

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL SESSION CASE NO. 029/2005.

UGANDA ::: PROSECUTOR

VERSUS

TURYAGABIRWA ABEERI ::: ACCUSED

BEFORE THE HON. MR. JUSTICE MOSES MUKIIBI

JUDGMENT

The accused, TURYAGABIRWA ABEERI alias MOHAMED MULOKOLE, was indicted for the offence of murder contrary to Sections 188 and 189 of the Penal Code Act. The particulars of offence alleged that on the 29th day of March, 2004 at Nabbanga village, Nyimbwa Sub County, in Luwero District, Turyagabirwa Abeeri alias Mohamed Mulokole unlawfully caused the death of one Kiiza Goretti. On arraignment the accused denied the indictment, whereupon the Prosecution called ten witnesses to prove its case.

In his defence the accused gave sworn evidence but called no witnesses.

The Prosecution case is as follows:-

The deceased, Kiiza Goreti, was a wife to the accused. The couple were blessed with three children. For some time the accused suspected that the deceased had an extra marital relationship with one Misango, her workmate at Ndejje Secondary School. The deceased used to operate a canteen at the school. On 29/3/2004 at about 5.30 – 6.00 pm the accused confronted the deceased regarding the suspected relationship. A quarrel broke out in the accused's house. The accused picked a Panga and cut the deceased several times on the head and both arms. The deceased died due to excessive bleeding in the sitting room of the accused's house. At the same time the accused inflicted deep cut wounds on his three children. The accused escaped from home while holding a Panga. Deep in the night of 29th – 30th March, 2004 the accused reported himself at Bombo Police Station. He was in possession of a panga. He was arrested and detained. The Panga was exhibited. The accused was medically examined on police form 24 (Exhibit P.I). The accused was charged, taken to court, and thereafter remanded in prison.

The accused, in his sworn evidence, denied committing the offence of murder. He put up two defences: an alibi and a grudge.

He testified as follows:-

On 29/3/2004 he left his home at 5.30 am in the company of his daughter Jackline Tugabirwa. He took her to school at Nalinya Lwantale. From there he took a Taxi and went to Kyambogo village, in Masaka. He went to see the burial site of his late father. He came back the same day but reached Kampala at 8.30 pm. All taxis going to Ndejje had left. He took a Taxi heading to Luwero. He dropped off at Bombo at about 9.00 pm. He received news that his wife and children had been killed. He went to Bombo police station to inquire about members of his family. The police said that they had been looking for him. They detained him. He was charged, taken to Luwero court and remanded in prison.

He had a grudge with Nanteza (known as “Maama Patu”). Nanteza was keeping pigs and goats which destroyed his crops, such as Cassava and sweet potatoes. He asked Nanteza to build a structure for her animals but she failed to do so. So he developed a grudge with Nanteza. That was why Nanteza implicated him in this case. Nanteza also told Jackline Tugabirwa what to say against him. Nanteza told court lies.

The accused admitted that Gorette Kiiza was his lawfully wedded wife. Turyagabirwa Jackie is his daughter. Nanteza is his neighbour. His house faces the west while Nanteza’s house faces the East. There is a road in between running down to the bore hole.

For the offence of murder the Prosecution has to prove, beyond reasonable doubt, the following essential ingredients, namely:-

1. That a human being by the name Gorette Kiiza is dead;
2. That she died as a result of an unlawful act.
3. That the unlawful act was accompanied by malice a forethought.
4. That the unlawful act was committed by the accused person.

The burden of proof rests upon the Prosecution to prove the guilt of the accused person beyond reasonable doubt.

See: WOOLMINGTON V.D.P.P. [1935] A.C. 462

at P.481 Per Viscount SANKEY, L.C.

SEKITOLEKO v. Uganda (1967) E.A. 531.

It was conceded by Mr. Tusubira Paul, learned Counsel for the defence on state brief, that a human being called Gorette Kiiza is dead.

