

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MUKONO  
HCT-CRIMINAL SESSION CASE NO. 434 OF 2015

UGANDA:.....PROSECUTOR  
VERSUS  
KIRABO MATTHEW:.....ACCUSED

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

**Introduction**

The accused person in this case is indicted with Murder c/s 188 and 189 of the Penal Code Act. It is alleged in the particulars of the offence that in the night of 10<sup>th</sup> to 11<sup>th</sup> July 2015 at Lugazi Kawolo in Buikwe District, the accused person murdered Mirembe Desire Jemimah.

The accused person pleaded not guilty to the indictment.

**The Burden and Standard of Proof**

Prosecution has the burden of proving the case against the accused person beyond reasonable doubt. The burden does not shift to the accused person and he can only be convicted on the strength of the prosecution case and not because of the weaknesses in his defence. Since the accused person pleaded not guilty, he has put in issue each and every essential ingredient of the offence with which he is charged. It is therefore the duty of the prosecution to adduce evidence that proves all of the ingredients that constitute the charge of murder beyond reasonable doubt. *See the case of Miller versus Minister of Pensions [1947]2 ALL ER 372*

Offer's legal guidance that the evidence adduced will satisfy this standard if all the evidence suggesting innocence of the accused person, is at its best a mere fanciful possibility but offers no probability that the accused person is innocent.

**Ingredients of the offence of Murder**

For the accused person to be convicted of Murder, the prosecution must prove each of the following essential ingredients beyond Reasonable doubt:

1. *That there was Death of a human being ,*

2. *That the death was unlawful*
3. *That the assailant acted with malice aforethought*
4. *That the accused person was the culprit who committed the crime, hence this trial.*

## **EVIDENCE ON RECORD**

### **Prosecution Evidence.**

The Prosecution led evidence of 15 witnesses. These included PW1; Musoke Emmanuel; (*Father to the Deceased*), PW2; Naturinda Darius, PW3; Murai Ismail, PW4; Isiah Mbuga, PW5; D/CPL Kibuka Patrick, PW6; D/CPL Mugabi Apollo, PW7; Sendiwala Amina, PW8; D/IP Manyi Dominic, PW9; D/AIP Nankumba Irene, PW10; D/SP Kirabo Joseph, PW11; Dr. Kizito Julius, PW12; D/IP Ayiko Joel, PW13; D/IP Ahimbisibwe Chrysostom, PW14; D/SP Wanyoto Herbert and PW15; Onen Godfrey.

### **Defence Evidence**

The defence evidence was led through DW1; Dr. Onzivua Sylvester, DW2; Andrew Lumansi and DW3; Anthony Tisasirana. The defence also relied on exhibits received and recorded as DEX1-3

### **Submissions by the prosecution**

The prosecution filed submissions to support their case as reproduced here below:

### **THE BACKGROUND TO THIS CASE**

The accused person and the deceased were in a relationship as boyfriend and girlfriend. On the 10<sup>th</sup> of July 2015, the accused person called the deceased for them to meet at OASIS Mall to have a discussion about their relationship which was on the rocks as the deceased had been advised by her church minister to stop relating with the accused person. That indeed the accused person and the deceased met at Oasis Mall where they had coffee, sat in the parking of the Mall where they had a heated argument and thereafter the accused person and the deceased boarded a motor vehicle driven by the accused person.

That the accused person drove the deceased towards Jinja, but when they reached in Lugazi, he branched off the road, parked the car, made a deep cut wound on the neck of the deceased, killed her and dumped her body on the road side near the sugarcane plantation and returned back to Kampala. That immediately after committing the offence, the accused person used the deceased's phone to send false messages to relatives of the deceased as to how the deceased was stuck in Jinja with a strange person. That the accused person in disguise, proceeded to the hostel of the deceased pretended to be looking for

his girlfriend- (*the deceased*) and also proceeded to Deliverance church to pretend that he spent that night in an overnight.

On the relatives of the deceased, receiving the strange messages, they got suspicious and started to look for the deceased whose known telephone numbers were switched off and reported to police. That on July 11, 2015, the residents of Kibubu village in Lugazi while moving in the road within the sugar cane plantations in Lugazi, saw a body of a girl lying in the sugar plantation, and they informed the area LC1 chairperson who in turn called DPC Lugazi and the body of the deceased was recovered and taken to Kawolo hospital; where it was later identified by the relatives to the deceased to be that of Mirembe Desire.

Tracking was done of the deceased phone number, it was established that the deceased last communicated with the accused person and the accused person was traced for by police. The accused person later handed himself at CPS Police Kampala, where he gave uncoordinated stories about the deceased and was arrested for the murder of the deceased. At police both in his charge and caution statement and reconstruction of the scene under video recording confessed to have killed the deceased, was then charged to Court hence this trial.

The prosecution to prove its case, led evidence of 15 witnesses. These included PW1; Musoke Emmanuel (*father to the deceased*), PW2; Naturinda Darius, PW3; Murai Ismail, PW4; Isiah Mbuga, PW5; D/CPL Kibuka Patrick, PW6; D/CPL Mugabi Apollo, PW7; Sendiwala Amina, PW8; D/IP Manyi Dominic, PW9; D/AIP Nankumba Irene, PW10; D/SP Kirabo Joseph, PW11; DR. Kizito Julius, PW12; D/IP Ayiko Joel, PW13; D/IP Ahimbisibwe Chrisostom, PW14; D/SP Wanyoto Herbert and PW15; Onen Godfrey.

They also relied on a set of exhibits received and recorded as PEX1-PEX12.

The burden of proof of guilty of the accused person is proof beyond reasonable doubt. The burden never shifts to the defense, save for a few exceptional cases provided by the law- *Wilmington versus DPP [1935] AC 462; Miller versus Minister of pension [1947] 2 ALLER 372.* The prosecution needed to prove the following ingredients;

1. *Death of a person*
2. *Death was caused unlawfully.*
3. *Death was caused with malice aforethought.*
4. *The accused person participated in or caused the death of the deceased.*

**First ingredient;**

Death of a person

PW1 and PW7 are relatives of the deceased; Desire Mirembe. Both testified that the deceased was killed in 2015 on the 11<sup>th</sup> of July 2015 and was buried in Kalungu Masaka. The prosecution also adduced evidence of a postmortem done by PW11; who testified that on July 13, 2015 while at Kawolo Hospital a dead

body was brought in by Lugazi Police and was identified to be of Desire Mirembe Jemimah. The postmortem was admitted as an exhibit PEX 10. In conclusion, the prosecution submitted that it had proved that a one Mirembe Desire is dead.

This same position was reiterated by the defence who concurred in their submissions that indeed there was proof that Desire Mirembe is dead.

This Court therefore finds that on the strength of the prosecution evidence above, there is proof beyond reasonable doubt that there was death of a human being. This ingredient was therefore proved.

## **2<sup>nd</sup> Ingredient**

### Death was unlawful

On this ingredient, the prosecution submitted that the death of Mirembe Desire was unlawful. They argued that it's trite law that all homicides are unlawful unless it was accidental or excusable or authorized by law.

They argued that through PW11 the prosecution adduced evidence of postmortem done on the body of the late Mirembe Desire and the injuries found on her body by DR. Kizito Julius that is severed, deep cut wound on the right neck with the trachea and jugular cut through indicate that this was a homicide. The doctor testified that the cause of death was severe hemorrhage from a deep cut wound on the neck. Prosecution averred that Homicide is defined by Wikipedia as an act of a person killing another person. They pointed out that the deceased neck was slit by another person leading to her death hence a homicide. They concluded that this ingredient had also been proved beyond reasonable doubt. The defence was however not convinced by this line of argument.

The defence referred to PW11; Dr. Kizito Julius who testified that the deceased had a deep cut wound on the right neck without showing court the weapon used to inflict the fatal wound. They pointed out that no evidence was adduced by prosecution to demonstrate the kind of weapon used on the deceased. They therefore prayed that Court finds that there was no proof for this ingredient.

It is trite law that "*The law presumes every homicide to be unlawful unless it is accidental or excusable or authorised by the law*". The circumstances that make a death excusable include defence of the person or properties. – See *Gusambizi Wesonga versus R (1948) 15 EACA 65 and Uganda versus Okello [1992 - 1993] HCB 68*

The defence in the present case does not agree that the death was unlawful. They contend that the death was either justifiable or excusable as the post-mortem report exhibit P1 is not conclusive. It was contended that, death by natural causes could not be ruled out.

However, considering the injuries that were inflicted upon the deceased as described in the evidence of PW4; the doctor and indicated in exhibit P1; the post-mortem report; this court finds that the evidence on record conclusively proves

that the death of the deceased was because of unlawful grievous harm. The grievous harm resulted into bleeding and total loss of blood to suffocation. The deep cut wound on the neck and the resultant excessive bleeding could not have been because of other causes, as Counsel for the defence would like Court to believe. The evidence of both PW14 the scene of crime officer who saw the dead body and PW4 and DW1 who examined the body and offered postmortem reports ruled out the possibility of death by suicide.

And without any circumstances to justify the infliction of the injuries that resulted in the death of the deceased, this Court rejects the submissions of Counsel for the defence in this regard and accepts the prosecution's evidence. I therefore find that the death of the deceased was unlawful.

I therefore find that on the basis of the strength of the evidence on record the death was unlawful. This issue therefore terminates in the affirmative

### **3<sup>rd</sup> ingredient**

#### That the death was caused with malice aforethought

Malice aforethought is defined under Section 191 of the Penal Code Act to mean;

*“An intention to cause death of any person, whether such person is the one actually killed or not”.*

The Knowledge that the act or omission causing death will probably cause death of a person, whether that person is the one killed or not, though such knowledge is accompanied by the indifference whether death is caused or not or by a wish that it may be caused.”

The circumstances are:-

- i) *The weapon used, whether lethal or not.*
- ii) *The part of the body targeted (whether vulnerable or not);*
- iii) *The manner in which the weapon was used (whether repeatedly or not);*  
*and*
- iv) *The conduct of the assailant before, during and after the attack.*

In summary, in arriving at a conclusion as to whether malice aforethought has been established, the Court must consider the weapon used, the manner in which it was used and the part of the body injured.

The circumstances include the nature and number of injuries inflicted, the part of the body injured, the type of weapon used and the conduct of the assailants before, during and immediately after the injuries were inflicted.

On record the evidence led by the prosecution through PW3, 5 and 6 is that they recovered the body of the deceased in Lugazi with a deep cut wound on the neck; which was confirmed to be for the late Desire Mirembe. This was confirmed by

the PW11; who examined the body of the deceased at Kawolo Hospital, a sketch plan of the scene made by PW8 which was admitted as 'PEX5' and the photos of the body of the deceased at the scene which were admitted as 'PEX2'

The prosecution evidence shows that whereas no weapon was exhibited in Court, PW11 testified that the cut on the neck of the deceased was cut using a sharp instrument. From the prosecution evidence, the deceased's neck was slit and PW11 found the cause of death to be hemorrhagic shock from a deep cut wound on the right part of the neck. It was argued by the prosecution that the use of a sharp object to deeply cut the neck of the deceased pointed to malice aforethought in killing the deceased.

The prosecution also made reference to the fact that the evidence shows that there was malice aforethought by the assailant who after cutting the deceased's neck dumped the body in the sugarcane plantation. They referred Court to PW5 and PW6 who had testified that they got information that there was a dead body of a lady lying in the plantation and they were led to the scene by PW3. This was a distance of about 50 meters from Jinja road high way. At the scene they found the body of a female dressed in a yellow sweater, green skirt and black leggings lying on the stomach full of blood with a deep cut wound on the neck.

From that articulation of evidence, this Court agrees with the conclusion by Counsel for the state that the prosecution has proved beyond reasonable doubt that Mirembe Desire was killed with malice aforethought because the nature of the injury and the part of the body injured indicated malice aforethought.

#### **4<sup>th</sup> Ingredient**

##### Participation of the accused person

The prosecution bears the burden to prove the participation of the accused person. In a bid to prove this ingredient the prosecution assembled evidence as highlighted here below.

PW1; Emmanuel Musoke told Court in his evidence that and *I quote* from the transcribed script of the court proceedings as here below:

"I am a developer, I am in real estate and I build and sell houses. Mirembe Desire was my biological daughter. She was born in 1996 on 4<sup>th</sup> of August. Mirembe Desire was murdered in the year 2015 and I buried her at my ancestral home in Kalungu, Masaka. It was on 11<sup>th</sup> day of July 2015.

I was with my daughter in June on the weekend of 27<sup>th</sup> and 28<sup>th</sup>. We spent the whole weekend at home in Makindye and on Monday I took her back to her hostel where she was residing. I last interacted with my daughter on 27<sup>th</sup> and 28<sup>th</sup> of 2015 June.

We were at home in Makindye where we spent the whole weekend. We had lunch together on Sunday I took her out, we interacted then on Monday I drove her back to her hostel where she was staying in Makerere and then I went back to Kalungu as I was supposed to travel on the 1<sup>st</sup> of June. She was a medical student in Makerere University and she was staying in her hostel in Makerere. Staying in Aka the former Akamwesi Hostel. On Monday I drove back to Kalungu then came back on Wednesday the 1<sup>st</sup> that is when I was supposed to travel to Germany. I was talking to her on phone.

From Kalungu I came on the 1<sup>st</sup> of July and I drove straight to the airport and I was talking to her. She was never supposed to escort me but I was time bad I had to check in then I said hello, bye-bye because I had given her all she wanted over the weekend that is the 27<sup>th</sup> and the 28<sup>th</sup>, so I left for Frankfurt Germany. When I reached Germany on the 2<sup>nd</sup> of July, stayed there from the 1<sup>st</sup> to the 6<sup>th</sup> of July then I moved to France.

On the 10<sup>th</sup> day that was a Friday I had talked to Mirembe Desire earlier on phone and she told me she was going to the bank to withdraw money so that she could go for NOGA (Namagunga's day) on Saturday while I was in the hotel in France.

That while I was in France on that day, I got a call from Mirembe Desire's mum from America at around 23:00 hrs in the night that she was in town and that she was going to withdraw money from the bank.

She was supposed to go for NOGA day (Namagunga's day) the next day and we chatted, I said okay take care, things like that that we talk on phone as father and daughter. And then that night of 10<sup>th</sup> Friday I received a phone call from her mum in America telling me that Mirembe sent her a message that she went to Jinja to see a boyfriend but a boyfriend disappointed her that she is with a stranger in Jinja. I thought that she was just disturbing me and I was very bitter.

I talked with my wife and told her that I have just talked to my daughter (Desire Mirembe) that she was in town withdrawing money to go back to hostel because she had a NOGA day tomorrow (the following day), how can she be in Jinja right now in the middle of the night. And then later she called me again I said do not take these things lightly I have received a message and I have talked to Maggie; her best friend in Nairobi she also received the same message. Maggie was the best friend of Mirembe Desire; a daughter of Dr. Sekasanvu and she was very close to her.

Then the mother called again and said do not take this thing lightly, that Desire is missing and even Maggie has got the same message like I have. It was a Friday night then on Saturday I communicated to my son Damulira Jonathan I said Desire is missing that you go to hostel or check there, then the search started from there. So Monday he went to class.

So the search started from there. I started also panicking, I called my colleagues in Kalungu. I called the LC5 Chairperson in Lwengo Mr. Mutabazi and I told her

that my daughter seems to have been kidnapped. The kidnappers are in Jinja and they have used her phone because Maggie had already told the mum that dad I know who sent this message it is Desire's boyfriend called Mathew Kirabo using her phone. That is when panic started I started preparing to come back home. I sent a photo to chairman LC5 Lwengo. I sent a photo of her I said my daughter had been kidnapped, she is missing probably in Jinja then I called the vice chairperson, my vice chairperson in Kalungu. People moved from Kalungu and they came to Kampala, the relatives, my wife was also calling Kampala and then that is how we started searching and preparing to comeback.

When I was in Frankfort on the 14<sup>th</sup>, I got information from her mum that Desire was murdered and they have found the body in Lugazi sugar plantation and her body was in mortuary. Then I got onto the plane. I left Frankfort on 15<sup>th</sup> I arrived here at Entebbe on the 16<sup>th</sup> day around 3:00 pm. On 16<sup>th</sup>, I arrived in Entebbe at around 3:00 pm and reaching home I found the body of my daughter at home and then we buried the next day on the 17<sup>th</sup>.

She had an account with Centenary Bank and after her burial the police called me on the 20<sup>th</sup> and I went to Kampala and then they took me to Centenary Bank to view the footage together with the police and the officials from Centenary Bank. We went into a camera room and I saw the footage of my daughter she was putting on a blue skirt and a yellow top withdrawing money from the ATM putting it in her bag and the police made a copy of the CD and that is when I started following up this case. She withdrew money from Centenary Bank, Garden City. She got Money from the ATM at Garden City. *The police and the bank official made a CD copy.* This was on the 10<sup>th</sup> at around 23:00 hrs. The police made a CD copy and they kept it.

I had not seen the accused person before, but after the murder that is when my relatives and my son were telling me that, that guy was a boyfriend to my daughter. My son; Jonathan Damulira, during cross examination, stated that he had never disclosed it to me before the death of my daughter, not until recently about 2 months ago, he called and told me that; Mzee I know what you are going through, I would like to meet you but I told him I couldn't meet him and I sent him to my lawyer; Hon. Medard Segona and they met. I didn't know him. The only grudge I have now is here in Court concerning a case of murder of my daughter is what is paining me.

I participated with the police going to the bank, identifying my daughter, then I went to Kibuli the CID headquarters. I travelled with the detectives to Jinja, Kampala I was following up. I had very high expectations. She was the girl in the family of 2. She was like my mum, she took care of me. I educated her in all those good schools from Kampala Parents to, Namagunga, then to the university. She would be a doctor by now (*witness cries*).

When I said that I interfaced with the police, this was after the burial on 20<sup>th</sup> of July 2015. I was told that he used to come to my home, taking my daughter for a drive. I was told by relatives at home.



I called her directly, it was around 10:00 am.

Yes, I told the police that I called my daughter on the 10<sup>th</sup> of July 2015. I am talking about I told the police in this statement that I talked to her and she was fine.

I do not see it in this statement and since it is not in this statement, then I didn't. I didn't even tell it to the police. That is the message I got from the mum before I left. She then called me and told me not to take this thing lightly because the message I had received is the same message they have sent to Maggie that is when I started panicking.

Yes I said that and that Maggie had already told Desire's mum that she knew who sent the message and that it was Mathew. The mother has the statement, me I recorded what was mine. She also recorded hers”.

The statement was tendered and marked as DEX1.

PW2; Naturinda Darius, 34, told Court that;

“I do mining, I reside at Kasanda Mubende at Aryan Hostel. I know someone called Mirembe. She is dead. Kirabo Mathew was our resident. On the 9<sup>th</sup> of July 2015, I was in Wandegeya, Aryan hostel. It's former Akamwesi hostel. On 9<sup>th</sup> actually I last saw Desire on 9<sup>th</sup>. She had a visitor. In the hostel. Then she escorted them after and she entered and went to the canteen and got goods, she went directly to her room. On the 10<sup>th</sup> of July 2015, I was also at hostel. I never saw Desire on that day. On the 10<sup>th</sup> of July 2015 coming to 11<sup>th</sup> July 2015 that night, at around 1:00 am, I saw Mathew Kirabo. He came at the hostel and he was driving a blue vehicle UAX, but I do not remember the other stuff.

He came directly to the gate and he hooted, then I went out and he told me that it's me Mathew then I opened for him and he then he entered and then he asked me whether I have seen Desire around. Then I said no then he asked me can I check whether she is inside. When he entered he was alone in the car and he went and checked in the room. After a few minutes he came back I asked him whether she was in and he told me no because no one is opening. He seemed not to be happy, he had nothing and he was alone, but he looked like as if he was not happy. He was not fine, fine.

