

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI**  
**CRIMINAL SESSIONS CASE No. 0113 OF 2017**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

1.	<b>KOMA JAMES alias GENESIO</b>	}	
2.	<b>ASUMANI LEMI alias KALE</b>	}	
3.	<b>NYUMA SAVIOUR</b>	}	..... <b>ACCUSED</b>
4.	<b>PALANDA GODFREY</b>	}	
10 5.	<b>SILA INNOCENT</b>	}	
6.	<b>ARUMADRI SONGO alias RASUL</b>	}	

**Before Hon. Justice Stephen Mubiru**

**RULING**

The six accused persons in this case are jointly indicted with two counts of murder and one count  
15 of aggravated robbery. In count One, they are indicted for Murder c/s 188 and 189 of *The Penal Code Act*. It is alleged that the accused on the night of 7<sup>th</sup> February, 2017 at Forua village in Adjumani District, murdered one Amandu Neckion. In Count two, they are indicted for Murder c/s 188 and 189 of *The Penal Code Act*. It is alleged that the accused on the night of 7<sup>th</sup> February, 2017 at Forua village in Adjumani District, murdered one Igama Dominic. In Count Three, they  
20 are indicted for Aggravated Robbery c/s 285 and 286 (1) (b) of *The Penal Code Act*. It is alleged that the accused on the night of 7<sup>th</sup> February, 2017 at Forua village in Adjumani District, robbed cash shs. 2,558,750/= from Amandu Neckion and Igama Dominic, and during, immediately before or immediately after the said robbery, used deadly weapons, to wit; a panga and iron bars on the said victims. Each of the accused pleaded not guilty to each of the three counts.

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In a bid to prove the indictment against the accused, the prosecution adduced evidence of P.W.1 Dr. Innocent Semanda of Adjumani Hospital which was admitted at the preliminary hearing. It is to the effect that on 8<sup>th</sup> February, 2017 he examined the body of Amandu Neckion and the cause of death was excessive intracranial haemorrhage. He examined the body of Igama Dominic on  
30 the same day and established the cause of death to have been respiratory failure due to hypoxia.

He also examined all the six of accused on 8<sup>th</sup> February, 2017 except A5 who was examined on 13<sup>th</sup> February, 2017. His findings were that;- A1 was found to be 45 years of age, and of normal mental status; A1 was found to be 70 years of age, and of normal mental status; A3 was found to be 25 years of age, and of normal mental status; A4 was found to be 30 years of age, and of normal mental status; A5 was found to be 35 years of age, and of normal mental status.

P.W.2 Hannington Munguryek the then branch manager of Rock Filling Station, Adjumani Branch testified that Amandu Neckion was an armed security Guard with New Uganda Security Limited company attached to Rock Filling Station Adjumani as a security guard while Igama Dominic was a locally recruited security guard, armed with a bow and arrow and both were on guard duties at the fuel station that fateful night. He arrived the station at around 5.45 am expecting to find one of the askaris on the compound but this time none of them was there. He thought they could have gone behind the office and he decided to open the office and look for them. As he moved close to the office door, he saw that the door was slightly ajar. Since he had the office key with him, he realised something was not right. Since it was dark, he ran very fast out of the fuel station and stood on the opposite side of the road, in front of Amani Radio Station, and called the police on phone. After about twenty five minutes, the police vehicle arrived and they entered the premises together. On checking around they found the dead body of Dominic behind the office and the body of the other security guard was behind the tipper parked at the fuel station. The bows and arrows were lying beside the body of Dominic. The other security guard had his gun next to him. Upon entering the office, he found that the second, inner door was broken and the safe too had been broken into and Shs 2,500,000/= in cash had been stolen.

P.W.3 Maiku Thomas testified that Igama Dominic was his son. On 8<sup>th</sup> February, 2017 at 7.00 am he received the information that Dominic had been killed. Upon receiving the information he went to the scene at the fuel station. He saw two dead bodies, one was that of his son who was a security guard at the fuel station. I did not know who killed them. He was later told by the Secretary for Defence, Odu Daniel that, A2 Asuman Lemi alias Kale, was involved in the death of his son. He said he had seen all the accused in a meeting two days before the attack and they had said after that meeting that something big was to happen soon and indeed it did happen when

the two guards were killed and money stolen. Having failed to secure any additional witnesses, the prosecution closed its case.

At the close of the prosecution case, section 73 of *The Trial on Indictments Act*, requires this  
5 court to determine whether or not the evidence adduced has established a *prima facie* case against the accused. It is only if a *prima facie* case has been made out against the accused that he should be put to his defence (see section 73 (2) of *The Trial on Indictments Act*). Where at the close of the prosecution case a *prima facie* case has not been made out, the accused would be entitled to an acquittal (See *Wabiro alias Musa v. R [1960] E.A. 184 and Kadiri Kyanju and*  
10 *Others v Uganda [1974] HCB 215*).