Indeed there was evidence of Nanteza Harriet (PWI), Fatuma Mugerwa (PW2), Tugabirwa Jackie (PW3), Kateete Vicent (PW4), and No. 25787 CPL. Twinobusinguzi Silver (PW7) who saw the body of Gorette Kiiza. Kateete Vicent (PW4) testified that on 30/3/2004 he proceeded to Kasana Health Centre Mortuary. He collected the body of Kiiza Gorette, put it on a pick up and went with it to Bombo police station. I am satisfied, as were the assessors, that the Prosecution has proved beyond reasonable doubt that Gorette Kiiza is dead.

On the second ingredient:

That she died as a result of an unlawful act, the Prosecution relied on the evidence of Nanteza Harriet (PWI), Fatuma Mugerwa (PW2), Turyagabirwa Jackie (PW3), No. 25787 CPL. Twinobusinguzi Silver (PW7) and D/AIP Matovu Nathan (PW8).

Our law presumes that every homicide is unlawful unless it was committed accidentally or in circumstances which show that it was excusable. See: *GUSAMBIZI s/o WESONGA v. R* (1948) 15 EACA 65.

The law applies the substantial factor test, and, for juridical purposes the death will be imputed only to the severe injury. The question to be considered is this:

Do the facts of the case lead to only one conclusion, that the death of the deceased resulted from the injuries inflicted?

Nanteza Harriet (PWI) testified as follows:-

She ran and stood in Abeeri's court yard, outside the Kitchen. She observed what was happening in the sitting room. She saw Abeeri cutting. He was holding a Panga. She saw him raising his hand and cutting twice. She saw that he was cutting a person. She asked him why he was killing the wife. He did not answer. He came out holding a Panga which was smeared with blood.

Fatuma Mugerwa (PW2) testified as follows:-

Many people went to Abeeri's home. She stood in the door way. She saw a body of a woman lying on its back. The face of the body was full of blood. She saw a cut wound on the forehead. She recognized the body as that of the mother of Jackie, also known as Gorette. She saw Gorette's body mutilated into pieces.

Tugabirwa Jackie (PW3) was aged 10 years, a child of tender years. The court conducted a voirie dire. It was found that she understood the nature of an oath and the duty of speaking the truth. She was allowed to give sworn evidence. She testified as follows:-

On 29/3/2004 at about 5.00 pm she returned from school and found her father and mother in the court yard quarrelling. Then she saw her father holding a panga and cutting her mother. The mother was lying down in the sitting room. The mother's hand was cut into pieces. Her legs were cut. The witness shouted: "Here is Dad cutting my mother".

No. 25787 CPL. Twinobusinguzi Silver (PW7) testified as follows:-

He entered the accused person's house, in the sitting room. He saw a dead woman lying on her back, in a pool of blood. Both arms were cut. She had a deep cut on her face. Her jaw was cut and the teeth were outside.

D/AIP Matovu Nathan (PW8) testified as follows:-

He is attached to Bombo Police station as the officer In charge, CID. He knows the accused. On 29/3/2004 at about 6.30 pm he received information concerning an alleged murder at Ndejje. He rushed to Nabbanga village. He went to the accused's home. Nanteza (PWI) identified to him the dead body of a woman as that of Gorette Kiiza. He saw in the sitting room a body lying on its back. He examined the body. The left upper arm had several cuts. The right upper arm had a cut. There was a deep cut across the nose and the mouth. There was a cut on the top of the head. Both palms of the hands were cut. The body was removed from the scene by his police team.

Dr. Tezitta John Bosco (PW5), a medical officer from Luwero Health Centre (4) Kasana testified in this case. He told court that he carried out a post mortem examination of the body on 30/3/2004. He testified that he prepared and signed a post mortem Report on police Form 48 B relating to Kiiza Gorette.