You know when someone is happy you tell if he is happy, when someone is not happy you can look at him you are like this person is not happy that is all that is what he looked like.

When I asked him whether she then told me she is not in. I knocked no one opened then he asked me do you know how to load data on Airtel, I said no I use MTN then he drove out that was all.

The deceased and the accused person were boyfriend and girlfriend. Actually the brother came looking for Desire, then we went to office, we picked the keys and we opened the room thinking that maybe she was inside the room. We checked there was no one then we went back. Then later a workmate called me that he had heard the news of Desire that they found her dead in Lugazi”

Witness given statement to read and reads:

*”Then Kirabo Mathew said that let me go and check in her room. He said that her phones were off. He went in that side where Mirembe's room is and within 4 minutes he was back. I asked him Mathew whether he had seen Mirembe Desire. He replied that I do not know she is not opening. He then asked me how data is loaded on Airtel, I told him that I do not know how data is loaded on Airtel since for me I used MTN. this was still between 1:00 o'clock and 2:00 o'clock of Saturday morning. Then he drove away and my observations Kirabo looked scared, he was not the usual Kirabo I know”.*

(Statement admitted as ‘PEX1’)

PW3: Mulali stated that;

“On the 11<sup>th</sup> day of July 2015 I was at home, then two youth who were coming from work by the names of Toto and Shawl, came home and told me that there is a lady/women that they have seen in the sugar cane but one shoe was by the roadside and the, was got up together with them, went there, I found that what they had told me was true so I made a phone call to the DPC Lugazi who, who sent police officer on a police patrol vehicle and they took the dead body.

She was a lady. Aged about 20 years. We found there the tyre marks and signs of struggle. When they were carrying away the body he saw that there was a wound on the neck. I went to police and I recorded a statement.

In cross examination, he revealed that there is a path coming from the factory its tarmac connecting to the main road that is Jinja Highway. If he was standing like he is in the dock, the deceased’s body was on his right, behind him my Lord, it could be the highway which is about 50 meters from where the body is.

The dead person was not very far away from this tarmac road, possibly if you stood on the tarmac road you would see the shoe which was remaining in her leg. There were footmarks because it had rained. There was little blood. They were droplets. There was blood drops from the tarmac road to the sugar plantation where the body was”.

PW4: Isaiah Mbuga stated

“That; I am a journalist by training, but currently I am serving as the Bishop for Christ Ministries International.

Yes, I have seen him once. He came to my office one time I do not remember the exact date but in 2015 and yes, I knew her. I knew her as a church member. She came in February of 2015 and joined us in our church and she made her presence known to us as someone who had an interest in joining our church. She is now dead.

The first time I met Desire she came seeking for Counseling regarding her relationship which according to her was distressing her. A love relationship. She told me that she was being told to do things she didn't want to do. Somebody called Mathew.

She told me that someone called Mathew forced her to wear an IUD so she doesn't get pregnant and she told me she did not want to continue because she felt controlled and she told me that she was usually picked up in a car, that Mathew would send a vehicle, call her on the phone and order her to get into a car and find him wherever they had to meet. And since she had become born again she told me she was tired of that life style. The lifestyle of a relationship which was sexual by nature and she said she wanted to clean up her ways with God.

My reaction was that as a Christian she wasn't supposed to engage in sex outside of marriage and secondly I told her because I asked her age and she told me she was 19. And I said you are 19, you are a first year student you do not need to be in a relationship then you went to school to study so she told me she was tired and she was looking for someone to agree with her that her was right. But she kept coming back to me several times 3 or 4 telling me that Mathew had difficulty accepting the relationship to end and I remember she used a word obsessed that he was obsessed with her to the extent according to her words that he had paid the security guards of the hostel to text him when she left or when she came in or if anybody came to see her.

One time in June I think it was June 2015, I had gone for summer holiday in the US and she texted me and told me that Mathew had come to her room and insisted he was going to sleep there. Being the last Friday of the month, she told me I have left him there because he refused to go.

It was supposed to be night time in Uganda and it was probably about 10:00 am or so in Uganda. She sent me a WhatsApp message telling me about the fact that Mathew had come to sleep in her room and he had no intentions of going away. So she left him in the room and got her friends who were coming for the overnight at church.

The weekend she died, she said to me before that she had something she wanted to tell me and so she came for our lunch hour service.

We didn't talk. She left immediately after the service. I beckoned her to wait for me to come off the pulpit but she told me in signs that she was going to class. In signs she did signs like she was going to read.

Mathew Kirabo, during cross examination, he revealed that he knew when he went to his church to meet him. He introduced himself as a friend to Desire and asked me a question whether it was true that I had advised Desire to end the relationship.

He was a normal person that is what I saw but when I told him I had advised against her continuing in the relationship he got disappointed in the way he was looking, he didn't say anything. He just said finally okay and he walked out but he was very sad. I didn't have a grudge with him and it was my first time to interact with him.

Over 25.

When did I first know Mathew or first saw him I can't tell you the date but if I go back to my records because everyone who comes to my office registers so his name must be in our registry for people that see me so that book is there I can trace if and get the exact day he came. But what I remember is it was after several interactions with Desire that he came. That is to the best of my knowledge. I do not know that Desire had a boyfriend among the pastors as you say. I didn't notice anything with her or any pastor. I do not have any evidence usually when a person has come I ask them whether they were in one relationship or I asked her that question and she said she only had one relationship and it was disgracing.

In February the 1<sup>st</sup> time, we met, that is one of the reasons why she had come to see me because she wanted advice, after which she kept coming several times. I didn't have any love relationship with Desire. As her pastor I only listened to her when she had issues she wanted to deal with. I never met her outside of church or of my office. Like I said before, if I go back, I can give you the date. Yes, the first time is when Desire came and told me she was in a relationship with someone. That was in February, but usually people are in church visiting several times before they commit themselves.

I saw him when he came to the office, the exact date I do not remember but he was there after 2 or 3 Counseling sessions with Desire which could be maybe after 2 months or 2 ½ months. According to my assessment and what she said, she was not in a relationship to save, because what I didn't tell Court are a qualified Adolescent Health And Sexual Health expert trained in Israeli by the Government of Uganda in conjunction with the Government of Israeli and I am one of the 8 people trained to deal with adolescents in regarding sexuality. So I was not talking to her as not just a pastor, but as somebody qualified to deal with adolescence sexual.

No sir there are many ways to of doing things. You only call 2 people if both of them are interested in the relationship. In this case it was different. The girl, according to what she told me, she told me that and she told me she wanted to stop. She further told me they were sleeping together.

I asked her how long it had been going on and she said about a year. Looking at her age of 19 and the fact that there was no balance she had no say whether to stop because she wanted to stop, but she couldn't. I told her it is not health to continue in such. I think on the 3<sup>rd</sup> visit when she came for the 3<sup>rd</sup> time.

Like I said I can only remember precisely the first time because when this case happened, I went back to check in the records and refresh my mind. I had come back. I didn't know where it was, but she had told me the name.

Our church has over 4000 people so it is hard to visit when there is low cause. If there is hospitalization, birth or death or graduation or wedding we visit. I think I talked to her, but like an adult at 19 years, we do not enforce right living. We only point in the right direction in form of advice.

I know but she said to me, I am telling you, the part she said and Court can decide whether she lied to me 'as a pastor, but she told me she didn't want to continue in the sexual aspect of that relationship'. I received a text message on that Friday when she died at 2:55 am which is quoted in my statement.

Stating words like I am traveling with someone okay it wasn't very clear should I be afraid something like that. I would perceive so because after that I called when I saw the message. I called because I knew there was already a problem. Probably at 3:00 am. I call people under distress in the night. That Friday before we got to know on Sunday that she had died, we can work out the day. She asked me should I be afraid. No, she didn't say. I didn't not know whether it is her or someone used her phone but the message came from her phone at 2:55 am and I tried calling back but there was nobody to respond.

No, I didn't say it was him, but I said it was the message on the phone. The message came from her phone. Yes, she is not the only one that I have dealt with in such circumstances. I tried to call several times. It should show because I had kept my number for the past 21 years. I have never changed it. It can show it. I have changed phones maybe 4-5 times, but it should be there in MTN. Yes Maggie Nairobi. Margret is in Nairobi. My administrator because I believe them at the end of the day the kind of people I had talked to and there is a third person called Joshua Ahabwe who was then the youth pastor.

About that visit, she told me she had something to tell me when I come back and I didn't hear it. When Desire came to me she came with Maggie so on the first time when she was introducing the matter she came with Maggie and we talked the three of us and eventually, when I noticed the nature of information, I decided to tell Maggie to step out so that she could be free to express herself. Mostly in Counseling sessions, when it's a private matter, it is between two people, but if I refer the case, I talk to the person I have referred the case to giving them a background of what I have been told.

Like when I was not in the country, I wouldn't hear from them until I come back so between I came back and when she passed we hadn't met with the youth

pastor to discuss the cases I had given him. He left the church so we cut off the communication.

I think late 2015.

I made a reference to Joshua Ahabwe and he could not deal with this issue (1) he was single and (2) he didn't have an experience so I took over the case again and there was no need for me to report to my junior on how I was executing the case. So that is why you see it is me who comes back. In my office or outside the office or in the church auditorium.

The first meeting was in office at Mabirizi complex. She talked to me after I had come from the pulpit to brief me on what was going on. We have a church inside Mabirizi complex, there so after one of the services she came and talked to me inside the church. Our headquarters are in Mukono.

Others were text messages, WhatsApp, phone, calls but usually with the question or an expression of dissatisfaction or something like that. I do not recall meeting her anywhere else. I do not recall. I do not recall having met her outside the church or outside of my office.

It depends on the nature of relationship. If it is a marriage, you meet both of them at some point or each of them separate, but the picture she showed me was of one looking for a way out. I did not because according to my assessment, this relationship was best not existing at the particular time. I do that all the time and I heard that he was going to Deliverance Church. He was part of the worship team. That is all from me.

My call was not answered, but I kept on calling until the phone eventually got switched off. I tried again in the morning and the phone was still off. I think on Sunday morning, somebody called Farida who we knew and she was a youth in the church we had been to and knew that Desire was praying with us. No and also the language was slightly different”

PW5; No.29867 Detective-Corporal Kibuyika Patrick. Said that:

“On the 11<sup>th</sup> day of May 2015, I was at Lugazi Police Station in Buikwe I received a phone call from my District CID officer; SP Lumala. He informed that he has received a phone call from the Chairman LC1 Kibubu that there was a dead body lying in the sugar cane plantation of SCOUL. So I mobilized a team of officers including the scene crime officer Detective; Corporal Mugabi and we moved to Kibubu village. We got the LC1 of Kibubu Mulayi standing at the roadside along Kampala-Jinja Highway waiting for the team. He led us to the scene towards the road. The Chairman LC1 Mulayi led us to the scene and we found 3 boys were standing around the scene. At the road side, close to the scene there was a single shoe then they led us inside the sugarcane plantation as you move along Kampala-Jinja Highway after Kawolo Hospital Mortuary down in the valley, you branch the road going to SCOUL about 50-100 meters from the main road was the scene.

So when we reached the scene they led us into the sugarcane plantation where we found a body of a female. It was dressed in a yellow sweater then a green skirt and a black legging and the body was lying on its stomach in a pool of blood. It was lying in a pool of blood and putting on a single shoe on the right leg which was red-stripped and white in color. So we had to examine the body. I was with the scene crimes officer; Detective Corporal Mugabi. When we turned the body by its back we saw there was a deep cut around the neck. So we had to move around the scene detecting some weapons which would have been used in the murder incident.

There was no murder weapon which was recovered at the scene. We were able to identify that there was tyre marks which came from the main road to the scene and ended where the scene was and went back to the main road.

So we were able to recover a metallic object sort of a ring or necklace, then blood sample of the deceased and a shoe which was similar to the other one which the deceased was putting on which was red-stripped and white. The person was not known and she was unidentified. The scenes officer took photographs and I took a graph sketch plan and there was a one Kivumbi; a reporter of Bukedde who came in and also took some videos.

The body we recovered we took it to Kawolo Mortuary Hospital. After delivering this body at Kawolo Hospital, was this body ever identified or it remained unknown?

Later on when Kivumbi of Bukedde put the coverage, there were announcements or news on the Bukedde TV so on the 14<sup>th</sup> days there were some people who came following up that news at Lugazi Police Station. There was an aunt; a lady called Nankumba Christine who informed me that they saw the news on Bukedde and their daughter went missing on the 10<sup>th</sup> day of May 2015. So I led her plus other relatives plus other people she came with me to Kawolo Mortuary Hospital. They observed the body and she was able to identify the body as a relative.

They identified the dead body as that of Mirembe Desire. She was able to identify the deceased by the shoe which the deceased was putting on which was still in the foot which was a map that the parents got for the deceased when they were in Germany and a scuff on the left leg. According to the appearance of this person, she was around 25 years. I do not recall when I recorded it but I signed on the statement. This is the statement I recorded at police. It bears my signature, my force number and my particulars and its dated 17<sup>th</sup> of July 2015. She was putting on a yellow sweater, a blue skirt and a black legging”

PW6; No. 4047 Detective Corporal Mugabi Apollo told Court that;

“On the 11<sup>th</sup> day of July 2015 at around 4:00 am, I he was at the police station and received information from the District CID officer who told me that there was a suspected case of murder and the body was lying in the sugar cane just

after the mortuary Kawolo Hospital Mortuary along Kampala-Jinja Highway. He instructed me to team up with homicide and we have the crime scene visited which we also did and I moved out with Detective Corporal Kibuyika Patrick who was attached to homicide Lugazi by then. We went to a place called Kibubu where we found the chairman of the area with other residents around. We were led to the scene by the area LCI; Mr. Mulayi.

The scene was in the sugarcane plantation and the place is called Kibubu. The body was hidden in the sugarcane plantation. After Mr. Mulayi introducing me to the crime scene, I condoned it off. I made an initial walk through at the crime scene and I made some observations. I saw a pool of blood, I also saw one shoe for ladies which was red with white stripes and when I extended towards the sugarcane, I saw a human head for a lady. I went closer and saw a lady who was lying on her right with the legs spread apart. She had also a deep cut wound around the neck on the right side.

I took photographs of the crime scene and I also picked blood samples from the crime scene and from the body. I also picked a metallic object which was in the pool of blood, but appeared to be part of a necklace or earring. It was incomplete so we removed the body from where it was hidden and we took it to Kawolo Hospital Mortuary.

On 31<sup>st</sup> of July 2015, as I was at the station on duty, I received a team from police headquarters Kampala which included among others; Aiko Joel, AIP Ahimbisibwe, ASP Kirabo and AIP Turyagyenda; all of them are detectives plus others whom I cannot remember now and they came with the accused person before Court now”.

I was led to the scene by the chairman LCI Mr. Mulayi. The scene was in the sugarcane plantation and that place is called Kibubu. The body was hidden in the sugarcane plantation. After Mr Mulayi introducing me to the crime scene, I condoned it off and I made an initial walk through of the crime scene and I made some observations. I saw a pool of blood, I also saw one shoe for ladies which was red with white stripes and when I extended towards the sugarcane where I saw a human head for a lady. I went closer and saw a lady who was lying on her right with the legs spread apart. She had also a deep cut wound, around the neck on the right side.

I took photographs of the crime scene and I also picked blood samples from the crime scene and from the body. I also picked a metallic object which was in the pool of blood, but appeared to be part of a necklace or earring. It was incomplete so we removed the body from where it was hidden and we took it to Kawolo Hospital Mortuary. We put the body on a police patrol car which we went with. I made a scene of crime report and the exhibits which I recovered and I gave them to the investigating officer who later submitted them to Kampala to CID headquarters.



I printed the photos I took and marked them. They bear the reference number, my signature and I marked them from 1-17. These are the photos I took on the 11<sup>th</sup> day of July 2015. This is how I marked them with my name and signature. This was the first photo marked 1, it is a photo identifier. This is the 2<sup>nd</sup> photo showing the general view of the crime scene. This was the 3<sup>rd</sup> photo also showing the general view, but a close up towards where I was seeing something resembling a head of a human being.

This was the 4<sup>th</sup> photo a close up of the pool of blood. This was the 5<sup>th</sup> photo showing close up of the metallic object I mentioned about which I picked on the crime scene. This was the 6<sup>th</sup> photo showing a lady's shoe. The shoe is here I have a close up of the area which is photo 7. This one you can see clearly it was a red with white stripes. This was photo 8 where I was seeing something resembling a human head (inaudible). This one is another close up showing how the hair was plaited. It was too black for us, I could not explain details from this so I took this a close up. Photo No.9. Photo 10 it's now when I entered into the sugarcane and this is how the body was lying. Photo 11 is the same as 10 and the same as 12.

Photos, 11, 12 and 13; what does those photos show the position of the body at the time of discovery.

The body was lying on the right hand side with legs spread apart. You can see the left leg is the other side then the right leg is straight. The same will be 13. photo 13 shows the position of the body. Photo 14 it's when we have removed the body from the sugarcane. We removed it from the sugarcane and put it on the grass.

Photo 15 it is showing a paper where the head of the deceased was resting. It is also stained with blood. Photo 16 shows the position of the wound. It was on the right side of the neck. The last photo which is photo 17 is a close up of the wound. It's me who signed on these photos and my signature is here. My name is here; Detective Corporal Mugabi Apollo and my signature down. What shows they are related to this case is that there is this photo identifier and they are marked from 1-17.

What shows that the photos are related to this case is that they bear a CRB number. That is CRB 1265/2015.

I made a crime report. This document is the scene of crime report of murder to the prejudice of Mirembe Desire vides CRB1265/2015. It has a background and It has the objectives as to why I went to the crime scene, where the action taken. It was on the 11<sup>th</sup> day of July 2015. It has the objectives as to why I went to the crime scene, the action taken, and my observations.

As I said before there was a pool of blood at the crime scene, there was a metallic object which was in the pool of blood, there was a female adult dressed in a

yellow top and a navy blue skirt with one shoe in the right leg in the sugarcane plantation. A deep cut wound on the right side of the neck, a lady's shoe of the left leg which was also recovered.

What shows it's you who made that report is that I signed on the report?

I signed on the 1<sup>st</sup> page here. (*The photos were collectively as PEX2 and the crime report as PEX3*)

Later the body ever identified after some days by people who came from Kampala. They came and looked at the body from Kawolo Hospital Mortuary and managed to identify it as that of Mirembe Desire who had been reported to have disappeared.

According to the position of the body, the crime scene and the wound on the body, I highly suspected to have been an act of murder. Towards the end of July I cannot recall the date, but the suspect came together with a team from CID headquarters and the suspect was willing to lead that team to the crime scene and in the office of the OC CID Lugazi, then at the crime scene when he was leading that team to reconstruct the crime scene. In the reconstruction of the crime scene I didn't have any role, I just followed as somebody who visited it before.

During the reconstruction we used 2 vehicles him the accused person he was together with the team he came with from Kampala and they were ahead of us. For us we were following from behind. He directed the team to where the crime scene actually was. I visited then he explained how he removed the body and took it in the sugarcane plantation.

While I was testifying I told this Court that I picked samples of blood from the scene and from the body of the deceased and I packed the exhibits and handed them over to the investigating officer that was DC Kabila Patrick.

I marked the exhibits. I recovered a pair of lady's shoes, a small metallic object and blood samples from the scene and the deceased. I appended my signature on the exhibit slip. I made the exhibit slip on the 12<sup>th</sup> day of July 2015. Inside here, there is a metallic object which I talked about and I marked it with letter 'E'. I also put the names of the deceased.