A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence, would convict the accused person if no evidence or explanation was set up by the defence (See *Rananlal T. Bhatt v. R. [1957] EA 332*).  
15 The evidence adduced at this stage, should be sufficient to require the accused to offer an explanation, lest he runs the risk of being convicted. It is the reason why in that case it was decided by the Eastern Africa Court of Appeal that a *prima facie* case could not be established by a mere scintilla of evidence or by any amount of worthless, discredited prosecution evidence. The prosecution though at this stage is not required to have proved the case beyond reasonable  
20 doubt since such a determination can only be made after hearing both the prosecution and the defence.

There are mainly two considerations justifying a finding that there is no *prima facie* case made out as stated in the Practice Note of Lord Parker which was published and reported in *[1962]*  
25 *ALL E.R 448* and also applied in *Uganda v. Alfred Ateu [1974] HCB 179*, as follows:-

- a) When there has been no evidence to prove an essential ingredient in the alleged offence,  
or
- b) When the evidence adduced by prosecution has been so discredited as a result of cross  
examination, or is manifestly unreliable that no reasonable court could safely convict on  
30 it.

Both counsel opted not to make a submission regarding the question whether or nor a prima facie case had been made out against any of the accused persons. At this stage, I have to determine whether the prosecution has led sufficient evidence capable of proving each of the ingredients of the offence of murder, if all the accused chose not to say anything in their respective defences, and whether such evidence has not been so discredited as a result of cross examination, or is manifestly unreliable that no reasonable court could safely convict on it. For any of the accused to be required to defend himself, the prosecution must have led evidence of such a quality or standard on each of the following essential ingredients in respect of the first two counts;

1. That death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

For any of the accused to be required to defend himself, the prosecution must have led evidence of such a quality or standard on each of the following essential ingredients in respect of the third count;

1. Theft of property belonging to another.
2. Use or use threat of use of violence against the victim(s).
3. Possession of a deadly weapon during the commission of the robbery.
4. The accused participated in commission of the robbery.

Regarding the first two counts, the fact of death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. Here two post mortem reports were admitted during the preliminary hearing. Both reports were prepared by P.W.1 Dr. Innocent Semanda of Adjumani Hospital on 8<sup>th</sup> February, 2017. Exhibit P. Ex. 1A in respect of Amandu Neckion indicates that the body was of a male of the apparent age of 30 years. Exhibit P. Ex. 1B in respect of Igama Dominic indicates that it was identified to him by Maiku Thomas. P.W.3 Maiku Thomas testified that on 8<sup>th</sup> February, 2017 at 7.00 am upon receiving the information that Dominic had been killed, he went to the scene at the fuel station where he saw two dead bodies, one of which was that of his son who was a security guard at the fuel station. Since this evidence has not been controverted by cross-examination, I find that the prosecution has led sufficient evidence capable of supporting a

finding that both Amandu Neckion and Igama Dominic are dead if all the accused opted to remain silent in their defence.

As to whether that death was as a result of an unlawful act, it is the law that any homicide (the  
5 killing of a human being by another) is presumed to have been caused unlawfully unless it was  
accidental or it was authorized by law. In the instant case, there is no direct evidence explaining  
the circumstances in which any of the two deceased died. P.W.2 Hannington Munguryek the  
then branch manager had left them alive on their routine guard duties the previous evening. He  
expected to find them patrolling the fuel station on the morning of 8<sup>th</sup> February, 2017 only to  
10 find both dead with obvious fatal injuries to the head. According to P.W.1 Dr. Innocent Semanda  
his post mortem report exhibit P. Ex. 1A, he found Amandu Neckion's cause of death to have  
been "two deep open cuts identified on the head; one which is temporal, occipital and paleatal  
bone noted. Internally, the inferior temporal sulcurs brain segment are severely traumatised  
which resulted into increased ICP and excessive intracranial haemorrhage, IC pressure. The  
15 cause of death was excessive intracranial haemorrhage." In his report exhibit P. Ex. 1A, he stated  
that Igama Dominic's cause of death to have been "blunt trauma and bruises found on the neck  
and to the scapular. Internally, found the cervical spine was injured, subtentorial mass lesion,  
brain stem abnormal impeding airway. The cause of death was respiratory failure due to  
hypoxia." The nature of the injuries and the circumstances of death do not suggest any of the  
20 deaths to have been a suicide or as a result of natural causes. This was in all probabilities a  
double homicide. Since this evidence has not been controverted by cross-examination, I find that  
the prosecution has led sufficient evidence capable of supporting a finding that both Amandu  
Neckion and Igama Dominic's are deaths were caused unlawfully if all the accused opted to  
remain silent in their defence.