However, during cross examination the Doctor was asked why he had described the deceased as a male. Under pressure of cross-examination the Doctor confessed that he had not carried out the Post Mortem examination. He told court that a mortuary assistant with long experience saw the deceased's body and noted major injuries. It was the assistant who gave information to the Doctor, and the latter used that information to compile a post mortem Report. The Doctor withheld the name of the mortuary assistant who had seen the deceased's body. The Doctor referred to that person as heyna. The court decided to exclude medical evidence from consideration in this case.

The fact of death and the cause of it can be established otherwise than by medical evidence. The absence of medical evidence as to death and the cause of it is not fatal. It is open to the Prosecution to produce and rely on other evidence to establish the fact of death and the cause of it.

See: R. vs. CHEYA and Anor.

(1973) E.A. 500 (High Court, Tanzania).

In WAIHI and Another v. Uganda (1968) E.A. 278 (C.A) at page 280, SPRY, J.A. said:

“There may be other cases where medical evidence is lacking but where there is direct evidence of an assault so violent that it could not but have caused immediate death.” In that case the court found that there was other evidence, other than medical evidence, which pointed irresistibly to an unlawful killing.

In the instant case several Prosecution witnesses saw the deceased's body lying in the sitting room. The witnesses described the multiple cut wounds on the deceased's body, with loss of blood. The witnesses observed deep cut wounds on the deceased's head. In my view, the facts of this case lead to only one conclusion that the death of Gorette Kiiza resulted from the injuries inflicted on her. The assessors were satisfied that the several cut wounds caused the deceased's death. I am in agreement with the assessors that the prosecution has proved beyond reasonable doubt that Gorette Kiiza died as a result of an unlawful act.

On the third ingredient:

That the unlawful act was accompanied by malice a forethought, the Prosecution relied on the evidence of Nanteza Harriet (PW1), Fatuma Mugerwa (PW2), Tugabirwa Jackie (PW3), No. 25787 CPL. Twinobusinguzi Silver (PW7), and D/AIP Matovu Nathan (PW8).

Fatuma Mugerwa (PW2) told court that she saw a cut wound on the forehead, and the face of the body was full of blood. She saw the deceased's body mutilated into pieces.

Tugabirwa Jackie (PW3) testified that she saw her mother's hand cut into pieces. She also saw the deceased's legs cut. CPL. Twinobusinguzi Silver (PW7) testified that he saw both arms of the deceased cut. The deceased had a deep cut on her face. Her jaw was cut and the teeth were outside.

D/AIP Matovu Nathan (PW8) testified that he saw the left upper arm of the deceased with several cuts. The right upper arm had a cut. The deceased had cut wounds across the nose and the mouth, and on top of the head. He saw both palms of the hands cut.

Intent to kill is an essential mental element in the crime of murder.

See: Section 191 (a) of the Penal Code Act.

Alternatively, it must be shown that the assailant, at the time of committing the act charged knew that, in all probability, it would be likely to cause death of some person.

See: Section 191 (b) of the Penal Code Act. Malice or the lack of it can be determined by examining the nature of the weapon used, the manner in which it is used, the parts of the body affected and the conduct of the assailant before and after the act.

See: R v. Tubere s/o Ochan (1945) 12 EACA 64.

Where the weapon used is a deadly or lethal weapon, or where a lethal weapon is used savagely, or where the vulnerable parts of the body of the deceased were affected by the injuries, malice a forethought would be more readily inferred by the court.

See: Moses Kayondo v. Uganda,

S.C. Criminal Appeal No. 11/92 (unreported).

Otim Gabriel Ogola v. Uganda S.C. Criminal Appeal No. 16/93 (unreported).

From the nature of the injuries which were seen on the deceased's body by the Prosecution witnesses I find it reasonable to make an inference that the injuries were inflicted by an instrument made for cutting.