This is the one of the blood samples that I recovered, actually this one I recovered it from the deceased person and after recovering it I put marks. I put two VP on the swab stick. This one also is blood sample which I recovered from the crime scene and for it I put 3 slashes on the swab stick. I have not seen the shoes. Apart from the shoes but these are the ones that I recovered from the crime scene. The items were received a marked by Court as 'PID7', a metallic object 'PID8'. Your exhibit slip will be received as 'PEX16'. These exhibits were submitted

for analysis so they were opened, at Government Analytical Laboratory Wandegaya so normally after the analysis they repack them.

After the analysis they are repacked and sent back. I reached the scene the following day in the morning with Mr. Kabila when someone called police.

It was on the 11<sup>th</sup> day of July 2015. We reached together with Mr. Kibuyika. When I went closer, I saw a body of a lady who was lying on her right side, I had not interfaced with the accused person before the CID team came with him. They came from CID headquarters because that is where the case was being handled. I'm not aware about his detention in Nabukenya, what I know is only that they came from Kampala because the case is handled from Kampala that is all I know.

Yes I went back during the reconstruction of the scene, is that so? I was not seated in the same car with the accused person? I was in the car which was following the car where the accused person was. When we were in the office of the OC/CID; the accused person was willing to direct the team to the scene of crime that was the OC CID was D/SP Lumala Fred. The accused person was willing to direct the team to the scene of crime. This is the same scene of crime that had been visited by police officers before.

No I didn't measure the skid marks at the scene of crime. I went to the scene on the 11<sup>th</sup> day of July 2015. The time when the deceased could have died is between 10<sup>th</sup> and 11<sup>th</sup> and I went on the 11<sup>th</sup> to check the body, for the obvious causes of death that is the physical wounds. I found a deep cut wound on the neck of the deceased person.

The weapon used could have been a sharp object used against the accused person. It could have been a surgical blade, yes it could have been one of the sharp objects but, I cannot confirm that. What I am saying is; it could have been a sharp object it could not be a panga because the size of the wound of the panga would too big. I cannot confirm if it was a knife.

How I found the position of the body it is that; most likely that the body was pushed there so I cannot confirm suicide. The body was lying by the right with the legs spread apart and it was hidden in the sugarcane plantation. It was lying by the right side and at least if a person cuts himself or herself there are higher chances of recovering the weapon with the deceased.

When the person cuts himself or herself dies, I said there are higher chances of recovering the weapon with the deceased person. I suspected the deceased to have died in the night of 10<sup>th</sup>/11<sup>th</sup> of July and I reached the crime scene at 16.00 hrs that is 4:00 pm. That could have been a whole day or at least more than 12 hours. As I said before, the way how I found the body, I can rule out suicide depending on the positioning of the body and the nature of the injury on the deceased.

The nature of the injury that the deceased person sustained was on the right and at the same time the body was lying by the right side so that one makes me think her life was just taken away. If a person rolls around when she has cut herself in pain, it would be seen at the crime scene. Signs would be at the crime scene. Because the deceased person was bleeding, there could be blood spread all over but at the crime scene there was a pool of blood and then where the body was, so if there was that element of rolling that blood would have moved from this pool of blood up to where the body was. This body was carried and hidden. The positioning of the body as I said, it was just put in the sugarcane. I found the pool of blood there”.

PW7; Sendiwalana Amine told Court That:

“On 11<sup>th</sup> July 2015, at night, she was chatting with Desire’s mother; Sindi Bukasion and she informed her that Desire had gone mission.

PW8; Manyi Dominic stated that they had come with the accused person before Court now bringing him to me as a suspect in the case of murder of Desire Mirembe. They came and I had to interview him to build my file and that he was confessing and he had come to reconstruct the scene how he murdered. They came bringing the accused person before Court now as an accused person in this case of murder of Mirembe Desire. They told me that they arrested him following the disappearance which was reported in Kampala and during the interview, he confessed that he was the last person with the Desire Mirembe and he is the one who killed her and he has come to show us, how he committed this crime.

So as the in-charge of the case where the offence occurred, and as the in-charge of the case and now the suspect has been established, I had to take over the reconstruction of the scene of confession. I had to take over the suspect before Court now because I was now the in-charge case of the murder case for purposes of reconstruction of the scene of confession, by interviewing him and for him to take me to the scene and explain /demonstrate how he did it.

So in preparation of that, we had to organize a video camera so I introduced myself to him in the office and he identified himself as Kirabo Wamulembo Mathew. He told me that he knows the girl; (the deceased) that he is the one who murdered her and he is ready to take us to the scene where he committed that offence. So we moved while he was explaining and every step we were moving he was explaining. We moved in the vehicle with police officers, who came from Kampala and he led us up to the sugar plantation where the dead body of Desire Mirembe was recovered on 11<sup>th</sup>.

The accused person before Court now, was the one leading us up to the scene of crime. He started by telling me from how they started movement from Kampala. He told me that Desire Mirembe was his girlfriend and he picked her from a

hostel; Akamwesi Hostel in Katanga Wandegeya. They came up to Akamwesi hostel in Katanga that is in Wandegeya where the girl was staying and schooling at Makerere University where he was also a student. They came up to.. I have forgotten the Mall in Kampala there is a certain Mall there where they sat.

They had some issues to solve as a boyfriend and a girlfriend and he asked the girl to move with him up to Bugiri where he was doing internship. So the two entered their vehicle and they started moving towards Bugiri, but when they were moving they had some issues they were discussing where they had disagreement. Now that when they reached Lugazi at Bulyatete, village they decided to branch off the road.

Both the deceased and the accused person before Court now and after moving 50 meters off the road, they stopped and spent some time in the vehicle while quarrelling. And after sometime the girl removed a polythene bag out of the bag and removed a surgical blade which she was having and they both came out of the vehicle. The accused person continued telling me that the girl; Desire Mirembe told him that he should allow her to say her last words.

In her last words she told me that that she loves the mother, she loves the father, and she loves the aunt. Then from there, that she got a surgical blade and put herself on the neck and they hugged each other for 8 - 10 minutes, then he counted up to 3 and the girl passed the surgical blade on the right hand side of the neck and she fell down and that he helped her to cut herself deeply. The accused person before Court now told me, that he helped her to cut herself deeply and that he stood for some time looking at her dying. After she had died he pulled the body inside the sugar plantation along the road inside the deep the sugar plantation and he afterwards, entered his car and he drove off to Bugiri.

After that explanation which was being videoed/captured on camera, the accused person's explanation was being captured on video by ASP Kirabo and the team. And the team we had that is Aiko Joel and so from the scene we went back, that is where we ended and we started preparing our file”.

**(VIDEO PLAYS).**

*“That one is the accused person before Court now called Kirabo. It was in the office at CPS Lugazi Police Station. Now he was before me after he had been delivered by police officers from Kampala and I was now interviewing him and he was confessing to me how he is ready to take me to the scene where he murdered his girlfriend Desire Mirembe from.*

*That one is along Jinja-Kampala Highway that is at Bulyatete village now. There we have branched now, he is taking us to the scene in the sugarcane plantation where he murdered the girlfriend from. Those ones are sugar plantations. That road is leading to Lugazi Mehta Sugar plantation. I am the one on the other side with short sleeved shirt. We were moving while he was taking me with the Detective. I had to handle him behind because you never know he might run away*

*from me and I could not handle anything. We are moving the other side, behind is the southern part of the road.*

*Now we have reached where the scene was and he is now explaining how it was. There is a small road on his right hand; that side where he said the girl said we stop here and they turned. I was asking him some questions to clarify where I had not heard and understood properly. That coming in was a CID/AIP Sajabi who helped and escorted me and I told him to move away because that was a confession. That one I was noting and putting some points down. Now there, he was explaining how he reached at the place and was showing how they parked the car.*

*The car was parked in that place where he is standing and he is now demonstrating how the car was parked facing the road, the other side, moving. We now reached where and how the girl came out of the vehicle and that is now the right hand side of the vehicle where he came out and stood. He is now explaining how the girl came out and requested him to allow her say the last words and they hugged themselves between 8 -10 minutes.*

*You are seeing that hand as he demonstrating how and showing me how the girl put the surgical blade on the hand and where he is standing, it is where the girl fell and the blood stains were there. There he was trying to look for the surgical blade where it fell. He is trying to look for the surgical blade which the girl used to slaughter herself. That thing that she slaughtered herself helped her to cut her deeply. You see the distance I have given him is about 5 meters away. He is showing how the girl fell. That grass you are seeing there are sugar plantations.*

*Now he is showing how he pulled the girl and as he was going to pull the Desire. Now that one pulling the girl, pulling the girl and pulling the girl when she is dead and put there. Pulled, pulled, pulled, pulled and he is now hiding laying the girl inside the sugar plantation, the head looking into the sugar plantation as he is demonstrating. That is how he laid the girl then he came out of the sugar plantation, but he is still trying to look for the surgical blade if he could get it. He is repeating how he was pulling the girl and how he was pulling her inside and hiding her dead body.*

*Hiding, after hiding he has repeated the second time. He has disappeared then he passed there like that, he came to the second road, then he passed like that back to leave. He first sat down thinking of what he has done. He sat there for some time thinking that he could also commit suicide. That one we are trying to look for the blade with SOCO Detective Corporal Mugabi, but we did not recover the weapon, then after that explanation, we entered the vehicle and drove away”.*

PW9; DAIP Nankumba Irene gave evidence of the CCTV footage, showing the deceased withdrawing the money in the company of the accused on 10<sup>th</sup> July 2015

PW10; DAIDP Joseph Kirabo who exhibited the DVD, two phones and a sim card related to this case.

PW11; Dr. Julius Kizito, I am senior medical officer attached to Kawolo Hospital with Bachelors of Medicine and Surgery of Makerere University. I Have you been attached to Kawolo Hospital since 2000?, yes I have been there and currently I am attached to the female ward, but I have other protocols. I also attend to several patients who come over with various complaints and I even do surgeries. We do postmortem on police request. This was a postmortem report made at a request of AIP; Manyi Dominic and that he was requesting me to carry out a postmortem to a body which was brought to Kawolo Hospital Mortuary by Lugazi Police.

It was in the names of Desire Mirembe Jemimah. That body arrived at 3:00 pm on 12<sup>th</sup> July 2015. We carried out the requested postmortem on 13<sup>th</sup> July 2015 that was at 10:00am. She was a well-nourished lady, she had no particular marks that were of recent scars, tribal marks and these were our findings. She had a sieved neck with a deep cut wound on the right side of the neck and the cut had gone through the trachea and the jugular vessels. They were all cut through. She had a served neck with a deep cut wound on the right side of her neck and the trachea and jugular were cut through.

The cause of death was the deep cut wound on that neck with associated organs which were damaged there with severe hemorrhage. Actually when you cut off somebody's neck and cut off the trachea and jugular, you disable all the organs and actually somebody bleeds to death. You can't survive without blood. The jugular is one of the blood vessels which comes directly from the heart and it supplies the head and the trachea is the one which carries oxygen from the atmosphere to the lungs.

This postmortem report dated 14<sup>th</sup> July 2015, the report is received and marked 'PEX10'.

Before we carry out a postmortem, I get the details of the deceased; the name from the next of kin or the relatives around. The period I was with the body that is around 30 minutes.

It was a sharp instrument which was used, I can't tell exactly but it must have been a knife, panga, I do not know but must have been a sharp instrument, but it couldn't have been a surgical blade. Normally in surgery, surgical blades make clean insertions and they are regular but this insertion was irregular. Normally surgical insertions are uniform and linear. That is if I could just draw a line straight line because surgical insertions are just straight. They, are not these ones which are dirty.

Of course the other one was; you know; what with somebody who doesn't take insertions to take an insertion will cut the way he/she likes. He can cut like this or either way. Yes, as I told Counsel that it was sharp instrument, I can't tell whether it was a machete, a knife, whatever it was. Yes, I couldn't tell".

DW1; Dr. Onzivua Sylvester. 58 years old, employed by Mulago Hospital as a Consultant Pathologist. I am a holder of a Bachelor's Degree in Medicine and Surgery that I obtained from Makerere University in 1992. I also hold a Master's Degree in Pathology from Makerere University that I obtained in 2003 and I have a Postgraduate Degree in Forensic Medicine that I obtained from Colleges of Medicine of South Africa in 2005.

Right now am employed by Mulago Hospital as a Consultant Pathologist and I have been working with Mulago from the year 2000. The year 2015 July, I was working in Mulago Hospital as a Consultant. I was asked by this Counsel to come to Court and I didn't discuss with him why he has called me to Court so I expect him to lead me why he has invited me to Court.

I performed a postmortem on one of the students who was in the college of Health Sciences by the names of Mirembe Desire on her body. I did not determine the exact date of death of the deceased, but I made a report in respect of her death. This is a postmortem report, the reference was CRB1265/2015 from Lugazi. It was a postmortem report of the late Desire Mirembe. The request was made by Det. Inspector of police; Manyi Dominic. I made this report on the 15<sup>th</sup> of July 2015.

The body of the deceased was identified to me by Dr. Emmanuel Sekasanvu. This body arrived at 6:00 pm on the 14<sup>th</sup> of July 2015. At the City Mortuary and it was brought by a Kawolo Hospital ambulance. I performed the postmortem on the 15<sup>th</sup> of July 2015. The time I did not note it, but the apparent age stated to me was 19 years and it was a decomposing body of a young woman. The skin was already showing signs of decomposition.

Showing evidence of decomposition, my most significant finding, was a deep cut in the neck on the right side of the neck that was 15cm long and 6cm deep and the internal organs were quite pale. They were pale, the void of blood, and the organs. Internal organs I am referring to are the liver, lungs, the heart, all those organs were pale.

In the process of the postmortem I dissected this body. A very strange thing I found on this body was that there was virtually no blood on this body. Usually when we carry out a postmortem, we find some little blood accumulated in the heart, but in this particular case I did not find blood. It was as if the blood of this lady had all been drained out and in cases like this, I usually like to collect blood for DNA testing, in case a weapon is recovered, but this time, I could not get that blood I had to take a swab. A swab is sterilized cotton similar to what you use for cleaning the ears, like ear buds, but it's sterilized and we place it on any organ or where there are traces of blood so that we send that to the lab for DNA tests.



My conclusion was that the deceased had died from excessive bleeding from a single deep cut wound in the neck. I also observed another thing that this young lady had no defence wounds on her body.

Usually when a human being is attacked one will tend to defend oneself so in that process you get injuries when you protect yourself and these are called defence wounds. I can say is that it was a sharp heavy weapon that caused this injury. It could have been a machete, it could have been an axe, but certainly something quite heavy could have caused this injury. I have stated that it was a heavy weapon with a sharp edge. I have given the examples, but I cannot say which of these could have been because no weapon was brought to me.

I do not have the police request with me here and I cannot remember whether there was a mention of any weapon or not, but should it been there, I am sure I would have commented on it. I have been actually consulting this report, what I have been saying are what are written in this report.

I signed this report and there is also the stamp of the City Mortuary on it. I signed it on the 15<sup>th</sup> of July 2015. I have signed here in my own handwriting.

**(Report marked as 'DEX5')**

When a person dies the heart stops beating/functioning and because of that, blood remains stagnant in the body at the point the heart stops beating however in this particular case there was virtually no blood in the systems in the blood vessels of the deceased. It was as if this blood had been deliberately drained from the body of the deceased. An example is if an animal is slaughtered and you hang it up the blood will all be drained out, you do not have to be an expert to do that. When I did not find blood in the venal system of the deceased, I actually called the investigating officers and I asked them the amount of blood that was at the scene of discovery of the body. I remember I asked them how much blood was recovered or how much blood was there at the scene and apparently they told me there was not much blood. I didn't report the amount of blood on the clothing but I was working with a scene of crime officer who took pictures but there wasn't much blood on her clothing.

I have said before, we usually find blood in people who have died but this was my first time to see a case where there was virtually no blood, unless the blood was deliberately drained or the person was in such a position that at the time of death the blood freely flowed from the cut under the effect of gravity. There are two main things that I would probably let Court know; Blood is made up of fluid and blood cells. In a person who has anemia the volume of blood is correct, but the cells, the red blood cells are the ones which are low. You would find what you call dilute blood in the body, but in this particular case, the fluid component was not there, the cells were not there. Dr. Emmanuel sent a sample, identified this body to me as that of Desire Mirembe Jemimahh. No, I did not indicate in my report what I have just told this Court that I found this as one of the rarest in my examination report. No, I did not indicate it in the report from having

found that it was a rare case that I contacted the investigators in regard to my findings and yes I did not indicate in my report that there was no blood in the body.

I was asked to establish the cause of death and reasons thereof, so to me, the cause of death was that deep cut in the neck, the pale organs and ofcourse the fact that it was very difficult to get blood from this body. The basis of my finding as to the cause of death was on the basis that there was a case of a deep cut in the neck on the right side where the blood vessels, had been cut with the conclusion that it was from hemorrhagic shock. On the report it is not indicated anywhere that I found no defence form of the injury. In this report, we are supposed to document external injuries. I did not indicate it that there were no defence injuries, but I did not document any other injury.

In this form you are supposed to put external injuries. You are supposed to document external injuries now if there were defence wounds, I would have indicated them under external injuries but since they were not there I couldn't document what was not there. This was a case of somebody who had been cut, who had sustained a cut with a heavy sharp object. I needed the DNA of the deceased to match it either with the weapon if found, or the scene where the body was found or even blood that could have gone on the assailants clothes such things. So I needed to take a control sample, our base sample of course is blood, but when I failed to get this blood I resorted to taking a swab. With the swab you can mop up the blood which is in the body so I mop up this blood using the swab for the reasons to match with samples that could have been at the scene, of the assailant or on the weapon.

Given the above evidence, the law is that in determining the lawfulness of any homicide the beginning presumption is that all homicides are unlawful unless sanctioned by law. The above evidence shows that for all purposes and intents; there was no sentence of law being executed neither was there any lawful act that was being fulfilled by the assailant who cut the neck of this victim.

DW2 Andrew Lumanzi; I am 32 years old a Petroleum Engineer by qualification and I also do full time industry that is church. I am a member of Deliverance Church Makerere Hill that is my local church where I pray from. Mathew Kirabo is a friend of mine whom I have known since 2008 and I am going to talk about the night of 10<sup>th</sup> and 11<sup>th</sup> and that was the night that started with. We left home at 9:00 pm; no we had supper at 9:00 pm because we were setting off for church where we were going to have an overnight.

My family who included my dad, my father; Mr Tusasirana Longino Kigambo, my elder brother; Mr Anthony Tusasirana, my cousin; Mr Hope Mwine Martin; and a

maid, we had at the time called, we used to call her Metu, but she was called Metu with and myself Andrew Lumanzi.

So we had supper at 9:00 pm and we had wanted to go there at 9:00 pm but we thought we would go a little bit later so we said let's try and make it at 10:00 pm which we did and when we got to church; (*Deliverance Church Makerere*) that is next to Bativa Hotel, so we get to church at 10:00 pm and we noticed that service had started, the night prayers hadn't yet begun and the Worship team had just finished their rehearsals and was exhausted and we were being asked to do praise and worship and there was a bit of commotion and confusion there because they were saying they are tired and they wanted to go home. So we decided as a family, to volunteer now personally, myself I had really known about this overnight and I was one of those that were in charge of organizing it and that is why my family was there because I actually wanted them to come and attend.

