder. His offence
 is, for those reasons, r}}\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid2449499 educed to one of Manslaughter. }}\rtlch\fcs1
 \ab\af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid2449499

\par }}\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adj
 ustright\rin0\lin0\itap0\ipgp1\pararsid5533851 }}\rtlch\fcs1 \af0 \ltrch\fcs0
 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The assessors advised me to convict the accused of murder but with diminished responsibility. Section 82(1) of the Trial on Indictments Act requires the assessors to give their opinion orally, which opinions, the Judge must record. But the Judge is {}

{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid2449499\charrsid7668615 not} {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

bound by the opinions of the assessors 82(2) but if he disagrees with their unanimous opinion, he m

ust give reasons for doing so 82(3). Thus the assessors are advisers to the court. If they give opinions which are not supported by the evidence on record or their opinions are not based on the law governing the case, then, the judge is at liberty to disa

gree with their opinions. \line {}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 See: (1) Habib Kara Vesta and ot}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid5533851\charrsid5533851 hers vs. R. (1934) 1 EACA 191.

\par {}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 (2) R. vs. Mwi}{\rtlch\fcs1

\ab\ai\af0 \ltrch\fcs0 \i\lang1033\langfe2057\langnp1033\insrsid5533851\charrsid5533851 ta s/o Samo (1948) 15 EACA 128

\par {}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 (3) Adam Mulira vs. R. (1953)

20 EACA 223 {}{\rtlch\fcs1 \ab\ai\af0 \ltrch\fcs0

\i\lang1033\langfe2057\langnp1033\insrsid5533851\charrsid5533851

\par {}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851

\par {}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 I have earlier observed that the assessors did not properly {}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5533851\charrsid7668615 address

{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

themselves on the evidence which must be available to court to establish the defence on who the burden to raise and prove the defence lies a}{\rtlch\fcs1 \af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851 nd the test of proof required.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 The assessors were carried aw}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851 ay by the descriptions
such as }{\rtlch\fcs1 \ab\af0

\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 '93fearful man\94
'93always drunk\94, '93prone to violence\94 '93always aggressive\94 }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 which the witness }{\rtlch\fcs1
\ab\af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 (PW4, 5, and
6) }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 attributed to him. Strange as
he }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 (accused) }{\rtlch\fcs1 \af0
\ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 may have been behaving, this
did not mean he was }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 a }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 victim of diminished
responsibility. I therefore reject the}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid5533851 ir opinions on that ground.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 I agree with counsel for the
accused, that by reason of intoxication, the accused was unable}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 to form the required intention
for t}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851 he charge of
murder. I also add}{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 that the accused was acting in
the heat of passion arising from the unlawful disposal of his chicken by the }{\rtlch\fcs1 \af0
\ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851

deceased when he hit Federesi.

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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

Consequently, I find the prosecution has not proved the offence of murder against the accused and he is acquitted on that charge. But the prosecution has proved the charge of Manslaughter against the accused.

The accused is therefore convicted for Manslaughter contrary to sections 187 }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851 and 190 of the Penal Code Act.

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\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 A. R. } {\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid5533851 Rwamisazi-Kagaba \line Judge \line }{\rtlch\fcs1 \af0 \ltrch\fcs0

\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

\par }\pard \ltrpar\s15\qj \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid7668615 {\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 SENTENCE \line }{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The accused/convict is sentenced to twelve (12) years imprisonment less the period he has been on r}{\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid5533851 emand.

\par }\pard \ltrpar\s15\ql \li0\ri0\sb100\sa240\sbauto1\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid5533851 {\rtlch\fcs1 \ab\af0 \ltrch\fcs0

\b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 V. A. R. Rwamisazi-Kagaba \line Judge \line 6/1/2005 \line }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5533851

\par }\pard \ltrpar\s15\qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid5533851 {\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615 Right of Appeal }

{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \b\lang1033\langfe2057\langnp1033\insrsid5533851

\par }\pard \ltrpar\s15\ql \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\ipgp1\pararsid5533851 {\rtlch\fcs1 \af0 \ltrch\fcs0 \lang1033\langfe2057\langnp1033\insrsid4029712\charrsid7668615

The convict is explained his right of appeal to the Court of Appeal within fourteen (14) days.

Appeal within fourteen (14) days.

V. A. R. Rwamisazi-Kagaba
Judge 6/1/2005

070d8a65cd2e88b7f07c2ca71ba8da481cc52c6ce1c715e6e97818c9b48d13df49c873517d23d59085adb5dd20d6b52bd521ef2cdd5eb9246a3d8b4757e8d3f7

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[illegible]

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\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority11 \lsdlocked0 Subtitle;
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\lsdsemihidden0 \lsdunhideused0 \lsdpriority70 \lsdlocked0 Dark List Accent 6;