In my view such an instrument would qualify to be called a deadly weapon. I find that the head of the deceased which was affected by the cut wounds was a Vulnerable part of the body. I have also considered the multiple cut wounds which were found on the deceased's body by the Prosecution witnesses. In the circumstances I find that the assailant used an instrument made for cutting, a lethal weapon, savagely on the deceased.

The assessors expressed a joint opinion that the Prosecution has proved beyond reasonable doubt that the intent of the assailant was to kill. I do agree with that opinion. I think that the assailant, considering the violence he used, did an act which was calculated, in the judgment of ordinary people, to cause death, and in that way caused the deceased's death. I am satisfied that the Prosecution has proved beyond all reasonable doubt that when the assailant did the unlawful act on Gorette Kiiza he knew that it was highly probable that it would cause her death. It is my view that malice aforethought has been established by the Prosecution beyond reasonable doubt.

On the fourth ingredient:

That the unlawful act was committed by the accused person, the Prosecution relied on the evidence of Nanteza Harriet (PWI), Fatuma Mugerwa (PW2), Tugabirwa Jackie (PW3), PC Abok Robert Komex (PW6) and CPL. Twinobusinguzi Silver (PW7).

Nanteza Harriet (PWI) testified as follows:

She resides at Nabbanga village, Ndejje, Nyimbwa Sub County, Luwero District. Her home is opposite the accused's home. Both homes have court yards stretching from a common path running in between. The accused was staying with Gorette Kiiza, his wife, and they had five children.

On 29/3/2004 at 5.30 pm the witness was in her kitchen cooking. Abeeri and his family members were at their home. Abeeri called her and asked: "Maama (mother of) Mukiibi, aren't Nkejje (small fish) eaten as sauce?" She answered that it could be used as sauce; that it was good for treating children afflicted by measles. Gorette Kiiza also asked the witnesses: "Maama (mother of) Mukiibi is Nkejje (small fish) used as sauce?" She answered: "Yes".

She advised Gorette Kiiza to mix it with ground nuts. The witness heard Abeeri and his wife conversing. Then she heard Gorette saying it was about 6.00 pm, and she wanted to prepare to go for work. Gorette used to operate a canteen in Ndejje Senior Secondary school. Soon after she heard Gorette say:

“If Taata (father of) Jackie you do not stop saying those things I will leave your home”.

After about 10 minutes the witness heard the children crying, raising alarm, and calling her. She ran and reached Abeeri’s court yard. She stood outside Abeeri’s Kitchen. She could see the door to Abeeri’s main house. The door was open. She could see inside the house. It was about 6.00 pm. The main door was facing the direction of the setting sun. She observed what was happening in the sitting room. She saw Abeeri cutting. He was holding a Panga. He was facing outside. She saw him raising his hand and cutting twice. She saw that he was cutting a person. She asked him why he was killing the wife. He did not answer. He stood up, looked at the witness, and came out. He was holding a Panga which had blood on it. He walked towards the witness. She ran away while raising an alarm. She ran to her home with two of Abeeri’s children: a boy called Robert Turyamuhebwa, and a girl called Jackline. When she looked in the direction of Abeeri’s house she saw Abeeri cutting a child. Abeeri cut the child in the face. The child fell down. Then he cut the child’s hand. Jackline left the witness and ran back to assist the child who had been cut. While Jackline was lifting the child Abeeri pierced/stabbed the back of Jackline. Jackline brought to the witness the child who had been cut. The child had been cut on the hand, in several areas, and across the face, above the nose.

Fatuma, wife of Mugerwa, answered the alarm. Mrs. Kagulire and aunt Suzan answered the alarm. Abeeri had entered his house. He came out of his house with a panga. He moved away at the side of his house. Kagulire came with a bicycle. He went to report to police.

In response to cross-examination the witness admitted that she quarrelled with Abeeri. Abeeri had chased away his children. The children ran to the witness’ home. The witness went to Abeeri’s home. She told Abeeri that it was wrong to chase children while holding a Panga. Abeeri had dismissed her as a person interfering with his affairs. This incident had occurred two years earlier. Abeeri had threatened to harm the witness. However, the two had since resumed friendship.