The preacher that night was Pastor Wandera Patrick he is an evangelist and he serves at the church as such specially in deliverance. So we had already planned our program and so I volunteered that night noticing that we had received a big number of people as compared to what we had expected. We had about 100 people that night mostly non-members so we did not know most of these individuals who were there. And that was attributed to the prior radio station sessions that had been going on that we are advertising this overnight so I decide to volunteer as an usher and I was among these ushers that was in charge of making sure that everybody is settled down and also trying to scan the crowd and ensure that there is a bit of security in terms of peoples' property are safe and at the same time service is going accordingly. So that night, we began our prayers and we began with the praise and worship which was led by a few volunteers who also volunteered to sing. We had no instruments, no band that night and we were provided with about three microphones.

When we begin the praise and worship that was on until the intersession which also drags until midnight. Now just before midnight 15 minutes to be exact before the midnight hour which was the hour that was scheduled for our preacher I see Mathew walk in through the front door.

15 minutes to midnight. I know this very well because that was the area that I was overseeing as the usher and I personally was one of those that ensured that the back doors of the church were closed. So there was the only access through the front door for security purposes that night which we always did at overnights so we can always see who is coming in and who is going. I saw him walk in and after not seeing him of course for a while, I was excited and I greeted him. I waved at him and he waved back at me.

Yes at that very moment I was seated. My seat was right in front of that door that I was overseeing and there is a pillar that is on my right hand side but also faces the door, close to the stage, close to the pulpit where the preacher

preachers and that is where I was seated so I was able to have a good look at the door from there.

So he walks in and I greet him, I wave at him and he waves back and then he walks to the right hand side if am facing the pulpit on my right hand side of the church. He walks to the right hand side so if I can just describe that for a second if this is where am seated and this is the pillar right next to me and that is the door so he walks in and I wave at him, he waves back at me and then he just walks like that all the way to the corner and seats right there at the back of the church in the extreme corner. There were so many people that night so all these other seats were covered; those were the few seats that people weren't sitting at the back seats so that is where he sat at the church.

I did speak with him for very many times, but I kept on going and checking on him personally because he was seating right next to my elder brother; Anthony Kisasirana. I kept going as I kept on moving around the church ensuring that everybody is okay and service was comfortable. I would occasionally pass by greet them, greet Mathew and check on them and ask a few things then walk away. Sometimes could even crack a joke or two and then I would give back to my station which was right in front of the door where I was seated. So this happened throughout the service between when the preacher came on at midnight until 3:00 am when the deliverance session started, I kept on moving that whole entire right wing that is this whole that is if this was the church that would be this whole section which I was in charge that night.

Thank you so for those three hours when the whole thing was going on the testimonies and the preaching I was moving around like I said and I would occasionally would go there and greet him. I do not have a particular number as to how many times I moved around because I was moving around a lot, but this is what I know that at 3:00 am, we had a deliverance session and that is when everybody was able to now stand up and move around, go outside, interact, because during the deliverance session this is the time when people are being prayed over and there is a lot of activity that happens. Some people begin to fall down and roll over so on so we are very busy so that is the only moment when I cannot particularly say I saw Mathew you know here or there. That is the only moment between 3:00 am and 5:00 am when I saw him last when we were just about to leave and we were trying to say bye-bye and you know and leave.

He only left at 3:00 am when the deliverance session started because everyone was really moving and I remember that corner where he was seated and the many other areas where people were seated were unoccupied and that's the only moment like I have said where Mathew left his seat but before that he was always in his seat.

I heard about it first when my dad Mr Tusasirana Rongina Kigambo mentioned it to me. I can't say I heard it on the news that was much later the very first time I

heard about this was when my dad mentioned it and he mentioned it to me because we were there that night with my elder brother. And so he told me that he was going to go to CPS (Central Police Station) to try and see if they can allow our testimonies or if they are receiving testimonies or statements from that night when they said the murder would have occurred. So he goes there and when he returns he then told me that when he got there the police officer told him that the statements they received were overwhelming from that night and because they felt it was sufficient enough and they said no we do not need any more testimonies. This was later on affirmed to us when we went for service the Sunday of that very week and the pastor at the pulpit Pastor Robert Tugume, who is our lead pastor stated the same that he went and made a statement and when he asked about the same thing he was also told that they were so many testimonies/statements so he said that he thanked us those of us who had gone there in the congregation and he said let's keep praying for the situation so that is when we first heard about it at the time when (inaudible). Personally I believe that these allegations are false, absolutely, totally false, those are false. It was 15 minutes to midnight not about 15 minutes to midnight when I saw Mathew Kirabo.

**DW3; Anthony Tisasirana**

I first met Mathew around 2008 through Deliverance Church Makerere Hill. We arrived, I, my brother and my cousin and my dad arrived at church which in this case is Makerere Deliverance Church at about 10:00 pm. We reached at 10:00pm. I myself, my father, my brother and my cousin arrived at Deliverance Church Makerere Hill at 10:00 pm including our house help. Martin Hope Mwine. We used to call her Metu which was Medline.

So when we go to church that day was a bit unusual there was an overnight but the members in the church were not the usual members that we usually see. So we didn't have our usual seats so if you have been to church you sort of like have your own seat usually so the new members had taken up the seats so we had to look for space in the back. I think my dad sat nearly in the front but we went to the back. So while we were there nothing was taking place. We were seated but nothing was taking place. It's like we expected the choir to start, choir didn't start off at time it was just mumming. So I walked out with my cousin Mr Martin Hope Mwine and we went at the back of the church so we were having a conversation with. We are outside church at the back of the building. Let me say the back of the building and continued in conversation. While we were there a car came in through the back if you have been to Deliverance Church we have two gates, there is the front gate and there is the behind gate. 11:30 pm.

The askari first opened for the car and it drove in and the person reverse parked in front of us. We were standing and the person parked in front, the car facing us. It was new car, was a Mitsubishi, it was black in color with a hatch back so it was quite a new model we had not yet seen it on the streets before. When the

person got out of it, we realized it was Mathew. We were excited to see him so first of all (1) it was a new car and then (2) we had been out of touch physically meeting. For that time I was doing a job.

So we start of course catching up and people are excited, they come around the car asking him to take a spin one of those gentlemen was Micheal but since it was new, he refused. He actually closed the car so we continued chatting outside talking about the last time we had met; I think it was about 3 months so we were catching upon cars because he had come with a new car. We were talking about girls different things where we were.

So as we were talking about that I told him I was planning actually to get married that year. Of course he asked me how for the last time we were talking my relationship was now getting better. First I opened up to Mathew my relationship had some challenges in 2013, so he asked me so how far I said now we are in the truck we are getting married. He was excited for me and we talked about that is the gist of what we talked about. It took about sometime outside there not so long.

He had told me he had just come from hostel, from the hostel checking on his girlfriend. While we were talking about different things of course he didn't mention her by name, he didn't show me a photo or anything but someone he was dating. I was happy that he had someone in his life. Around that time the music started and they were talking in the church so we had to enter. So he came with us since he didn't have a seat like I told you he had just come and found us outside. So we walked and entered inside the church and this was still at the back there was still space at the back so we went to the back and that is where we sat. So the service started and the preacher that day was Pastor Patrick Wandera, we call him pastor, we call him evangelist it can be used either way.

What I remember very well about that night is that he introduced his niece she is called Erica. So Erica begun her testimony and her testimony is about going underworld and circular music and things like that how she got possessed, taken down so when she began her testimony we stopped all chit chat because her testimony was quite captivating. The testimony went on for some time then after that Pastor Wandera came on stage and continued. Now Anthony during that all period pastor has started preaching, you are seated at the back kindly tell us who were you seated with at the back?

I had Mathew to my right and I had martin to my left. So it was a deliverance service so after that pastor Wandera came and took over and then continued with the preaching and then after that we started deliverance.

I did not look at my watch but the preaching should have gone on for like about for 2-3 hours. It was a long summon. During that time he was seated with me as I told you the testimony was quite intense and no one was moving up and

about. Then we began the deliverance service the praying for people and the praying, the manifesting and all those things. By that time people were moving because my brother that time was helping the preacher, and if you have been to Pentecostal churches if they are praying someone will fall down and the some ladies have to wrap so my brother was moving around.

He was in my vicinity but by that time you know we were all praying you know my eyes were closed so if you ask me if he was next to me my eyes were closed at that time and we were all praying. So I can't be 100% that he was next to me at that moment but my eyes were closed, we were praying.

Okay that time the deliverance service took a long time because even up to the time we left this was coming to 6:00 am, people were still coming forward for prayer and I asked Mathew so are you going home. He told me no he is going to pick his little brother whom he had to take to school. He had some school function; his brother was in P7 so he has to stay around and for us we had to leave.

So he had to go and pick his little brother up and we usually leave early for most overnights. Most overnights at Deliverance church we leave quite early, people leave at about 4:00 am, but for this particular one my brother was heavily involved with the pastor so we were forced to stay back and wait for him to get done so that we can leave together.

So we parted ways at 6:00 am and left Mathew behind in church and then we went home. The reason why we went there also our maid was she had been, she got an attack while at home she was a bit possessed so we thought we would get prayers for her that night. I am just giving you a background that is why we actually came with her but we were not able since people were very many so we just left, we said we would come back another day.

You also told Court that Mathew told you that he had come from hostel to check on his girlfriend although he did not mention the name, If it's for the night between 10<sup>th</sup> to 11<sup>th</sup> for that overnight, those allegations are wrong. If it's for Saturday after I left him at 6:00 am I do not know, we are all capable of different things but for that night between 10:00, we were at church so between 11:30 to 6:00 am when we parted ways I do not think so.

The first time I heard the story it was in Red Pepper, they talked about someone who had killed a girlfriend and had been brought on a bus heading to Rwanda. It was the first story I heard so after reading that story I was like who is this. I didn't do what put two and two together, but then later we start hearing that the story that we read it is actually Mathew and the night in question was when we had the overnight. So we reached out to my dad Mr Tusasirana Longino to get more information on what is going on. Of course he asked around and was told that Mathew had been locked up. Yes I am. a friend to Kirabo Mathew, the accused person He is missing. No, I have not reported to police. I would want

the truth to come out. I arrived at church at 10:00 am. I can't be sure, when we stepped out.

I was outside church, Mathew walked in at 11:30 pm. I said we sat in church and later on when it was some bit of commotion we walked outside church because there was nothing taking place inside church. Mathew came in a car at 11:30 pm that night and we were outside, with my cousin and the people we came with from home my cousin. There were other church members outside. My cousin, my dad, my brother and the house help but outside church I was outside with my cousin just to be clear and if I remember very well I actually said. Mathew came at 11:30 pm, and I had taken about 3 months without seeing him. I cannot tell this Court with certainty where Mathew was before 10<sup>th</sup>. I confirm to this Court that the accused person also revealed to me that before he came to church that he had gone to check on a girlfriend. He said he had a girlfriend; he didn't give me the name. The news said she passed away. It was a murder. She was killed and according to the news outlets they speculate the night of 10<sup>th</sup> to 11<sup>th</sup>. But I do not know the time.

DW4; Longino Tusasirana Bigambo stated that

"I am 67 years old. Right now I am doing consultancy and also am a farmer, but I can also tell you before I went into consultancy what I did. I am actually a retired civil servant and I did my work at the Ministry of Finance where I worked for more than 20 years and retired at the level of Commissioner. I stayed in 2009 from the post of Commissioner, I became the Executive Director of National Planning Authority (NPA) from 2009 - 2013 I was on contract. So when I finished my contract then I went into consultancy and farming which am doing now. If I could add I also fellowship with Deliverance Church Makerere Hill and am also a Deacon; am a minister in Church

I and the parents belong to the same church. We all fellowship at Makerere Hill Deliverance Church and it's not a very big church so we tend to know each other so I got to know Mathew through his parents Dr. Wamulembo and his wife. We were friends and eventually we got to know the children and then he also became a friend to my children so that is really how I got to know Mathew.

It was a Friday and on that Friday there was an overnight at church so me being a deacon I had to be at church but secondly we also had a house maid who was possessed with demons so because that overnight was a deliverance service we actually took the house-girl. So we went to church so the church started, we went through praise and worship and then the pastor started the service. Started the preaching and around midnight that is when the pastor came to the pulpit and started preaching and I was seated near the front you know being a deacon and you know I sit near the front. So after about an hour after the pastor had started the service I turned, I looked around and I turned behind and I saw Mathew



Kirabo seated actually with my son Andrew that is how I was looking to notify him I saw him.

And we continued with the service then of course it went into deliverance and you know but we continued with service until morning. We left at about 6:00 am and people were coming to the front please pray for so and so including Mathew. Yes so he was there, he was there I saw him.

It could have been around 1:00 am. Then when the news of the murder came out because it was in the newspapers, it was on the TV, it was very highly published and so when it came out that on that night Mathew was the accused person of having murdered that girl because for me, I had seen him. After a few days the news had come out, I decided on my own, I wasn't forced, I wasn't what I just decided to go to CPS (Central Police Station) in Kampala to go and make a statement and tell them what I saw and what I knew. So I went to CPS and I was directed to go to a certain room I can't remember the number and I found there an officer and I introduced myself and I told him that I had come to make a statement with regard to the case of Mathew Kirabo and the officer first listened to what I was saying.

I told him about the events of that night how I had seen Mathew Kirabo in the church and the time I saw him and so on. Then the police officer told me that they had received many other witnesses from the church giving similar evidence so he told me he said no you can go. He didn't take down my statement he said you can go because they had already received you know enough evidence and that.

No, I did nothing I just walked away although when I went back to church and was talking to people and church members about it actually at some point the pastor announced that more people should not go to the police to report because they had already received a lot of statements.

Yes. After he was given bail he actually came to my house to my home in Muyenga. We talked about it and even prayed and so on. As I said he was a friend to my children. When one of my sons Andrew was going to wed, actually Mathew participated, he was a transport officer. He participated in the wedding. Even in the meetings when we were holding meetings, Mathew used to come and attend meetings.

Still to make a statement of what I knew especially on the day of that about the murder to go and tell them what I saw and what I knew that was the purpose. As a responsible citizen and as a Christian and as a friend of the family I really felt duty bound to go and inform the police. This is my statement that I made at police. This is my signature that appears on that document.

You are right to say that that this is my statement that I made at police. I made it in 2015. So I am accepting that this is my statement. I am recollecting now, am just

It says I do not remember seeing him during the time of fasting and prayer, but I saw him that Friday 10<sup>th</sup> November 2015 in the morning of Saturday at around 5:00 am. According to this statement I saw Mathew at 5:00 am. I saw him when he was going for prayers and to be prayed for at 5:00 am. I saw him at 5:00 am when he was going to be prayed for but I had seen him earlier. I didn't state this in my statement that I had seen him earlier, it but I saw him. So now that I told police that I saw the accused person at 5:00 am, and whether I wish to withdraw the earlier evidence that I saw him at 1:00 am. You have put me in a very difficult situation because, what if I get additional information, can't I add it on? We always put additional information but if you are saying so I withdraw but I have that additional information.

Definitely, I didn't know where the accused person had come from before he came to church. I do not know if my children recorded statements at police. I do not know the time when the girl was killed. I do not know"

**(Statement tendered and received as CEX1)**

**That being the evidence on record**

It was submitted for the state that the prosecution that the accused person participated in the murder of Mirembe Desire. In reaching this conclusion, reference was made to the evidence led through PW1 who testified that he was with the deceased who was his biological daughter on the 27<sup>th</sup> and 28<sup>th</sup> of June, where after he travelled to Kalungu. He then traveled to Germany on 1<sup>st</sup> July 2015 and on 10<sup>th</sup> July, he talked to the deceased who told him that she was going to withdraw money to go for the NOGA day. But later he got a call from the deceased's mother who lives in the USA that she had received a message that Mirembe had travelled to Jinja with a boyfriend and she was stranded there. It was Counsel's case that PW1 testified that he got to know that desire had gone missing and he contacted people in Uganda to start tracing for Desire. He further testified that he travelled back on 14/7/2015 after getting information that Desire had been murdered and her body dumped in a sugarcane plantation.

PW2 testified that he last saw the deceased on 9/7/2015 at Aleena Hostel former Akamwesi hostel where he was working as a security guard. That later in the night of 10<sup>th</sup> coming to 11<sup>th</sup> July 2015 at about 1.00 am, the accused person came to Akamwesi hostel asking about the deceased and he didn't look fine and drove away in motor vehicle UAX. PW1, PW2 and PW7 confirmed that the deceased and the accused person were boyfriend and girlfriend.

PW4 testified that he knew the deceased who joined his church and is now dead. He testified that the first time he met the deceased she came seeking Counselling regarding her relationship and it was a love relationship under stress. She reported to him how her boyfriend was telling her to do things she didn't want to do. She disclosed to PW4 how Mathew Kirabo was forcing her to wear IUD and that PW4 had advised her to leave the relationship the accused person was obsessed and didn't want to leave the relationship. That there after the accused

person also came to confirm if the pastor had advised her to leave him and he confirmed the same. The accused person left PW4's office when he was sad. PW4 testified that the relation between the deceased and the accused person was a stormy relationship.

PW8; Manyi Dominic testified that on 31<sup>st</sup> July 2015, he received a team of detectives from CID headquarters who included Ayiko Joel, Ahimbisibwe, ASP Kirabo, AIP Turyagyenda who came with the accused person as a suspect for the murder of Mirembe Desire and as the investigating officer he interviewed the accused person. The accused person told PW8 on how he was ready to show them how he had committed the crime of killing desire. PW8 then took over the reconstruction of the scene and taking of the confession as the accused person explained how killed the deceased. The accused person told PW8 that he is the one who killed the deceased and was ready to take them to the scene. That the accused person the led the investigating team to the scene while explaining how he moved with the deceased in his car and how he held the sharp object and cut deep the deceased's neck, killed, dragged and dumped her dead body into the sugarcane plantation. That the scene reconstruction was video recorded by AIP Ayiko Joel who testified in this Court. The confession which was saved on DVD was played in Court, viewed by Court, and admitted as an exhibit through PW12 who recorded it as PEX11.

The accused person's confession in a video recording was exhibited in Court, the accused person narrated and guided the team of investigators on how he moved with the deceased from Kampala after coffee at café javas, center bank and drove the deceased to Lugazi about 50 meters from Jinja road highway and slit the deceased neck with a sharp object killing her, dumping the same in the sugarcane plantation. This video confession followed after the accused person had confessed in a charge & caution statement before D/SP Wanyoto Herbert Recorded on 30/7/2015.

The Charge & Caution statement was subjected to a Trial within trial through PW14 Wanyoto Herbert, DR Niwamanya and Sgt Buluma and two defence witnesses. Thereafter the charge and caution statement of the accused person was admitted as PEX21 upon this Court finding that the confession was voluntarily given by the accused person. My lord we submit that the charge and caution statement is not the only evidence against the accused person. We pray that Court considers the evidence as whole such as the evidence that the accused person was not happy that the deceased was planning to separate with him which left him very sad as testified by PW4, his confession under video coverage where the accused person led the police through the process he took in driving the deceased to Lugazi, killing her dumping the body there and driving back to Kampala as evidence corroborating the confession in the charge and caution statement.

Counsel prayed that this Court finds as it did find in the trial within a trial that the confession was voluntary and if any procedural irregularities are found may

this Court find that substantive justice is upheld over technicalities. Further there is evidence led in Court that the accused person was the last to call the deceased as per the call data print outs and two phones of the accused person tendered in Court as exhibits through PW13 Ahimbisibwe Chrysostom as PEX 13, PEX14, PEX15.

PW13 on interviewing the accused person upon handing himself at police, accused person was alleging that he had taken time without talking to the deceased which contradicted the call data. This led to his arrest as the suspect in the killing the deceased.

