

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-00-CR-S-C-0007 OF 2002

UGANDA ::: PROSECUTOR

VERSUS

KIGUNDU SULEIMAN ::: ACCUSED

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

The accused is indicted for murder; an offence contrary to section 183 and punishable under section 184 of the Penal Code Act.

It is alleged that, on the 25th day of March 2001 at Kanyanya Kawempe Division in the Kampala District he murdered Kayondo. Prosecution examined 4 witnesses.

The first witness was Robert Kyagaba. He testified that on the 25th day of March 2001 at 1 a.m. he was attending a disco at Mpererwe, while in the disco hall, he heard commotion outside. On going outside he found Sula (accused) fighting with Kayondo (deceased) with the assistance of Karuna they separated the two. The

witness took away Kayondo while Karuna took away Sula. Later Sula managed to free himself Karuna and followed deceased. He was armed with a big stick. On reaching Kayondo, he hit him with the said stick and Kayondo fell down and started bleeding from the nose and mouth. Later he died at Mulago hospital.

PW2:

Haruna Lukyamuzi testified that on the 25th March 2001 he was at club corner disco. He was with Kayondo. Kayondo joined those who were playing matatu (cards). Accused was one of those playing. They were playing for money and accused on losing said he was not paying because a mistake had been made. Kayondo insisted that he must pay and boxed the accused. The two started fighting. The witness and others tried to separate the two from fighting. He got hold of the accused while Robert got hold of the deceased Kayondo. Robert walked deceased towards home. The witness remained with the accused when released the accused, accused went round the building, picked a stick and followed the deceased. From where the witness was he saw accused hit deceased with the stick on the head. After hitting deceased accused ran away. Later deceased died at Mulago Hospital. PW3 Adikini Joyce as a police officer. On 25/3/2001 she was on duty, accused reported to her that as he was going home he had found thugs who had robbed him of his money and that he had managed to grab a stick from

one of the thugs. He had a stick which she treated as an exhibit. In court it was marked exhibit P1. The last witness for the prosecution was Mubiru Edward. He testified that on 25/3/2001. He was at Mpererwe Petrol Station. While there he witnessed a fight between accused and deceased. He tried to separate the two with the assistance of Robert and Karuna. Robert held deceased while Karuna held the accused. Robert took deceased towards the petrol station while Karuna took deceased upwards. Later accused came with a stick and ran toward Kayondo. With the stick he hit Kayondo and Kayondo fell down. The stick broke into two and accused ran away with part of the broken stick. Later Kayondo died at Mulago.

Accused gave evidence on oath. He testified that on 24/3/2001 he was at Nansagazi. He left Nansagazi at 9.30 p.m. for home. On the way he fell into a robbers' ambush. He was beaten and robbed. He reported the robbery at Kanyanya with the stick he had managed to grab from one of the robbers. He did not know Kayondo, nor does he know any of the prosecution witnesses though he used to see them around. He did not examine any witnesses.

These is an indictment for murder. Prosecution must prove the following ingredients beyond reasonable doubt.

1. That Kayondo is dead.
2. That he died of unlawful act or omission,
3. That unlawful act or omission was of malice aforethought, and
4. by the accused at the bar.

The burden of proof rests on the prosecution throughout and does not shift to the accused. It is for the prosecution to destroy the alibi put forward by the accused and not the accused to prove it. All he needs to do is to create a doubt in prosecution case.

In his submission learned counsel for the accused said that the fact that Kayondo is dead is not contested. All they were contesting is that accused is not responsible for that death as he was never at the scene of the alleged offence.

I had all prosecution witnesses before me. I examined their demeanour while in the witness box meticulously. I examined the alibi put forward with anxious case I am left in no slightest doubt that all prosecution witness were truthful. They all

gave their testimony in a straightforward manner and without prevaricating. I have no hesitation in believing their testimony. They knew the accused very well and their knowledge was not shaken in any slightest way. The evidence by the accused that he did not know any of the three key prosecution witnesses is a lie intended to dodge the long arm of justice. I accept the evidence that soon after hitting the deceased, accused ran to police and reported a false case of robbery. This was a ploy by a crook who was trying to beat the long arm of justice. Prosecution has completely and beyond any reasonable doubt destroyed the sham alibi put forward by the accused. On the evidence there is no credible defence adduced.

Provocation does not arise as accused had ample time to cool down after deceased had hit him. The question of self-defence or defence of property does not arise as prosecution has destroyed the sham abibi put forward by the accused. Learned counsel for accused submitted that there were contradictions in prosecution case. With the greatest respect I see none, and if there be any the same does not vitiate prosecution case. I am in complete agreement with the assessors that prosecution has proved the case against the accused beyond reasonable doubt. I find him guilty of the offence charged and convict him.

J.B.A. Katutsi

JUDGE

Sentence:

There is only one sentence authorized by the law. You will suffer death in a manner laid down by the law.

J.B.A. Katutsi

JUDGE

2/12/2002