Fatuma Mugerwa (PW2) testified as follows:- She resides at Nabbanga village, Kitwalanyi, Nyimbwa sub county, in Luwero District. She knew Kiiza Goretti. Her husband was called Abeeri, the accused. On 29/3/2004 at about 5.00 pm she was coming from Ndejje. She was passing in the road near Abeeri's home. She heard children crying. She looked towards Abeeri's house and saw Nanteza (PWI).

Nanteza called her and told her what had happened. Nanteza suggested that they raise an alarm.

The witness saw Abeeri emerge from his house. He was holding a panga. She saw Abeeri cutting a young child on the face. The child fell down. He cut the child on the hand. The witness felt frightened. She raised an alarm. They ran towards the play ground. Jackline was with them. Jackline ran back to Abeeri's home. She brought the child who had been cut. The child was bleeding. Mrs. Mugerwa, Mrs. Kagulire and Mr. Kagulire answered the alarm. Many other people gathered. They went to Abeeri's home. The witness stood in the door way. She saw a body of a woman lying on its back in a small sitting room. She recognised the body as that of the mother of Jackie called Goretti. Kagulire went to report to police.

Tugabirwa Jackie (PW3) testified as follows:- She stays at Kitwalanyi village. The accused, Turyagabirwa Abeeri, is her father. On 29/3/2004 at about 5.00 pm she returned home from Ndejje Primary School. She was staying with her mother called Kiiza Gorette and her father at Nabbanga village. She found her mother and father at home. The two parents were in the court yard. They were quarrelling. Then she saw her mother and father in the house. She stood in the door way. She saw her father holding a panga. He was cutting her mother. Her mother was lying down in the sitting room. She saw this and raised an alarm. She said: "Here is Dad cutting my mother". A neighbour, a lady, answered her alarm. The neighbour also raised an alarm.

There was another child, aged about 2 years, called Kahangi Stephen. After the witness' father had cut the mother Kahangi went and touched the mother. The accused pushed Kahangi away. Kahangi fell down. Then the accused cut Kahangi. Kahangi's hand was cut off; he was also cut in the face near the nose. The witness went to rescue Kahangi. The accused cut her at the back. The accused said: "I am cutting you because of rumour mongering". The Panga cut the witness. [she showed to court a scar on her left hand shoulder blade, about 4cms long]. That was the place the accused cut.

The witness has a sister called Kokundeka Faith. She too was at home. The accused cut her on the face, near the nose. Kokundeka Faith had two fingers of the left hand cut; another finger on the right hand was also cut. The witness lifted Kahangi and took him to the playing field. She saw her Dad running away to the forest.

In response to cross examination the witness testified that a lady called Nanteza, a resident of Nabbanga village, came to answer her alarm at a time when the accused was cutting her mother. Nanteza started raising an alarm. The witness also saw Mrs. Fatuma Mugerwa on that same day.

CPL. Twinobusinguzi Silver (PW7) testified that on 29/3/04 he was the In charge of Ndejje police post. At around 17.00 hrs he met Kagulire Grace on the way. Kagulire reported to him a case of murder. The witness knew Turyagabirwa Abeeri and his home. So he went to the scene at Nabbanga village, at the home of the accused. He entered the accused's house, in the sitting room. He saw a dead woman lying on her back, in a pool of blood. There were three children who had been cut.

No. 31727 PC Abok Robert Komex (PW6) testified as follows:-

On 30/3/2004 at 1.15 am he was on night duty with W/PC Kayegi at Bombo police station. A man, who later identified himself as Turyagabirwa Muhammad, came to the charge office, holding a panga. It was the accused. The witness asked the man who he was, and why he was holding the panga. The accused was dressed in a white stripped shirt and a black trouser. He appeared to be sober. His shirt was wet. The witness took the panga away from him. It was sharp on one side. It had a wooden handle. It had a curved tip. It appeared to be new. The witness exhibited the panga in the exhibit book. The next morning he handed the panga to the store man, D/CPL. Makasi. [Two carbon copies of Exhibit slips were admitted as Exhibit P.3]. The accused had a dirty pair of trousers. The witness arrested him and put him in custody.