That all the prosecution witnesses were subjected to intense cross examination and none of the evidence was discredited but all pointed to the guilt of the accused person and that the evidence led by prosecution proves all the ingredients of murder against the accused person. She pointed out that Whereas it may be argued that the prosecution evidence is circumstantial, it has been held and its trite law that circumstantial evidence is sometimes the best evidence as held by *Hon Justice Flavia Senoga Anglin in HCT SC 98/2017 Uganda versus Nsubuga Ben*.

Circumstantial evidence is often the best evidence as was found in the case of *Akbar Hussein Godi Versus. Uganda Supreme Court CR. APP 3/2013 which quoted Simon Musoke versus R [1958] EA715*, where it was held that;

*“In a case depending exclusively upon circumstantial evidence, the Court must, before deciding upon conviction, find that the inculpatory facts are incompatible with the innocence of the accused person, and incapable of explanation upon any to the reasonable hypothesis than that of guilt”*

*See also Audrea Obonyo & Ors R [1962] EA 542.*

Further Justice Chigamoy Owiny Dollo in *Sanyu Charles & Ors versus Uganda HCSC 13/2005* as he then was, held that;

*‘from evidence on record, there was no witness to the incident that led to the bizarre death of Rugomoka, .... but the evidence was only circumstantial...and before conviction is based on it can be justified, the Court must establish that the inculpatory facts are incompatible with innocence of the accused person, and incapable of explanation upon any other hypothesis than that of guilt, and further, that there are no co-existing circumstances that would negative the inference of guilt’.*

#### **ALIBI:**

Two defence witnesses led in defense attempted to raise an alibi to the effect that the night of 10<sup>th</sup> and 11<sup>th</sup> July 2015, accused person was in church between midnight and 5.00 am. Be that as it may be however, these defence witnesses only buttress the prosecution case, that as per accused person’s confession in

Charge and Caution statement and video recording, in order to disguise his participation in the killing of the deceased

1. *Accused person sent false messages to relatives to the deceased that the deceased was stuck in Jinja.*
2. *Pretended to look for the deceased at deceased does hostel well know he had dumped her dead body in Sugarcane Plantation.*
3. *Thereafter he went to church as confirmed by DW1 and DW2.*

However upon intense cross examination none of the defence witnesses had knowledge of where the accused person was coming from before coming to church and therefore prosecution has proved that the accused person killed the deceased and thereafter went out to disguise his murderous act.

DW1 confirmed that indeed accused person arrived in a Mitsubishi car which confirms accused person's confession that he drove the deceased in his mother's car, a Mitsubishi to Lugazi where he cut her neck, dragged her dead body into the sugarcane plantation, sent false messages to relatives of deceased, pretended thereafter as not being the killer both in church and deceased's hostel until in his confession at police that he disclosed how he killed the deceased. Prosecution adduced evidence that the accused person was the last person to communicate to the deceased before she met her death and phone printouts of tel number 0751957476 and tel numbers 0701550207/0775887939 belonging to the deceased and the accused person respectively were admitted as prosecution exhibits together with the two phones of the accused person admitted as PEX 14 and PEX 15 which had his sim cards number 0701550207/0775887939.

It was submitted for the State that the prosecution evidence places accused person at the Scene and that the confession of the accused person was voluntary, also indicates how accused person planned and participated in the Murder of Mirembe Desire. The state called upon this Court to consider the conduct of the accused person in absconding while this trial was on going is incompatible with the innocence of the accused person and finds that there are no other coexisting circumstances exist that would negate the inference of guilt. The State prayed that the Court finds that prosecution has proved all the ingredients of murder against the accused person and convicts him as indicted.

### **Defence submission on participation in the murder**

According to the defence case accused person is not the culprit because of the following arguments as raised in their submissions reproduced here below; Counsel argues that; PW1's evidence (Emmanuel Musoke). PW1's evidence does not bring out any iota of evidence of participation of the accused person. He

pointed out that; PW2, Darius Naturinda who testified as the head of security at Aryan Hostel formerly known as Akamwesi hostel. His evidence is largely proving the fact that the accused person and deceased both resided at Aryan hostel. His testimony is of no evidential value pertaining to participation of the accused person.

It is worth to note from his evidence that he describes how the accused person was trying to find the whereabouts of the deceased, and how the accused person went up to the room trying to locate the deceased. The confirmation by him that the accused person and the deceased were boyfriend and girlfriend does not bring the element of participation by the accused person.

The defence further argued that; PW4 Isaiah Mbuga stated that he was a bishop for Christ Ministries International, his testimony alludes to the fact that the deceased went to his church for Counselling claiming strained relationship with the accused person and the said meeting allegedly occurred in February 2015. His testimony my lord tends to build a theory of disagreement which is common in any relationship but does not in any way point to the participation of the accused person in the alleged offence of murder.

PW8 further moved the defence, and argued that; Detective AIP Manyi Dominic. Was one of the investigators in this case and the gist of his testimony is how he visited the scene of crime and conducted interview of the accused person. Other than the interview of the accused person which we contend was stage managed and procured as a result of torture there is no independent evidence in his testimony or evidence pointing to the participation of the accused person in the commission of the offence.

There is also no exhibit of evidential value that was ever recovered out of the alleged interview of the accused person. It is worth noting that he narrated of how the accused person confessed and was cooperative with them as they moved from one place to another. There is simply no discovery of any exhibit that links the accused person to the commission of the offence or collaborates the alleged confession in material particular.

They argued that the allegation by State that PW8 implicated the accused person hence proving participation of the accused person in the murder of the deceased through a confession captured on a video and admitted as PEX 11, should be disregarded because this Court evaluates the video evidence PEX 11, Court will see that it is PW8 leading the witness, asking leading questions and eliciting answers from the accused person. The video indicated that it was not even the accused person who led the detectives to the scene but it was the detectives who led the accused person to the scene. There is no evidence on record to suggest that the video was taken at the scene of crime where the body was recovered. There was no reconstruction of the scene as submitted by the Prosecution.

Defence also called upon this Court not to rely PEX 11 since it did not comply with Section 8(2) of the Electronic Transactions Act No. 8 of 2011. Under the aforesaid section, it is the law that a person seeking to introduce a data message or an electric message has a burden of proving its authenticity by evidence of electronic record that the person claims is to be.

Court therefore argued that the burden of proving authenticity of the video lied on the prosecution and we strongly submit that prosecution with respect did not prove the authenticity by evidence capable of supporting a finding that the video record is what PW12 claims it to be. PW12 in cross examination informed Court that he took the video and gave one of his colleagues for processing. At page 224 of the record, prosecution asked PW12 what he did after recording the video. PW12 replied (I took the tape which I used for recording to our counterparts in police headquarters for processing, but the said counterpart at headquarters was not mentioned by PW12. So PW12 was not party to the processing of the video and in the video there are jump cuts short cuts.

He further argued that the video evidence must pass the test established. Section 7(2) of the Electronic Transactions Act No. 8 of 2011, the authenticity of a data message shall be accessed amongst others by considering whether the information has remained complete or unaltered, from the cross examination of PW12, he told Court that he made this video on 31<sup>st</sup> of July 2015. When the cover of the DVD was put to him, he conceded that the date indicated that the video was taken on 29<sup>th</sup> and 31<sup>st</sup> of July 2015. We thus submit that Court should not rely on this video evidence.

He reasoned that; apart from the testimony of PW8 and PEX 11, Prosecution relied on the charge and caution statement admitted as PEX21. This confessional statement was repudiated by the accused person. *The Supreme Court in the case of Mumbere Julius Versus Uganda Supreme Court Criminal Appeal No. 15 of 2014 relying on the case of Matovu Musa Kassim versus Uganda Supreme Court Criminal Appeal No. 27 of 2002 reiterated the law governing retracted and repudiated confessions as succinctly stated in Tuwamoi versus Uganda that:*

*“A trial Court should accept any confession which has been retracted or repudiated with caution and must before finding a conviction on such a confession be fully satisfied in all circumstances of that case that the confession is true”.*

Counsel further submitted that it is incumbent upon Court to evaluate PEX 21 and PEX 11 as any other evidence to see whether it could shed more light on the entire case. This was the decision in the case the Supreme Court in the case of

**Mumbere Julius versus Uganda Supreme Court Criminal Appeal No. 15 of 2014.**

Counsel further cited the case of **Tuwamoi versus Uganda [1967] EA 84, 91** relied upon by the *Supreme Court of Uganda* and in the *Mumbere Julius Versus Uganda (supra)* case, *The East African Court of Appeal* held as follows:

*“If the Court is satisfied that the statement is properly admissible and so admits it, then when the Court is arriving at its judgement it will consider all the evidence before it and all the circumstances of the case and in the doing so will consider the weight to be placed on any confession that has been admitted. In assessing a confession, the main consideration at this stage will be, is it true? If the confession is the only evidence against an accused person, then the Court must decide whether the accused person has correctly related what happened and whether the statement establishes his guilt with that degree of certainty required in a criminal case. This applies to all confessions whether they have been retracted or repudiated or admitted, but when an accused person denies or retracts his statement at the trial, then this is a part of the circumstances of the case which the case must consider in deciding whether the confession is true.”*

He continued to say that, the confession PEX21 indicated that it is the deceased who cut her throat using a surgical blade and that since the deceased was going to die, the accused person assisted her by pressing her hand. This also was the gist of the testimony of PW8 who testified that the accused person confessed to him that he used a surgical blade to inflict the deep cut on the neck of the deceased. The question this Court should ask is whether this confession is true?

He submitted further that the confession in PEX 11 and the testimony of PW8 shows that the confession is not true. PW11 Kizito Julius the doctor who performed the postmortem and prepared the postmortem report which was received and marked as PEX 10 testified that the cause of death was a deep cut wound on the neck with associated organs which were damaged causing severe hemorrhage, and says the wound could never have been caused by a surgical blade as stated in PEX21, the testimony of PW8 and PEX 11. In the expert opinion of PW11 Kizito Julius, the wound on the neck of the deceased could have been inflicted by a knife or a panga. And he was unequivocal in his description and reasons why it could not have been a surgical blade as he stated that surgical incisions are uniform and liner which was not the case.

Counsel further urged that, the testimony of PW11 Kizito Julius, is consistent with that of DW1 Dr. Onzivua Sylvester another expert who testified that there was a single deep cut wound in the neck of the deceased and that the weapon used was a sharp heavy weapon like an axe or a machete.



In his opinion, Counsel said that the piece of evidence we invite you to evaluate in our submissions to the effect that the confession was not true is the testimony of PW14 Wanyoto Herbert who introduced the charge and caution statement PEX21. In cross examination, PW14 told Court that he administered a charge and caution on the 30<sup>th</sup> day of July 2015 at 10 o'clock. He told Court that the Police Surgeon who testified in the trial within the trial as PW3 did not carry his examination on the accused person at in his office at the same date and time. It was not the same time that the police surgeon who testified in the trial in a trial as PW3 did not examine the accused person with him.

When Exhibit PET1 Police Form 24 on which the accused person was examined by the Police surgeon was put to him during cross examination he conceded that the time and date indicated in Police Form 24 which was 30<sup>th</sup> day of July 2015 at 10 o'clock was the same as the time and date on PEX21. He had the evidence on record of PET1 police form 24 in which the police surgeon indicated examining the accused person on 30<sup>th</sup> July 2015 at 10 o'clock. This further goes to illustrate that the confession was not true because it could not have been administered on the same day and time as the examination of the accused person by the Police Surgeon.

In further submissions, Counsel stated that to further buttress our submission that the confession was not true, we invite you to evaluate another expert witness in the person of PW15 Onen Geoffrey the GAL who testified as an expert. PW15 failed to link the accused person DNA to the deceased. The victim's clothing including the pink nicker C1 had no DNA of the accused person and even the purported grey nicker Exhibit C2 which had the DNA of the accused person did not have the DNA of the victim and it was not the nicker found on the victim. This nicker remained strange of its source. The photograph taken by PW6 which indicated that the victim had a pink nicker was put to this witness PW15 he refused to tell Court the color but most, this DNA analysis report PEX 19 did not link the participation of the accused person in the murder. Further that had the accused person held the deceased and assisted her in slitting her neck as per the confessional statement PEX21, then his DNA would have been found on the DNA of the deceased.

Counsel pointed out that, PW16 Turyagenda Erifaz, told Court that he was used by the accused person to demonstrate how the accused person killed the victim, this was an outright lie. A similar lie was told by PW8 who said the accused person pulled the deceased by the leg. The DNA analysis report PEX19 which PW16 claimed he got from Manyi and two SOCO's which he Exhibited as A1 to N indicated that the accused person DNA was not got on the victim, on her clothing's, on her pink knickers on the suspected blood stain recovered from the scene of murder or even the boxer panty recovered from the room of the deceased. Even the purported confessional statement in which the accused person is stated to have held the deceased could have put the accused person

DNA on the deceased. So the DNA analysis and report PEX19 which indicated the DNA of the accused person was not found on the victim's belongings or at the scene shows that the story prosecution has brought through PW16, PW8 and PW12 are a pack of lies.

He argued further that due to the beauty of science the DNA report would have linked the accused person even if he had touched and held the victim or strangled her or pulled her by the leg. Counsel invited this Court to disregard evidence by PW16, PW8, PW12 and PW15 and PEX11 and PEX 21 as not being true.

From the submissions above, the defence prayed Court to find that the confessional statements adduced in PEX 11, PEX21 and testimony of PW8 is not true and accordingly find that the accused person did not participate in the murder of the deceased.

It was the defence case that; the Prosecution did not place the accused person at the scene of crime and in his defence, the accused person established an alibi and called four witnesses. DW2; Andrew Lumanzi testified that on that fateful night, while at Deliverance Church Makerere during overnight prayers, where he was an usher, he saw the accused person enter the church at 15 Minutes to midnight and that the accused person sat next to his brother DW3; Anthony Tisasirana until 5.00 a.m. DW3; Anthony Tisasirana corroborated this alibi. This testimony is consistent with the testimony of PW2; Darius Naturinda who testified that the accused person came to the hostel looking for the deceased.

It is trite law that the Prosecution has to place the accused person at the scene of the crime. The Supreme Court restated this position of the law in the case of **Tito Buhingiro versus Uganda Supreme Court Criminal Appeal No. 08 of 2014** relied on the case of **Bogere Moses and Another versus Uganda (SCCA 1 of 1997) where the Supreme Court of Uganda** held as follows:

*“What then amounts to putting an accused person at the scene of crime? We think that the expression must mean proof to the required standard that the accused person was at the scene of crime at the material time.*

*To hold that such proof has been achieved the Court must base itself upon the evaluation of the evidence as a whole. Where the prosecution adduces evidence that the accused person was at the scene of crime, and the defence not only denies it, but also adduces evidence showing that the accused person was elsewhere at the material time it is incumbent on the Court to evaluate both versions judicially and give reasons why one and not the other version is accepted. It is a misdirection to accept one version and hold that because of that acceptance per se the other version is unsustainable.”*

In conclusion, the defence invited this Court to uphold the version advanced by the accused person since the version advanced by Prosecution is full of lies and deliberate false hoods. It was further observed that DW1; Dr. Onzivua Sylvester, testified that he did a Post Mortem on the deceased. At page 53 of the Record of

Proceedings, DW1 testified that there was no blood in the body and that the deceased died of excessive bleeding from a single deep cut wound in the neck. Further that there was no defence wounds on the body of the deceased and that since this case looked extra-ordinary, he conferred with the Investigating officer to find out whether there was blood at the scene where the body was found and that there was no blood at the scene. It's our submission that the prosecution evidence places accused person at the Scene and that the confession of the accused person was voluntary, also indicates how accused person planned and participated in the Murder of Mirembe Desire.

Regarding the absconding of the accused person, they argued that absconding while this trial was on going is incompatible with the innocence of the accused person and finds that there are no other co-existing circumstances which exist that would negate the inference of guilt. The defence further argued that law presumes which is not compatible with the innocence of an accused person is the conduct immediately or after the commission of the offence.

According to the defence the accused person did not run away when he heard about the news of the demise of the deceased who was his girlfriend. He went to Police on his own. He attended his trial and went missing thereafter. We submit strongly that in Uganda we have a law regarding the Estates of Missing Persons (Management) Act Cap 159. The accused person is in the category of persons who fall within the ambit of this law. In view of the submissions, I find as follows:

## RESOLUTION BY COURT

### **Burden of proof.**

The law on how to treat circumstantial evidence has been re-stated in a number of cases. The test to be applied was re-stated in the *case of Simoni Musoke versus R. (1958) EA 715* that in a case depending exclusively upon circumstantial evidence, the Court must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilt and also before drawing the inference of guilt the Court must be sure that there are no co-existing circumstances which would weaken or destroy the inference of guilt. *See also Moses Kalyowa & 3 Ors. Versus Uganda Criminal Appeal 4/1985* (Supreme Court).

In her concluding remarks Counsel for the state submitted thus:

*"It's our submission that the prosecution evidence places accused person at the Scene and that the confession of the accused person was voluntary, also indicates how accused person planned and participated in the Murder of Mirembe Desire.*

*Last but not least, we pray that the Court also considers the conduct of the accused person in absconding while this trial was on going is incompatible*

*with the innocence of the accused person and finds that there are no other coexisting circumstances exist that would negate the inference of guilt.*

*In the nutshell, it's our prayer that Court finds that prosecution has proved all the ingredients of murder against the accused person and convicts him as indicted"*

However the defence concluded thus:

*"It's our submission that the prosecution evidence places accused person at the Scene and that the confession of the accused person was voluntary also indicates how accused person planned and participated in the Murder of Mirembe Desire.*

*Last but not least, my lord we pray that the Court also considers the conduct of the accused person in absconding while this trial was on going is incompatible with the innocence of the accused person and finds that there are no other coexisting circumstances exist that would negate the inference of guilt"*

The circumstantial evidence in this case majorly is of the assembled evidence by the investigating officers and the exhibits which defence challenged and which I now review and make findings thereon as follows.

#### **1. The confession statement (PEX 11.)**

The prosecution contested this evidence for reasons stated in their submissions.

The law as regards admissibility and reliance on confessions was articulated in the case of Tuwamoi versus Uganda [1967] EA 84, 91 relied upon by the Supreme Court of Uganda in the Mumbere Julius versus Uganda (supra) case, The East African Court of Appeal held as follows:

*"If the Court is satisfied that the statement is properly admissible and so admits it, then when the Court is arriving at its judgement it will consider all the evidence before it and all the circumstances of the case and in the doing so will consider the weight to be placed on any confession that has been admitted. In assessing a confession, the main consideration at this stage will be, is it true? If the confession is the only evidence against an accused person, then the Court must decide whether the accused person has correctly related what happened and whether the statement establishes his guilt with that degree of certainty required in a criminal case. This applies to all confessions whether they have been retracted or repudiated or admitted, but when an accused person denies or retracts his statement at the trial, then this is a part of the circumstances of the case which the Court must consider in deciding whether the confession is true."*

#### **The video recordings (PEXH 21)**

1. under **Section 7(2) of the Electronic Transactions Act No. 8 of 2011**, the authenticity of a data message shall be accessed amongst others by considering whether the information has remained complete or unaltered, from the cross examination of PW12, he told Court that he made this video on **31<sup>st</sup> of July 2015**. When the cover of the DVD was put to him, he conceded that the date indicated that the video was taken on **29<sup>th</sup> and 31<sup>st</sup> of July 2015**. We thus submit that Court should not rely on this video evidence.
2. Apart from the testimony of PW8 and PEX 11, Prosecution relied on the charge and caution statement admitted as PEX21. My Lord, this confessional statement was repudiated by the accused person. The *Supreme Court* in the case of **Mumbere Julius versus Uganda Supreme Court Criminal Appeal No. 15 of 2014** relying on the case of **Matovu Musa Kassim versus Uganda Supreme Court Criminal Appeal No. 27 of 2002** reiterated the law governing retracted and repudiated confessions as succinctly stated in **Tuwamoi versus Uganda** that: Inconsistencies in witness statements regarding weapon used and cause of death of The defence argued that there were grave inconsistency which undermined the truthfulness of the evidence. The defence noted that:

***“The confession in PEX 11 and the testimony of PW8 shows that the confession is not true. PW11 Kizito Julius the doctor who performed the postmortem and prepared the postmortem report which was received and marked as PEX 10 testified that the cause of death was a deep cut wound on the neck with associated organs which were damaged causing severe hemorrhage, and says the wound could never have been caused by a surgical blade as stated in PEX21, the testimony of PW8 and PEX 11. In the expert opinion of PW11 Kizito Julius, the wound on the neck of the deceased could have been inflicted by a knife or a panga. And he was unequivocal in his description and reasons why it could not have been a surgical blade as he stated that surgical incisions are uniform and liner which was not the case. The testimony of PW11 Kizito Julius is consistent with that of DW1 Dr. Onzivua Sylvester another expert who testified that there was a single deep cut wound in the neck of the deceased and that the weapon used was a sharp heavy weapon like an axe or a machete”.***

On the credibility and inconsistency of witnesses, the Courts have stated in a number of cases that a witness may be untruthful in certain aspects of his evidence but truthful in the main substance of his evidence. Further, that a witness who has been untruthful in some parts and truthful in other parts could be believed in those parts where he has been truthful. But whereas it is true to say that minor discrepancies might be explained away, inconsistencies unless satisfactorily explained would usually but not necessarily result in the evidence of a witness being rejected.