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As to whether this death was actuated by malice aforethought, malice aforethought is defined by  
section 191 of the *Penal Code Act* as either an intention to cause death of a person or knowledge  
that the act causing death will probably cause the death of some person. The question is whether  
anyone intended to cause the death of the deceased or knew that death would result from their  
30 act. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts  
usually consider weapon used (in this case none was recovered) and the manner it was applied

(fatal injuries to the head and neck respectively) and the part of the body of the victim that was targeted (the head and neck respectively). The ferocity can be determined from the impact (suspected cutting and strangulation respectively). In the circumstances, malice aforethought can be inferred. Since the evidence led so far is capable of ruling out natural or accidental death, and  
5 since this evidence has not been controverted by cross-examination, I find that the prosecution has led sufficient evidence capable of supporting a finding that both Amandu Neckion and Igama Dominic's are deaths were caused with malice aforethought, if all the accused opted to remain silent in their defence.

10 With regard to the third count, there must be proof of what amounts in law to an asportation (that is carrying away) of the property of another without his or her consent. According to P.W.2 Hannington Munguryek the then branch manager of Rock Filling Station, Adjumani Branch, he had counted and locked up the evenings sales of over shs. 2,000,000/= in the safe, before he went off duty the previous evening. He planned to bank the money on the morning of 8<sup>th</sup> February,  
15 2017 only to find early in the morning at around 6.45 am that not only had the outer and inner doors to his office been forced open during the night, but also that the safe had been Brocken into and the cash stolen. There is no evidence that this was done with his consent. It is apparent that Amandu Neckion and Igama Dominic had to be killed for this to be achieved. Since this evidence has not been controverted by cross-examination, I find that the prosecution has led  
20 sufficient evidence capable of supporting a finding that over shs. 2,000,000/= was stolen that night, if all the accused opted to remain silent in their defence.

This count further requires evidence to show the use or threat of use of some force to overcome the actual or perceived resistance of the victim(s). From the circumstances of the case as  
25 evaluated in respect of the first two counts, it is apparent that Amandu Neckion and Igama Dominic had to be killed for this to be achieved. Since this evidence has not been controverted by cross-examination, I find that the prosecution has led sufficient evidence capable of supporting a finding that the theft of the over shs. 2,000,000/= that night, involved the use of deadly force to overcome the actual or perceived resistance of the victims if all the accused opted to remain  
30 silent in their defence.

It also requires possession of a deadly weapon in the process of commission of the robbery. According to section 286 (2) of *The Penal Code Act*, a deadly weapon is one which is made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death. Although none was recovered or has been exhibited in court,  
5 from the nature of the injuries inflicted on Amandu Neckion as indicated in exhibit P. Ex. 1A, including "two deep open cuts on the head," whatever was used to inflict those injuries fits the legal definition of a deadly weapon. The circumstances of the case considered as a whole suggest that the injuries seen were contemporaneous with the robbery of the cash from the safe. Since this evidence has not been controverted by cross-examination, I find that the prosecution has led  
10 sufficient evidence capable of supporting a finding that whoever committed theft of the over shs. 2,000,000/= that night, had in his or her possession a deadly weapon, if all the accused opted to remain silent in their defence.

Lastly, common to all three counts is the requirement of sufficient evidence to implicate each of  
15 the accused as having participated in committing the three offences. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing each of the accused at the scene of crime not as a mere spectator but as the perpetrator of the offence. In this, the prosecution relies entirely on unsubstantiated information given to P.W.3 Maiku Thomas by the Secretary for Defence, Odu Daniel to the effect that A2 Asuman Lemi alias Kale, was involved in the death of  
20 his son. He said he had seen all the accused in a meeting two days before the attack and they had said after that meeting that something big was to happen soon and indeed it did happen when the two guards were killed and money stolen.

This is not only hearsay, but also is evidence of mere suspicion, which by all accounts is  
25 unreasonable suspicion in absence of any objective facts linking that meeting and what was discussed thereat to any of the three counts. In my view is nowhere near what would otherwise have constituted circumstantial evidence of the quality that irresistibly points to the guilt of the accused. No reasonable court could on the basis of that evidence conclude that any of the accused participated in the commission of any of the three counts. For that reason, the  
30 prosecution has failed to lead credible evidence capable of supporting such a finding.

Having evaluated the evidence, I have formed the opinion that if all the accused chose to remain silent, this court would not have evidence sufficient to hold any of them responsible for any of the three counts. I therefore find that no prima facie case has been made out requiring any of the accused persons to be put to his defence. I accordingly, find each of the accused not guilty and  
5 hereby acquit him of the offence of Murder c/s 188 and 189 of the *Penal Code Act* preferred in counts one and two, and that of Aggravated Robbery c/s 285 and 286 (2) of *The Penal Code Act* preferred in count three. Each of them is to be set forthwith unless there are other lawful reasons for maintaining them in custody.

Dated at Adjumani this 1<sup>st</sup> day of March, 2018

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.....  
Stephen Mubiru  
Judge,  
1<sup>st</sup> March, 2018.