The accused put up an alibi as his defence. First, I carefully noticed the accused's demeanour as he gave his evidence. It did not impress me as that of a person speaking the truth.

Secondly, the accused was cross examined. He told court that his father died a longtime ago; that he was buried at Kyambogo village, in Masaka; that it was his second time to go there.

He told court that on his way back from Kyambogo village he arrived at Masaka at 2.30 pm. He testified that he headed for Kampala, where he arrived at 8.00 pm. He told court that on his way to Masaka he left Kampala at 9.00 am and reached Masaka between 1.00 and 2.00 pm. He told court that he cleared bush on his father's grave, which took him one hour. He told court that he does not know how far Kyambogo village is from Masaka. I find the accused's claim that he travelled from Masaka to Kampala in a Taxi from 2.30 pm to 8.00pm unbelievable.

The accused testified that he got off the Luwero bound Taxi at Bombo. He found the taxis operating on the Ndejje route already gone. He told court that as he tried to get a Boda Boda to go home a cyclist asked to know his name. Then the cyclist told him that his wife and children had been cut; that the cyclist had seen them on their way to hospital. So the accused started tracing members of his family at Nyimbwa Hospital and Dr. Lwanga's clinic without success. Then the Boda boda cyclist told him that the people he was looking for had been seen in the company of the police. So he (the accused) decided to go to Bombo police station to inquire. He reached Bombo police station at around 10.00pm.

P.C. Abok Robert Komex (PW6) told court that the accused reached Bombo police station charge office on 30/3/2004 at 1.15 am.

Tugabirwa Jackie (PW3) must have been about Nine years in 2004. She was attending school at Ndejje primary school. I cannot imagine why it was necessary for the accused, on 29/3/2004, to take her from home, at night, at 5.30 am, to school. She told court that on that day she returned home from school at 5.00pm. She told court that she found her mother and father at home, in the court yard, quarrelling. Nanteza Harriet (PWI) testified that she heard Gorette threatening to leave the accused's home because of what the accused had said to her. Tugabirwa Jackie (PW3) testified that she saw her mother and father in the house. She saw her father holding a panga; he was cutting her mother. Nanteza (PWI) testified that after about 10 minutes she heard children crying, raising alarm, and calling her.

Tugabirwa Jackie (PW3) told court that she raised an alarm and a neighbour, a lady, answered it. Nanteza (PWI) told court that she ran and reached Abeeri's court yard. Both Nanteza (PWI) and Fatuma Mugerwa (PW2) testified that they were together with Tugabirwa Jackie (PW3) when they saw Abeeri cutting a child. They both testified that Jackline ran back to assist the child who had been cut. Tugabirwa Jackie (PW3) named the child who was cut as Kahangi Stephen. She testified that she went to rescue Kahangi, and in the process the

accused cut her back. Nanteza (PWI) testified about this also. Nanteza (PWI), Fatuma Mugerwa (PW2) and Tugabirwa Jackie (PW3) all saw the accused holding a panga. Nanteza (PWI) and Tugabirwa Jackie (PW3) actually saw the accused cutting Gorette Kiiza. Fatuma Mugerwa (PW2) told court that when she and other people went to Abeeri's home soon after she saw the body of Gorette lying on its back in the sitting room. CPL. Twinobusinguzi Silver (PW7) supported the stories of PWI (Nanteza), Fatuma Mugerwa (PW2), and Tugabirwa Jackie (PW3) on where Gorette Kiiza's body was lying, and its appearance. CPL. Twinobusinguzi (PW7) supported the story of Tugabirwa Jackie (PW3) on the number of children who had been cut.