**(See cases of Uganda versus Rutaro (1976) HCB 162; Uganda Versus George W. Yiga (1979) HCB 217 and Uganda Versus Abdalla Nasur (1982) HCB 1)**

The evidence being complained of by the defence is repeated here verbatim for analysis by this Court of the inconsistencies pointed out. The recorded evidence by PW8, 11, 12 14, 15, 16, and DW3 is as here below;

**PW6:**

On the 11<sup>th</sup> day of July 2015 at around 4:00 pm, I was at the police station and I received information from the District CID officer who told me that there was a suspected case of murder and the body was lying in the sugar cane just after the mortuary Kawolo Hospital Mortuary along

Kampala-Jinja Highway. He instructed me to team up with homicide and we have the crime scene visited which we also did and I moved out with Detective Corporal Kibuyika Patrick who was attached to homicide Lugazi by then. And we went to a place called Kibubu where we found the chairman of the area with other residents surrounded. It was the chairman LCI Mr. Mulayi. The scene was in the sugarcane plantation. That place is Kibubu. The body was hidden in the sugarcane plantation. After Mr. Mulayi introducing me to the crime scene, I condoned it off. I made an initial walk through of the crime scene and I made some observations. I saw a pool of blood, I also saw one shoe for ladies which was red with white stripes and when I extended towards the sugarcane I saw a human head for a lady. I went closer and saw a lady who was lying on her right with the legs spread apart. She had also a deep cut wound around the neck on the right side.

I took photographs of the crime scene and I also picked blood samples from the crime scene and from the body. I also picked a metallic object which was in the pool of blood but appeared to be part of a necklace or earring. It was incomplete so we removed the body from where it was hidden and we took it to Kawolo Hospital Mortuary.

It was on 31<sup>st</sup> of July 2015 as I was at the station on duty I received a team from police headquarters Kampala which included among others Aiko Joel, AIP Ahimbisibwe, ASP Kirabo, AIP Turyagyenda all of them are detectives plus others whom I cannot remember now and they came with the accused person before Court now. They had come with the accused person before Court now bringing him to me as a suspect in the case of murder of Desire Mirembe.

On the 31<sup>st</sup> of July 2015, they came and I had to interview him to build my file and that he was confessing and he had come to reconstruct the scene how he murdered. They came bringing the accused person before Court now as an accused person in this case of murder of Mirembe Desire. They told me that they arrested him following the disappearance which was reported in Kampala and during the interview he confessed that he was the last person with the Desire Mirembe and he is the one who killed her and he has come to show us, how he committed this crime. So as the in-charge case where the offence occurred.

As the in-charge case and now the suspect has been established I had to take over the reconstruction of the scene of confession. I had to take over the suspect

before Court now because I was now the in-charge case of the murder case. For the purpose of reconstruction of the scene of confession. That is his evidence you will cross examine him what he means. By interviewing him and for him to take me to the scene and demonstrate how he did it. Explain how he did it remove the word demonstration and he explained how he did it.

So in preparation that we had to organize a video camera so I introduced myself to him in the office and he identified himself as Kirabo Wamulembo Mathew. And he told me that he knows the girl the deceased that he is the one who murdered her and he is ready to take us to the scene where he committed that offence. So we moved while he was explaining and every step we were moving he was explaining and. We moved in the vehicle with, police officers, who came from Kampala and he led us up to the sugar plantation where the dead body of Desire Mirembe was recovered on 11<sup>th</sup>.

The accused person before Court now was the one leading us up to the scene of crime. He started by telling me from how they started movement from Kampala. He told me that Desire Mirembe was his girlfriend and he picked her from a hostel Aka Hostel in Katanga Wandegaya. They came up to Akamwesi hostel in Katanga that is in Wandegaya where the girl was staying and schooling at Makerere University where he was also a student. They came up to I have forgotten the Mall in Kampala there is a certain Mall there where they sat. They had some issues to solve as a boyfriend and a girlfriend and he asked the girl to 'move with him up to Bugiri where he was doing internship. So the two entered their vehicle and they started moving towards Bugiri but when they were moving they had some issues they were discussing when they were having disagreement. Now that when they reached Lugazi at Bulyatete village they decided to branch off the road.

Both the deceased and the accused person before Court now and after moving 50 meters off the road; they stopped and spent some time in the vehicle while quarrelling and after sometime the girl removed a polythene bag out of the bag and removed a surgical bleed which she was having and they both came out of the vehicle. Accused person continued telling me that the girl Desire Mirembe told him that let him allow her say the last words her last words.

The last words he told me that she said that she said that he loves the mother. She loves the father. She loves the aunt. Then from there that she got a surgical bleed and put herself on the neck and they hugged each other for 8 - 10 minutes then he counted up to 3 and the girl passed the surgical bleed on the right hand side of the neck and she fell down and that he helped her to cut herself deeply. The accused person before Court now told me, that he helped her to cut herself deeply and that he stood for some time looking at her dying. After she had died he pulled the body inside the sugar plantation along the Toad inside the deep the sugar plantation and he afterwards he entered his car and he drove off to Bugiri.

After that explanation the accused person's explanation was being captured on video by ASP Kirabo and Aiko Joel. From the scene. We went back that is where we ended and we started preparing our file. My lord I have given the Court clerk a video to play on our laptop. I just want to disclose what is showing him.

*(Video plays)*

- That one is an accused person before Court now called Kirabo.
- That one is an accused person before Court now called Kirabo.
- It was in the office at CPS Lugazi Police Station.
- Now he was before me after he had been delivered by police officers from Kampala and I was now interviewing him and he was confessing to me how he is ready to take me to the scene where he murdered his girlfriend Desire Mirembe from.

That one is along Jinja-Kampala Highway that is at Bulyatete village now. There we have branched now he is taking us to the scene in the sugarcane plantation where he murdered the girlfriend from. Those ones are sugar plantations. That road is leading to Lugazi Mehta sugar plantation. On the other side with short sleeved shirt I am the one. We were moving he is taking me with that is the Detective I had to handle him behind because you never know he might run away from me and I could not handle anything. We are moving the other side behind is the road the southern part.

Now we have reached where the scene was and now he is explaining how it was. There is a small road on his right hand that side where he said the girl said we stop here and they turned. I was asking him some questions to clarify where I had not heard and understood properly. That coming in was a CID/AIP Sajabi who helped me to escort me and I told him to move away because that was a confession. That one I was noting and putting some points down. Now there he was explaining how he reached at the place. He was showing how they parked the car. There where he is standing in that place. Now he is demonstrating how the car was parked. Yes, facing the road, the other side, moving. We reached where now how the girl came out and that is how the right hand side of the vehicle where he came out and stood.

His explanation now the girl came out and requested him to allow her say the last words and they hugged themselves between 8 -10 minutes. You are seeing that hand as he is doing like this he was showing me how the girl put the surgical bleed on the hand and where he is standing there it is where the girl fell the blood stains were there. There he was trying to look for the surgical bleed where it fell. He is trying to look for the surgical bleed which the girl used to slaughter herself. That thing that she slaughtered herself helped her to cut her deeply. You see the distance I have given him is about 5 meters away. He is showing the girl fell like this. That grass you are seeing there are sugar plantations.

Now he is showing how he pulled the girl as he was going to pull the girl and Now that one pulling the girl, pulling the girl and pulling the girl when she is



dead and put there. Pulled, pulled, pulled, pulled and hide now he is hiding lying the girl inside the sugar plantation the head looking into the sugar plantation as he is demonstrating. That is how he laid the girl then he came out of the sugar plantation but he is still trying to look for the surgical bleed if he can get any. He is repeating how he was pulling the girl. How he was pulling the girl inside hiding the dead body of Desire Mirembe.

Hiding, after hiding he has repeated the second time. He has disappeared then he passed there like that he came to the second road then he passed like that back to leave. He first sat down thinking of what he has done. He sat there for some time thinking also that he can also commit suicide. That one we are trying to look for the bleed with SOCO Detective Corporal Mugabi.

We did not recover then after explanation we entered the vehicle and drove. I think it is ASP Kirabo and Aiko they were two. Aiko Joel and ASP Kirabo they were the ones on the video camera so they are the ones to know who recorded what. No he was not known to me because me my case I was first investigating murder by unknown.

**PW11:**

I Am Julius Kizito, a Christian, born again and I am now 50 years, a holder of .Bachelors of Medicine and Surgery of Makerere University Obtained 1998.

We do postmortem on police request. It has my handwriting and it has the official stamp of the hospital and my signature of course. It was postmortem report made at a request of AIP Manyi Dominic and that was requesting me to do a postmortem to a body which was brought to Kawolo hospital mortuary by Lugazi police.

So you said that the request was for you to examine a body, what did you do with that body?

It was in the names of Desire Mirembe Jemimah. That body arrived at 3:00 pm that was on 12<sup>th</sup> July 2015. We carried out a postmortem on 13<sup>th</sup> July 2015 that was at 10:00 am. She was well nourished lady, she had no particular marks that is of recent scars, tribal marks and these were our findings. She had a sieved neck with a deep cut wound on the right side of the neck and the cut had gone through the trachea and the jugular vessels. They were all cut through:

She had a served neck with a deep cut wound on the right side of the neck. The trachea and jugular were cut through. The cause of death was the deep cut wound on that neck with associated organs which were damaged there with severe hemorrhage. As a doctor, how would you relate the injuries that you saw on the neck with the cause of death? Actually when you cut off somebody's neck and cut off the trachea and jugular that you disable all the organs and actually somebody bleeds to death. You can't survive without blood. The jugular is one of the blood vessels which come directly from the heart and it supplies the head and the trachea is the one which carries oxygen from the atmosphere to the

lungs. The report is received and marked PEX10 Postmortem takes around 30-45 minutes. Before we do postmortem, I get the details of the deceased.

The weapon used to cut her; this was a sharp instrument that was used.  
*I can't tell exactly but it might have been a knife, panga I do not know but must have been a sharp instrument. It couldn't have been a surgical blade  
Normally y in surgery surgical bleeds make clean insertions and they are regular but this insertion was irregular.*

**PW12:**

In this case I remember I was called by Detective Director Mr. Musana the Deputy Director CID who directed me that I should proceed to Lugazi Police Station and meet inspector of Police who was in charge homicide called Inspector Manyi. When I reached there I met Dominic Manyi that was on 31<sup>st</sup> July 2015. When I reached there he briefed, me on the assignment I was directed to do with him. The assignment was that we are going to re-visit a scene of crime which was reconstruction of scene of crime. When I left the CID headquarters I carried along a video camera. It was Sonny video camera, Camcorder. When I reached there I found Inspector Dominic with a person who later I got to know was called Kirabo.

Manyi there and thereafter he introduced himself to Kirabo as the Inspector of police and he gave his names. He asked Kirabo if he can us through what transpired during the time when he was with a girl called Mirembe. He responded in positive. That was the time when started the recording process. I started video recording from the point at the station. He took us through to the sugar cane plantation. We drove along the main tarmac road. After some distance he told us to stop and branch off on marram road. Jinja Highway. When we branched off on the marram road, one the left hand side, he started demonstrating what he did.

He was demonstrating to Mr. Manyi who was asking him questions of what happened when he was with Desire. He kept on demonstrating while I was still recording. Yes, he was showing a point where the girl Desire was lying down. All that I recorded on video camera and where he pulled the body after she died into the sugarcane plantation; all that was what he demonstrated. He only demonstrated what happened during that time. After his demonstration, from there he took us again to another place where he claimed he had thrown the phone which was belonging to the deceased. That was on Kasasiro, the place I think it is called Kasasiro around Kitezi area. All those ones I recorded on video camera. We did not recover anything. Another place where we went was Nakumat Oasis Mall. That was the place where he said they met with the deceased. He sat where they had allegedly. He demonstrated where they had allegedly sat together when they met at Nakumat He also showed where the deceased was sitting.

Another place where I covered was where he took us to that were now police clinic. He was taken there to identify the surgical bleed the type of surgical bleed which he alleged the deceased had used for cutting herself. After all that recording, I took the tape which I used for recording to our counterparts in Police headquarters for processing which was later transferred to a DVD. I retrieved the DVD and handed over to D/SP Kirabo who was working with homicide department CID headquarters.

I am praying that the video which is still PID1 and the same is also played on the computer. I had earlier arranged with the clerk.PID1. You are not tendering. Okay we shall. She has not yet finished; why do not you wait for her to finish. He can sit down, give him la chair. State you now have to guide us what you want to do with your because he is on the machine. You want him to play everything, what do you want him to do?

He is more familiar with his recording however Court can guide us. That is from Lugazi Police Station. That is Detective the one we got at the police station at Lugazi. The person who appeared next to him is Inspector Dominic the one who was taking him through the interview. He was giving a brief of what transpired during that time. When he was with Desire? At that point we have reached at the place where the sin was committed. Am not hearing you please. At that point that was the point where we branched off going to the sugarcane plantation on the marram road Mathew told us that was the point where he branched off when he was together with Desire when he was taking us to the place where he demonstrated how the girl died.

That was now at the exact point where he was going to demonstrate what happened at the scene of crime. He is moving he said from the other point they went together to the road and turned that Desire was the one driving the car at that point. That is where the girl turned and then up to the vehicle that is where he is showing. He is pointing where they parked the vehicle which was facing the main road. He is still narrating about Desire.

How they were arguing, discussing or arguing with her Desire. That was the point where he said Desire. This was the exact place where he said the girl cut herself in the neck and where he is moving that is where he said he was pulling the body. He pulled the body inside the plantation and after pulling the body he then demonstrated where he sat thinking about the death of Desire. This is where he said he prayed. He said his prayers from this point.

Most of the words I was not picking but I concentrated on the recording that is why I was not picking the words. I knew all the words would be there on the record. He was still demonstrating how he pulled the body, I did not get the words clearly. That is concluding as he is finishing. Yes, I listened to it. It's now long since I listened to it.

I cannot recall everything proceedings. He said at this point he was remorseful he wanted to be given another chance. For what he had done; for the murder he

committed. He said if they give him another chance to go and complete his studies.

At that point Mathew was telling the investigator Dominic that he was sorry for having participated in the murder. We were guided by Dominic; the officer in charge homicide Mukono. We were proceeding there to go and recover the phone Mathew claimed he threw at a point where they pour rubbish.

**(Video is playing).**

That is the point where he took us in Kitezi along the roadside where he claimed he threw the phone. The phone was not recovered. From Kitezi we proceeded to Nakumat where Mathew said he met with Desire. That was the point where, we reached Nakumat where he claimed he met with Desire. At that point my lord he had hoped that the money was withdrawn from that Centenary Bank that is why I was focusing at the bank. At this point Mathew was taking to police Nsambya police clinic. The reason why he was taking there was to identify the type of surgical bleed he claimed Desire used for cutting herself.

From that point he demonstrated that is Mathew demonstrated again how the girl that was Desire cut herself, from that clinic. He repeated the fact from the clinic using the surgical blade. After that demonstration it ended. There was no more that is where I ended with video recording Am Detective Superintendent of Police Wanyoto Herbert, male adult of 45 years attached to CID Headquarters. That makes him a different witness. He is already on oath, we just stopped him midway because he was tendering a document so he is already on oath.

**PW14:**

Am D/SP Wanyoto Herbert a police officer attached to CID headquarters I am 45. In the month of July 2015 I was the regional CID officer Kampala Metropolitan East. On the 29<sup>th</sup> of July 2015 I received a call from my supervisor D/SSP; Namugenyi Rebecca CID; Commander Kampala Metropolitan by then asking me to report to her office on the 30<sup>th</sup> to go and record a charge and caution statement.

On the 30<sup>th</sup> July 2015 I reported to CPS Kampala as directed. I was briefed that the suspect the one before Court now and had been accused person of a case of murder of one Mirembe. I prepared myself and I was allocated where to sit. I was At CPS Kampala. The accused person was marched before me by DC Buluma to take his charge and caution statement.

I introduced myself to the accused person and I told him the reason why he was before me. He told me he was hungry, he needed to eat something before we can embark on anything and I allowed him whereupon he was served. He had his relatives around. The environment was conducive in that I asked everyone.

The accused person having brought before me I made sure the room was free of any other person and we had a cordial relationship. So I introduced the offence the charges which he had been placed against the accused person. That was the

murder. He had been charged with the offence of murder. I went ahead and read for him the charge and caution.

I cautioned him as required by law but he told me he did not understand the charge much as I tried to explain but none the less he told me he was ready and willing to narrate what transpired in regard to the deceased. For that matter he did not sign on the charge and caution part of the statement. The accused person told me he is a 3<sup>rd</sup> year Medical student of Makerere University and the deceased was his girlfriend, whom he had met at the hostel and that in the course of their relationship they developed misunderstandings. Sometimes the deceased would go move out without informing him. They developed misunderstandings in that the deceased sometimes move out without informing him and whenever he would call sometimes she would not pick neither return the calls and this had been on for some time.

Then on the 10<sup>th</sup> of July 2015 the accused person made an appointment with the deceased for purposes of meeting and discussing about their challenges. On the fateful date between 21:00 hrs and 22:00 hrs, the two caught up at Oasis Mall former Nakumat and they went in the basement. They drove into the basement where they started talking about the issues affecting them, but still no solution was found. They ended in disagreement.

That the deceased excused herself and moved out to pick some money from Cente point and when she came back she asked the accused person to take her to Namagunga. Without question the accused person accepted and drove towards Namagunga. That along the way the deceased was busy on her phone and she also opened her bag and picked out some pills, some tablets which she swallowed and when the accused person inquired what the tablets were for that the deceased told him that they were pain killers.

That when they reached Namagunga the deceased asked him to drive ahead and the duo proceeded up to Lugazi where the deceased asked the accused person to turn off the main road and enter into a sugarcane plantation. That was around midnight.