I have found the accused's story inherently improbable. His demeanour, when he gave evidence gave a poor impression of the accused as a witness. On the other hand I found the Prosecution witnesses consistent and credible. Their stories fit in neatly each with the other. I believe them, and prefer their account of what happened.

The established law on alibi in Uganda is that when an accused person sets up an alibi as a defence, he or she does not assume any responsibility of proving the alibi. The Prosecution is under duty to negative the alibi by evidence. Such evidence may be adduced by calling witnesses either before the defence is put forward by the accused in his testimony or statement at his trial, or afterwards in rebuttal.

See: Kibale Ishma V. Uganda, S.C. Crim Appeal No.21 of 1998 (un reported). I have carefully evaluated the evidence on record as a whole. I have considered the Prosecution evidence showing that the accused person was at the scene of crime, and the defence evidence showing that the accused person was at Kyambogo village, Masaka on 29/3/2004. I find that the Prosecution has proved to the required standard that the accused was at his home at Nabbanga village (the scene of crime) at 6.00 pm, the material time. I find that the Prosecution has negated the accused's alibi. The assessors expressed the opinion that the Prosecution witnesses had placed the accused at the scene of crime.

With regard to the defence of a grudge the court has to take into account the existence of a grudge when considering whether or not the Prosecution witnesses have told the truth. I advised the assessors to consider the accused's defence of a grudge. The assessors had to

take into account the existence of a grudge when considering whether or not Nanteza (PWI), Fatuma Mugerwa (PW2) and Tugabirwa Jackie (PW3) told court the truth.

See: NTAMBI FRANCIS v. Uganda, Court of Appeal Crim. Appeal No. 19/98 (unreported).

Nanteza (PWI) was cross examined about her relationship with the accused. She answered that she was a neighbour to Abeeri and that he and his family were her good friends. She also told court how she confronted the accused after he had chased his children while holding a panga. She explained that the incident had occurred about two years before 29/3/2004. She told court that on that occasion the accused had threatened to harm her. However, she said that she and the accused had resumed friendship.

The accused testified that his grudge with Nanteza (PWI) arose from her failure to build a structure for her pigs and goats to stop them from destroying the accused's crops. He told court that Nanteza (PWI) implicated him in this case because of this grudge. However, Nanteza (PWI) was not cross examined about her animals and the damage they had done to the accused's crops.

The question considered by the assessors and this court was whether Nanteza (PWI) could sit down with Fatuma Mugerwa (PW2) and Tugabirwa Jackie (PW3) and fabricate a story against the accused because of a grudge over the movement of Nanteza's pigs and goats. Tugabirwa Jackie (PW3) had just seen her real mother cut and she lay lifeless. An alarm was raised and people gathered in response thereto. Obviously the people who came would ask questions about the identity of the assailant. Did Nanteza (PWI) have enough time to sit and convince a shocked and emotional Tugabirwa Jackie to allege that it was her father who had cut her mother, whereas it was not true? I do not think Nanteza (PWI) did this, or even had time to do so. The assessors, in their joint opinion, said that they had ruled out any alleged grudge as the motive for implicating the accused. I do not believe the accused's story of a grudge with Nanteza (PWI) over goats and pigs. I think it was an after thought, otherwise the matter would have been put to Nanteza (PWI) in cross examination.

Both assessors gave a joint opinion that the Prosecution had proved the fourth ingredient of the offence beyond reasonable doubt. In full agreement with the assessors I find that the

Prosecution has proved beyond reasonable doubt that the unlawful act of killing the deceased was committed by the accused person.

In the result I hold that Turyagabirwa Abeeri alias Mohammed Mulokole committed murder, and I, accordingly, convict him of murder contrary to Section 188 of the Penal Code Act.

MOSES MUKIIBI

JUDGE

16/9/2005.