That the deceased asked the accused person to get out of the car and that the deceased got to the steering and turned the car and parked it facing the direction where they were coming from and the accused person was standing right outside of the car. That the deceased, got out of the car, hugged the accused person like for 2- 3 minutes and the deceased walked towards the sugar plantation, picked what looked like a surgical blade and cut her throat. That she fell down facing downwards and she was in pain. That the accused person went and got the hand of the deceased with the surgical blade and pushed it deeper into her neck and that resulted into a deeper cut because he says she had cut herself slightly so for him he now exerted some force on the hand to inflict a deeper wound which resulted into the deceased's death.

Having realized that the deceased had died, he dragged her body and took it inside the sugarcane plantation. He picked the deceased's phone and drove back to Kampala where he went to church for a night vigil or night prayers. That the following day friends and relatives of the deceased started calling him inquiring about the whereabouts of the deceased but he told them he doesn't know. That very day he went to Wandegaya and bought data from an agent directly into the deceased's phone. And that some pending messages which the deceased had written prior to her death were able to go out to the receipts.

From then he retreated to his village home in Bugiri and while there he received a phone call from a police officer who introduced himself as Chris and asked him whether he was a boyfriend to the deceased. It is from that point that the accused person decided to go to police particularly CPS and handed himself in and he was detained. I took down a statement as the accused person narrated what transpired which at the end of it I read it back to him and he countersigned on it having understood the contents therein. The law requires that before after reading the charge and caution you explain it to the accused person to be able to understand the nature of the charges which have been brought before him or her.

The suspect can either accept to have understood and if he says so then he is invited to countersign and he is at liberty not to state anything but in this particular case the accused person said he has not understood the charge but however he said he was ready and willing to explain what transpired in relation to the charges placed against him. This is a charge and caution statement which I recorded from the accused person on 30<sup>th</sup> of July 2015 at 10 o'clock, At Kampala Metropolitan Headquarters. I can recognize the handwriting and my signature and even the facts stated therein.

The accused person signed at the last page of the statement then it was countersigned by me. The accused person also signed on each of the page on the side at the margin here to confirm that that is his statement on each and every page.

**DW1:**

"My names are Dr. Onzivua Sylvester, I am a holder of a Bachelor's Degree in Medicine and Surgery that I obtained from Makerere University in 1992. I also hold a Master's Degree in Pathology from Makerere University that I obtained in 2003 and I have a Postgraduate Degree in Forensic Medicine that I obtained from Colleges of Medicine of South Africa in 2005. Right now am employed by Mulago Hospital as a consultant pathologist and I have been working with Mulago from the year 2000.

I was asked by this Counsel to come to Court and I didn't discuss with him why he has called me to Court so I expect him to lead me why he has called me to Court. I performed a postmortem on one of the students who was in the college

of health sciences by the names of Mirembe Desire. I did a postmortem on her body.

I made a report in respect to the death of Desire Mirembe. I made this report on the 15<sup>th</sup> of July 2015. This body arrived at 6:00 pm on the 14<sup>th</sup> of July 2015. Kawolo in Lugazi. I performed the postmortem on the 15<sup>th</sup> of July 2015. The time I did not note it but the apparent age stated to me was 19 years and it was a decomposing body of a young woman. The skin was already showing signs of decomposition. Showing evidence of decomposition. My most significant finding was a deep cut in the neck on the right side of the neck that was 15cm long and 6cm deep and the internal organs were quite pale. They were pale, the void of blood. A very strange thing I found on this body was that there was virtually no blood on this body.

Usually when we do a postmortem we find some little blood accumulated in the heart but in this particular case I did not find blood. It was as if the blood of this lady had all been drained out and my lord in cases like this I usually like to collect blood for DNA testing in case a weapon is recovered but this time I could not get that blood I had to take a swab. A swab it's a sterilized cotton similar to what you use for cleaning the ears, like ear buds but its sterilized and we place it on any organ or where there are traces of blood so that we send that to the lab for DNA tests. That is what I did but my conclusion was that the deceased had died from excessive bleeding from a single deep cut wound in the neck. I also observed another thing that this young lady had no defence wounds on her body. When a human being is attacked, one will tend to defend oneself so in that process you get injuries when you protect yourself and these are called defence wounds. All I can say is that it was a sharp heavy weapon that caused this injury. It could have been a machete, it could have been an axe but certainly something quite heavy could have caused this injury.

I have stated that it was a heavy weapon with a sharp edge. I have given the examples but I cannot say which of these could have been. When a person dies the heart stops beating and because of that blood remains stagnant in the body at the point the heart stops beating however in this particular case there was virtually no blood in the systems in the blood vessels of the deceased.

It was as if this blood had been deliberately drained from the body of the deceased. An example is if an animal is slaughtered and you hang it up the blood will all drain, you do not have to be an expert to do that. When I did not find blood in the venal system of the deceased. I actually called the investigating officers I asked them the amount of blood that was at the scene of discovery of the body. I remember I asked them how much blood was recovered or how much blood was there at the scene and apparently they told me there was not much blood. All my finding in the report was that she died of excessive bleeding. She died of hemorrhagic shock which is excessive bleeding. The evidence was the pale internal organs.

I didn't report the amount of blood on the clothing but I was working with a scene of crime officer who took pictures but there wasn't much blood on her clothing. I have said before we usually find blood in people who have died but my lord this was my first time to see a case where there was virtually no blood, unless the blood was deliberately drained or the person was in such a position that at the time of death the blood freely flowed from the cut under the effect of gravity.

There are two main things that I would probably let Court know. Blood is made up of fluid and blood cells. In a person who has anemia the volume of blood is correct but the cells, the red blood cells are the ones which are low. You would find what you call dilute blood in the body but in this particular case the fluid component was not there, the cells were not there. I didn't indicate that in my postmortem report and I didn't indicate the findings. Then from my report that it was a rare case to the investigators in regard to your findings. I did not explicitly indicate it in the report. I was asked to establish the cause of death and reasons thereof so to me my cause of death was that deep cut in the neck, the pale organs and of course the fact that it was very difficult to get blood from this body".

I did not indicate it that there were no defence injuries but I did not document any other injury.

**Analysis of Evidential Value of Evidence Above.**

The evidence above tends to show that the accused person was with the deceased person during the last moment of her life. Though there are some hiccups in the procedures adopted in assembling this evidence, I do observe that Contrary to what the defence alludes to, the evidence is consistent in recounting the fact that the accused person is the one who is shown by this evidence to have been the last person in the company of the deceased during the last moments of her life. This is supported by the testimonies of the evidence from PW5,6,7,8,9,10,11,12,13,14 and PEX11,and PEX21. The defence was of the opinion that the contents of both PEX11 and 21 should be disregarded on grounds as argued in submissions. This was mainly due to the alleged

Procedural hiccups highlighted for instance the fact that the accused person did not understand the charge and caution bit of the procedure and did not sign it. This was arguably a hiccup. The deceased cases on this point are reviewed herebelow;

In the *Court of Appeal*, Mr. Michael Akampurira, who appeared for the Appellant, criticised the judgment of the trial judge for relying on Appellant's confession to *Inspector Obitre*, which was not recorded according to law. Counsel pointed out that rule 7(a) of the Evidence (Statements to Police Officers) Rules S. 1 43-1, (Cap.43) requires that a confessionary statement should be recorded in the language understood and spoken by its maker and there after



it shall be translated into English so that if such a confession was to be put in evidence both versions of the statement would be presented. He cited Aloni Safari versus Uganda, Criminal. App. No. 40 of 1996 (unreported), in support of that proposition. Mr. Charles Ogwal-Olwa, Principal State Attorney, Counsel for the Respondent, in the same Court submitted that the law does not prohibit the method used in recording the confession of the Appellant in this case so long as it is read back to him so as to ascertain its accuracy and he signs it, as was done.

He submitted that the method adopted in recording the Appellant's confession was not fatal to the prosecution's case. He further submitted that there was other overwhelming evidence to support the Appellant's conviction. The Court of Appeal agreed that the kind of recording reported in this case was permissible under sub-rule (b) of rule 7 of the Evidence (statements to Police Officers) Rules - S L 43-1 made under section 24 (2) of the Evidence Act (Cap. 43) . After reviewing law applicable in this respect including the case of Aloni Safari versus. Uganda, (supra), the *Court of Appeal* held that;

*"The confession was properly recorded. With respect, it is our view that decisions of both the trial judge and the Court of Appeal regarding confessions were made per incuriam. In Beronda s/o Rwaruturu versus Uganda Crim. Appeal No. 117 of 1973, (1974) EA 446, the Court of Appeal for East Africa observed,"*  
*"Reference was also made in the High Court to the Evidence (Statements to Police Officers) Rule (S.L.43-1). We are quite satisfied that those rules were revoked by the repeal of section 24. During these sessions, we determined another appeal in which a confession had been recorded (Criminal) Appeal No. 131 of 1973. In that case, a charge and caution statement was taken by a magistrate in open Court, with at least two police officers present. For the reasons we have given, we regard that practice as undesirable. We would add that we have seen administrative instructions dated 2nd March, 1973, entitled "Recording of Extra— Judicial Statements" and issued to all magistrates by the Chief Justice, which we think, with respect, admirably sets out the procedure that should be followed"*

We therefore wish to point out that The Evidence (statements to Police Officers) Rules were revoked when the old S. 24 of the Evidence Act under which the rules had been made was repealed by Decree No. 25 of 1971. The rules were not saved by the Decree nor were they reinstated by the Evidence (Amendment) Act 1985. However, under S. 24 (2) of the Evidence Act as amended by the Evidence (Amendment) Act, 1985, the Attorney General is empowered to make regulations governing confessional statements of accused person persons. These need to be made expeditiously but until they are made such confessions should be governed by the Judges' Rules.

Mr. Zagyenda argued that both the trial judge and justices of appeal were wrong in law and fact in basing their findings on a defective confession which they

should have held inadmissible. He contended that the Appellant having claimed that he had been beaten up for many days, the trial judge and Court of Appeal should have satisfied them that the confession was indeed voluntary. Indeed, both Courts did observe that the manner of recording the confession had not conformed to the law.

In addition, Mr. Zagyenda, submitted that the record of proceedings of the trial shows that the Appellant denied that he had confessed claiming that he was forced to *sign a* statement he did not understand and because of the beating he had received at the hands of the police, he did not know what he said at the time of the alleged confession. Counsel for the Appellant cited the case of *Edong s/o Etat versus. (1954) 21 EACA 338* in which the *Court of Appeal for East Africa* held that;

*'a confession which was improperly obtained and which conflicted with other evidence in the same case was unsafe to rely upon as the basis of a conviction and in particular Counsel relied on the holding that "If there is a good reason to think that the chain of events leading up to the confession was started by physical violence to the person of the prisoner, it would be a valid exercise of a trial judge's discretion to reject the statement'.*

At p. 340 their Lordships in that case observed, "On the 10th January the Inspector arrested the Appellant and charged him with murder. No statement made by the Appellant when charged was put in evidence, but it would seem from his extra-judicial statement made to the magistrate on the 13<sup>th</sup> that when arrested he denied being concerned in the murder. The Appellant was kept in custody from the 10<sup>th</sup> to the 13<sup>th</sup> of January and, on the morning of 13<sup>th</sup> was taken by the inspector back to Mr. Simpson's farm where he picked up piece of iron (exhibit 1) and also pointed out a knife (exhibit 2). As already mentioned, both these objects had already been seen by the police in the Appellant's presence on the occasion of the previous visit on the 7<sup>th</sup> January

According to the Inspector's evidence, the Appellant also said that he had thrown two spears into the river, but, although the river was searched, the spears were not found.

On the afternoon of the same day, the 13<sup>th</sup> the Appellant made the statement (exhibit '4') to Mr. Purves, a Magistrate. The inspector explained, "*I think something happened in the accused person's mind to make him want to see a Magistrate.*" The Court proceeded to review other evidence in that case which contradicted the alleged confession of the Appellant and then held that the judge had failed to direct himself properly on the involuntary nature of the confession and its admissibility. They therefore allowed the appeal. Mr. Zagyenda concluded that as the facts and circumstances were similar in this case, the appeal should be similarly allowed.

Mr. Ogwal-Olwa supported the conviction and sentence of the Appellant and adopted his arguments in the *Court of Appeal*. Learned Principal State Attorney further argued that the Appellant had to show that the trial judge and the justices of the Court of Appeal had so misdirected themselves as to deprive the Appellant of a reasonable chance of acquittal. Indeed, this was the ratio decided in the *Edong's case (supra)*

It was Mr. Ogwal's opinion that the Appellant had failed to do so. He pointed out that in the Court of Appeal, the question of torture or involuntariness of the confession were not in issue. What was argued there was the improper recording of the confession by the police. In fact, involuntary confession as a ground of appeal in the Court of Appeal was abandoned by the Appellant and therefore the justices of that Court cannot be faulted on that ground. Mr. Ogwal submitted that even if that ground had been raised in the Court of Appeal, it is his view that it could have been rejected for a number of reasons.

Firstly, the reasoning of the trial judge on the confession was faultless. She considered all the aspects of the complaint that it was involuntary and that it was improperly recorded. We have already dealt with this aspects of her judgment and we agree that she cannot be faulted. The Court of Appeal agreed with her also. Mr. Ogwal argued that *Edong's case* cited by Counsel for the Appellant was easily distinguishable from the present case. The accused person, in the *Edong's case* made two statements. In the first one he denied any knowledge or involvement in the murder.

*The Supreme Court* in the case of **Mawazi versus Uganda criminal appeal 23 of 2018** emphasized earlier positions of the same Court as laid out in the case of **Amos Binuge & Others versus. Uganda Crim. Appeal No. 23 of 1989 (Supreme Court)**, where it was held: "It is trite law that when the admissibility of an extra-judicial statement is challenged then the objecting accused person must be given a chance to establish, by evidence, his grounds of objection. This is done through a trial within a trial. The purpose of the trial within a trial is to decide, upon the evidence of both sides, whether the confession should be admitted. *In the case of Tuwamoi versus Uganda (1967) EA 84* Court held that:

*"A trial Court should accept any confession which has been retracted or repudiated with caution and must, before founding a conviction on such a confession, be fully satisfied in all circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a Court will only act on the confession if corroborated in some material particular by independent evidence accepted by the Court. But corroboration is not necessary in law and the Court may act on a confession alone if it is satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true."*

In that case it was further held:

*“If the Court is satisfied that the statement is properly admissible and so admits it, then when the Court is arriving at its judgment it will consider all the evidence before it and all the circumstances of the case and in doing so will consider the weight to be placed on any confession that has been admitted. In assessing the confession the main consideration at this stage will be, is it true?”*  
Furthermore on procedure the supreme Court guided as follows in the case of *Amos Binuge & Others versus. Uganda Crim. Appeal No. 23 of 1989* (Supreme Court), it was held:

*“It is trite law that when the admissibility of an extra-judicial statement is challenged then the objecting accused person must be given a chance to establish, by evidence, his grounds of objection. This is done through a trial within a trial. ... The purpose of the trial within a trial is to decide, upon the evidence of both sides, whether the confession should be admitted.”*  
(Emphasis mine)

In the present case the record of proceedings confirms that the trial magistrate did indeed conduct a trial within a trial, pursuant to which he admitted the Appellant’s confession in evidence. Although the confession was admitted on the Court record, the Appellant hereby denies its validity, as he is well entitled to do. The question is whether or not the trial magistrate wrongfully relied on the retracted confession to convict the Appellant.

*In the case of **Tuwamoi versus Uganda (1967) EA 84** it was held:*

*“A trial Court should accept any confession which has been retracted or repudiated with caution and must, before founding a conviction on such a confession, be fully satisfied in all circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a Court will only act on the confession if corroborated in some material particular by independent evidence accepted by the Court. But corroboration is not necessary in law and the Court may act on a confession alone if it is satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true.”*

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In the case of *Amos Binuge & Others versus. Uganda Crim. Appeal No. 23 of 1989* (Supreme Court), it was held:

***The Supreme Court found in Mumbere versus Uganda [2018] UGSC 4 (09 April 2018, Re affirmed the decision in CPL Wasswa and another versus Uganda (supra) that;***

*“A delay in recording a charge and caution statement will not result in the nullification of the statement unless the Court finds that the delay was designed to force the Appellant to make an involuntary statement. In this case, the trial Court conducted a trial within a trial and found that the Appellant’s statement was made voluntarily and this was confirmed by the Court of Appeal. We find no reason to disagree with the Courts below about the manner in which the Appellant made the statement”*

The evidence before me was subjected to a trial within a trial. I found that the statement was voluntary having found no evidence of torture or coercion of the accused person a prerequisite to the making of the confession statement in issue. The only anomaly was the fact the accused person did not countersign the part of the statement where the caution is explained to him. However the same was self-corrected by the fact that the accused person went ahead to testify and countersigned his statement on all pages alongside the officer who took down the statement. I did not find this a very fatal omission in view of Article 126(2), (e) which enjoins Court to apply substantial justice without due regard to technicalities

This is also given further weight by Section 29 of the Evidence Act. This section provides that; “ *notwithstanding sections 23 and 24 of the Evidence Act when any fact is proved to as discovered in consequence of information received from a person accused of any offence, so much of that information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved*”.

This confession statement was admitted in evidence after PW6 had testified to give a background to the same and had tendered in Court the Video recording that had recording of the reconstruction of the scene of crime. Before admitting this evidence of the video an objection was raised regarding its admissibility. This Court; looked at the law and found that all necessary precautions as required by law had been taken and the evidence was rightly tendered in Court. This video was reviewed in Court and the witnesses cross-examined on it and I did not find any discrepancies in the way it was handled that violated the Electronic Act as argued by Counsel for defence. These pieces of evidence as contained in the evidence of P8, 11,12,14, 15, 16.DW1, 2, 3.and 4 alongside the rest of evidence on record serves to corroborate PEX21.

I am aware of the need to take such evidence with caution; I have indeed cautioned myself and do set out to look for independent evidence to that supports or disproves PEX21, I have found a steady line of connection in the evidence of the prosecution corroborating the content of PEX21, and do find that as guided in the case of **Festo Androa Asenua) And Kakooza Joseph Denis) versus Uganda Criminal Appeal No. 1 Of 1998** that:

*“In our view it does not matter that the second Appellant never threw the grenade at the deceased persons. According to his statement, he had participated in discussions in Nairobi about the murder of Mudhola. He was detained to drive the first Appellant to and from the scene of murder, knowing the mission of the first Appellant. That is sufficient to show his admission of guilt of the offence charged and to render the statement a confession.*

*As regards the first argument by learned Counsel for the Appellant, we would refer to the provisions of Section 28 of the Evidence Act which reads*

*"When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting him and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well*

*As against the person who makes such confession. Explanation - "offence", as used in this Section includes the abetment of or attempt to commit the offence".*

*We think that by virtue of the provisions quoted above and as we consider that EXH. P2 is a confession, the learned trial Judge and the Court of Appeal would have been justified in taking EXH. P2 into account as evidence against the first Appellant as well as against A2; the maker. Besides, as the Court of Appeal correctly held, even without taking EXH. P2 into account, the trial Judge would have convicted the first Appellant on the other available evidence such as EXH. P 20 and the confession to Ali which was heard and proved by P.W.16 which is sufficient by itself. Thus the misdirection of the learned trial Judge that Andrew mentioned in EXH. P2, is Androa, the first Appellant, did not occasion injustice to the first Appellant.*

*The learned Counsel for the Appellants contended that neither the trial Judge nor the Court of Appeal cautioned themselves before they relied on the retracted confession (EXH. P2). That there was no corroboration thereof; On the face of it, it would appear that the trial Judge did not warn herself before she acted on the confession of the second Appellant to convict the second Appellant. On reflection however, we think that the Judge was alive to the need for caution because of the following passage which appears at pages 11 and 12 of her judgment.*

*"I warned the gentlemen assessors that it was their duty to decide on the probative value of the confession but that before deciding to base a conviction on it, they had to be fully satisfied that in all the circumstances of the case it was a true confession weighing all the circumstances under which it was made".*

*Clearly if she warned the assessors to act on the confession with care then she was alive to the need for care or caution.*

*Referring to the confession by A2, the learned Judge states this at page 13 of her judgment -*

*"Regarding the circumstances under which he alleges it was made I assert with confidence no officer would have asked a prisoner to copy out a statement, over to him while he (officer) wrote out the same statement. It is*

*absolute nonsense. I find the facts/circumstances proven complement the confession with perfect certainty".*

*It is not the use of the words "care", "caution" or "warn" which show that the Judge warned or cautioned her. Care, caution or warning can be inferred from words used by, the Judge in her judgment. This is what the Court of Appeal refers to in Tuwamoi case (supra). At page 91^the Court of Appeal for East Africa stated -"We would summarise the position thus - a trial Court should accept any confession which has been retracted or repudiated or both traced and repudiated with caution and must before founding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true.*

*The same standard of proof is required in all cases and usually a Court will only act on the confession if corroborated in some material particular by independent evidence accepted by the Court. But corroboration is not necessary in law and the Court may act on a confession alone if it is fully-satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true".*

*We think that the trial Judge was satisfied that the confession cannot but be true. The learned Justices took a similar view. Thus at page 10 of the judgment of the Court of Appeal it is there stated-*

*"Given the wealth of the information contained in EXH. P2, and the circumstances in which it was made, we are satisfied that the confession must be true".*

*Both the trial Judge and the Court of Appeal quoted at length portions of the statement showing details and steps taken by the group under whose instructions the Appellants acted and the movements of A2 himself. The Court of Appeal did caution itself before accepting and confirming the convictions"*

The findings above appear to be similar to the facts before me and on the basis of that authority I hold that PEX21 is a confession properly admitted by accused person and will be taken into account along with PEX11 as evidence against the accused person.

This leads me to the admissibility of PEX11. According to the defence submissions, Court should not rely on PEX 11 since it did not comply with Section 8(2) of the Electronic Transactions Act No. 8 of 2011. According to the defence under the aforesaid section, it is the law that a person seeking to introduce a data message or an electric message has a burden of proving its authenticity by evidence of electronic record that the person claims it to be.

He pointed out that the burden of proving authenticity of the video lays on the prosecution and the prosecution with respect did not prove the authenticity by



evidence capable of supporting a finding that the video record is what PW12 claims it to be.

I have reviewed the record and cross checked the alleged comprise of the recording rendering it to be labeled as unauthentic by the defence claims. Before admitting the video on record the defence raised objections based on the same issues as above. The Court reviewed the law and made a ruling that is on record that the procedure that was taken in compiling and taking care of the video did not violate Section 8(2) of the Electronic Transactions Act No. 8 of 2011.

According to the above law under section 8(2) the requirement is “that a person seeking to introduce a data message or an electronic record in a legal proceeding has the burden of proving its authenticity that it is what he claims it to be” However section 8(2) is informed by section 8(1) which categorically provides that in legal proceedings, the rules of evidence shall not be applied so as to deny admissibility of a data message or an electronic record on grounds under;

- (a) merely on grounds that it is constituted by data message or an electronic record,
- (b) if it is the best evidence that the person adducing the evidence could reasonably be expected to obtain, or
- (c) merely on the ground that it is not in its original form

The record shows that there was no other way the state could have produce the evidence contained in PE X 11 save by terms as articulated by PW12 during cross examination when he informed Court that he took the video and for processing to CID Headquarters. I do not find any evidence of tampering with its content neither does it has cut jumps as alleged. I therefore find no merit in the defence criticism of PEX11. I do find it good evidence and do put reliance on it as such.

The other piece scientific evidence relied on by the prosecution and which the defence criticized was the evidence of the DNA. According to PW15; Onen Godfrey, his evidence on this point is hereby reproduced verbatim and was as follows:

*“The second table, table 2 is a DNA profile from exhibit Y and exhibit C2 the grey nicker, my lord exhibit Y of course it was a controlled blood for Mathew it is showing XY as you can see here and then the exhibit C2 also is showing XY the DNA profile recovered is of a male origin of that exhibit*

*The finding of table 1 shows the DNA profile was exhibit F8 is matching the DNA profile in exhibit G in the positions where we were able to recover the parallels markers is the position where we were able to recover the nail markers they were all marching.*

*Nails are signature markers on individual impositions that is why we didn't ask the 15, 16, 17 you see them in the report so where we were able to recover you see them appearing where we were not able to recover we are showing them as not recovered. You will see it in the table.*

*According to table 1 in all the positions we recovered the markers, they were matching the DNA profile of the finger nail clippings of the victim.*

*In table 2 the lab was able to confirm that the male DNA profile which was recovered from exhibit C2 the grey nicker matched the DNA profile on Exhibit Y which is the controlled blood sample of Kirabo Mathew.*

*This was my conclusion in my report. The first conclusion my lord is there is extremely strong genetic evidence that the suspect Kirabo Mathew is the donor of the DNA profile recovered from exhibit C2 grey nicker of Desire Mirembe.*

*My second conclusion was that there is extremely strong genetic evidence for the composition that the biological material on exhibit F8 that is the finger nail clippings from the deceased and G that stain recovered from the scene of crime is from the same female donor that is my conclusion my lord".*

*In spite of the evidence above, the defence Counsel argued that "PW15 failed to link the accused person DNA to the deceased. The victim's clothing including the pink nicker C1 had no DNA of the accused person and even the purported grey nicker exhibit C2 which had the DNA of the accused person did not have the DNA of the victim and it was not the nicker found on the victim. This nicker remained strange of its source. The photograph taken by PW6 which indicated that the victim had a pink nicker was put to this witness PW15 he refused to tell Court the color. This DNA analysis report PEX 19 did not link the participation of the accused person in the murder. Had the accused person held the deceased and assisted her in slitting her neck as per the confessional statement PEX21, then his DNA would have been found on the DNA of the deceased"*

With due respect, I do not find the criticism above born out with what transpired in Court. As shown from the evidence of PW15 the defence cross-examined the witness on various aspects of his evidence and he offered scientific responses to them. In the conclusion it is clearly stated that in his opinion there is extremely strong genetic evidence that the suspect Kirabo Mathew is the donor of the DNA profile recovered from exhibit C2 grey nicker of Desire Mirembe; and the second conclusion was that there is extremely strong genetic evidence for the composition that the biological material on Exhibit F8 that is the finger nail clippings from the deceased and G that stain recovered from the scene of crime is from the same female donor. There is therefore no merit in the defence claim articulated on this point.

The defence further criticized the evidence by the prosecution for failing to place the accused person at the scene of crime. The defence put up the defence of alibi and called four witnesses in proof of this line of defence. The defence stated in

submission that, the Prosecution did not place the accused person at the scene of crime and in his defence, the accused person established an alibi and called DW2 Andrew Lumanzi who testified that on that fateful night, while at Deliverance Church Makerere during overnight prayers, where he was an usher, he saw the accused person enter the church at 15 Minutes to midnight and that the accused person sat next to his brother DW3 Anthony Tisasirana until 5: a.m. They argued that DW3 Anthony Tisasirana corroborated this alibi. They argued that this testimony is consistent with the testimony of PW2 Darius Naturinda who testified that the accused person came to the hostel looking for the deceased.

It is the law that the Prosecution has to place the accused person at the scene of the crime. Counsel for the prosecution referred to that defence and pointed out that though the defense attempted to rise an alibi to the effect that the night of 10th and 11<sup>th</sup> July 2015, accused person was in church between midnight and 5am. Be that as it may be however, these defence witnesses only buttress the prosecution case, that as per accused person's confession in Charge and Caution statement and video recording, in order to disguise his participation in the killing of the deceased;

1. Accused person sent false messages to relatives to the deceased that the deceased was stuck in Jinja.
2. Pretended to look for the deceased at the deceased hostel well know he had dumped her dead body in Sugarcane Plantation.
3. Thereafter he went to church as confirmed by DW1 and DW2.

However upon intense cross examination none of the defence witnesses had knowledge of where the accused person was coming from before coming to church and therefore prosecution has proved that the accused person killed the deceased and thereafter went out to disguise his murderous act.

DW1 confirmed that indeed accused person arrived in a Mitsubishi car which confirms accused person's confession that he drove the deceased in his mother's car, a Mitsubishi to Lugazi where he cut her neck, dragged her dead body into the sugarcane plantation, sent false messages to relatives of deceased, pretended thereafter as not being the killer both in church and deceased's hostel until in his confession at police that he disclosed how he killed the deceased. Prosecution adduced evidence that the accused person was the last person to communicate to the deceased before she met her death and phone printouts of Tel number 0751957476 and Tel numbers 0701550207/0775887939 belonging to the deceased and the accused person respectively were admitted as prosecution exhibits together with the two phones of the accused person admitted as PEX 14 and PEX 15 which had his sim cards number 0701550207/0775887939.

I do agree with the state's submission that the prosecution evidence places the accused person at the Scène. This evidence is contained in the recorded video

PEX11 and the confession statement PEX21 and collaborated by all the evidence as reviewed earlier on. The confession of the accused person contains details of how the accused person connived and participated in the Murder of Mirembe Desire.

In the video recording the accused person is clearly seen leading the investigating officers to the scene of crime. There is no iota of force or machination in that recording. He is seen in jovial mood and even is seen voluntarily taking turns to correct the police officers in certain aspects of details to which he enthusiastically points out. He is seen at one spot pausing to ask for forgiveness saying he is a born again Christian and he regretted for what he did to murder Desire Mirembe. The evidence in the video corroborates the written confession evidence. The same evidence is supported by the DNA findings that the items found on the body of the deceased like the nicker C2 is associated with both the victim and accused person. This evidence corroborates itself. It is the accused person who was with desire between the days of 10<sup>th</sup> and 11<sup>th</sup> when her death occurred. The data from the phones, the evidence of both prosecution and defence witnesses is all confirming that it is Kirabo Mathew who last picked her from the hostel, it is Kirabo's phone lines which last communicated with her, it is Kirabo who after her disappearance showed up at her hostel and entered her room, it is Kirabo who volunteered information to police and led it to reconstruct the scene, It is Kirabo who confessed and asked for forgiveness in the vidiolised discourse during the reconstruction of the scene.

**Discrepancies in description of weapon, of murder and items recovered at scene of crime.**

In Edong's case (*supra*), the Court observed, "In the circumstances in which the statement of Mr. Purves was made, what was required by way of corroboration was something which could not have been known to police or to the Appellant except on the hypothesis that he was present at the time of the murder The Appellant's description of the three injuries does not exactly correspond with the injuries found by Dr. Clarke."

In this particular case, the Appellant's admissions and behavior simply indicate the knowledge of someone who was implicated in the murder of the deceased. Therefore the first ground fails. We now come to the second ground of appeal that the contradictions in the prosecution's case rendered the burden of proof on the prosecution undischarged since in the capital charges the requisite standard of proof ought to be not only beyond reasonable doubt but clearer and stronger in the capital charge than was in this case. Mr. Zagyenda, Counsel for the Appellant, argued this ground briefly. He submitted that the trial Court found that there were contradictions in the prosecution's evidence.

Mr. Zagyenda based his argument mainly on the assertions of the Appellant's denials and of his own versions of events. Counsel concluded that these denials and assertions conflicted with the testimony of prosecution witnesses, and that Appellant should be acquitted on the grounds that the standard of proof exhibited in these contradictions was not high or clear enough in such a grave offence as murder. He cited such authorities as *Hornal versus Neuberger Products, Ltd (1956) 3 ALL E.R.p.970*, *Bater versus Bater (1950) 2 ALL E.R. 458 and Obonyo V.R. (1962) EACA 542* and Kenny's Outlines of Criminal Law, (16<sup>th</sup> Edn.) (1952) in support of his proposition. In the last book of authority the learned author asserts at p. 416, 'A larger minimum of proof is necessary to support an accusation of crime than will suffice when the charge is only of a civil nature. For in the latter it is sufficient that there be a preponderance of evidence in favor of the successful party, whereas in criminal cases the burden rests upon the prosecution to prove that the accused person is guilty beyond reasonable doubt But in criminal cases the presumption of innocence is still stronger, and accordingly a still higher minimum of evidence is required and the more heinous a crime the higher will be this minimum of necessary proof. The progressive increase in the difficulty of proof, as the gravity of the accusation to be proved increases, is vividly illustrated in an extract from Lord Brougham's speech in defence of Queen Caroline.

"The evidence before us", he said 'is inadequate even to prove a debt-impotent to deprive of a civil right - ridiculous for convicting of the pettiest offence - scandalous if brought forward to support a charge of any grave character-monstrous if to ruin the honor of an English Queen".

Lord Brougham made his speech at a period in England when the use of the hyperbole and colorful language was quite fashionable, but in our view, the learned noble Lord is saying nothing more and nothing less than that in proving a debt or ruining the honor of an English Queen (*unless it be treason*), in civil cases, a party will win a case on a balance of probabilities while in the pettiest of offence or a most serious criminal charge, the onus is always on the prosecution to prove the case beyond reasonable doubt. There can be no test higher than proof beyond reasonable doubt even though in accepting that proof one should take much greater care when faced with graver offence. We believe that that is what *Lord Denning, L.J. (as he then was)* meant when he said in *Bater versus Bater (2) (1950 2 ALL E.R. - 458 at p. 459.*

*"The difference of opinion which has been evolved about the standard of proof in these cases may well turn out to be more a matter of words than anything else. It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases, the charge*

*must be proved beyond reasonable doubt, but there may be degrees of proof within that standard”.*

There may be degrees of proof but each degree is only proof beyond reasonable doubt. As we have held in our judgment in this session in *Kamese Moses versus Uganda, Crim. App. No 8/97 (unreported)* , in the proof of criminal cases, no offence is so grave as to require a higher degree of proof and none is so minor as to require a lower degree of proof, than the well-established standard of proof beyond reasonable doubt. We agree with Counsel for the Respondent that the pages cited from *Hornal versus Neuberger products, Ltd, (supra) Bater v. Rater, (supra)* and *Obonyo's case, (supra)* are insufficient to alter the law which has stood the test of time. In our view, both the trial judge and the justices of Court of Appeal correctly held that the prosecution had proved the case beyond reasonable doubt.”

The above holding helps us to resolve the defence concerns regarding the evidence given about the murder weapon by each of the different witnesses are that it could have been a heavy weapon. However in PEX11part3 at Minutes( 22:33:33),(3:44:22 ),(4:50:00),(4:51:34) the accused person in PEX11 is seen specifically showing the police a sample of the size of the weapon since he had held it in hand and felt its size while pushing the hand of the deceased for a deeper cut. That discourse is very personal and depicts someone who is speaking from prior experience and knowledge of the subject.

The accused person is also seen arguing the police officers to believe him in his assertion that a surgical blade is very sharp and is able to inflict the fatal wound since the jugular and vesicular neck muscles are the key suppliers of blood to the heart. He is heard arguing the police officers to consult with any medical person to find support for his assertion that it does not take much blood to flow out once those parts are cut for the victim to die.

This evidence weakens and rules out the defence hypothesis which was offered in that the absence of blood in the victim's body could mean that this was a ritual murder.

Similarly I did not find evidence to support the proposition that the evidence on record points to suicide in light of the strong prosecution evidence to the contrary. There is direct evidence arising from the recorded audio video (PEX11) and in the charge and caution statement (PEX21) where the accused person was captured on video confessing and accepting participation in the commission of the offence as charged.

For purposes of driving this point home excerpts of this evidence as captured on video is as here below:

According to Part one of PEX11 at minute 2:29 Mathew Kirabo is seen explaining how he and Desire Mirembe agreed to meet and go to Namagunga.

Minute 3:54: He is heard confirming that they travelled together in the same vehicle Toyota Estates Wagon black.

Minute 6:15:26: He is heard relating how it was almost coming to midnight when the death occurred.

In minute 7:04:48: to minute 9:47; Kirabo is heard giving a detailed description of what transpired at the scene. He explained that as the deceased pulled out the surgical blade from her bag he knew what was going to happen and he agreed with it. He emphasized that he was annoyed and she was also annoyed and they were quarreling. He demonstrates how they stood, how she knelt, how she cut herself, how he got her hand, and inserted the blade deeper in order to finish her off.

In minutes 2:57:57 to 3:18:03: of part 3 Kirabo Mathew is seen facing the camera and clearly asking for pardon for having participated in the murder of Desire Mirembe. The same request is repeated by him under Minute 4.06.050 to 4:58:32 of this caption paraphrased thus:

*"I request to be excused, I definitely participated .I apologize .I ask to be pardoned .I ask to be given another chance to complete my career and to be a better person"*

The defence offered by the accused person through its witnesses also further collaborated the prosecution hypothesis because the defence confirmed that the accused person was seen by the defence witnesses driving the same motor vehicle which accused person mentioned as the car they were driving with the accused person when the murder happened. The defence confirmed that the accused person went to attend the overnight prayers which the accused person also confirms to have attended in his confession statement. Also in Minute 5:07:07: Kirabo is heard on camera in PEX11 stating in his own voice that *"I drove directly to Makerere deliverance church. It was Midnight, in 20 minutes I was in Kampala and went to Deliverance Church Makerere "*

What is clarified by the other evidence on record that is in the phone calls data and the messages as alluded to by the evidence of PW1 Musoke Emanuel, and PW2, Naturinda Darius PW3; Murai Ismail. This is collaborated by the information contained in Exhibits PEX11 and in PEX 2, where accused person is heard confirming that by the time the accused person appeared at the church for overnight prayers, the murder had been committed.

Under PEX11 at minute 5:20:52 ,the accused person is captured on video giving details how he drafted a fake message and sent it to Desires phone to cover up evidence, He then took the phone and threw it in Kampala at Kasasiro, because he did not want anybody to track him down(minute 6:05:04)

He is then seen leading the team to Kasasiro Kitezi Road where he dumped Desire's phone Samsung Galax Tab in Part 3 of PEX11 (see Minute 9:31:47 to 9:50:45)

This piece of evidence is clarified by accused person himself when in his confession statement he stated that after committing the crime he drove to the church, and to the hostel, and carried out activities aimed at covering up the crime. He states that he sent messages that were on Desires phone after loading data on the phone.

This aspect of his testimony is corroborated by the testimony of PW4 who revealed that when accused person went to the hostel he asked him to help him load data on his phone. It is also important to note that the accused person led the police to the site where he allegedly dumped the phone and also took the detectives through the events before and after the murder, and this is clearly documented in the evidence in PEX11 and collaborated by PEX21 and testified to by PW6.PW8, PW9, PW10, PW11, PW12, 13 14, and PW 15.

The assessors in their joint opinion advised me to find the accused person liable on the charge.

Having reviewed all the evidence above I find that the circumstantial evidence before me is well collaborated. It shows that for a fact this was a sad story of love gone sour. The two love birds developed relationship challenges and the girl sought Counseling. In the process they agreed to meet to resolve their differences and hence agreed to meet. The last time they met was on the fateful night. The events that followed this meeting led to the death of Desire Mirembe. The mystery of what happened following this meeting is however revealed by the evidence on record as has been reviewed above. This evidence is not capable of any other explanation or hypothesis save the one offered by the prosecution that it is Mathew Kirabo who killed Desire Mirembe.

In that regard I therefore find that the prosecution has proved beyond reasonable doubt that the accused person Kirabo Mathew participated in committing the offence of murder.

I therefore find him guilty as charged and I do convict him there of as charged.

I so order.

.....

Henry I. Kawesa

**JUDGE**

30/05/2022