

Hon. Mr. Justice  
J.W.M. Tschuro /w

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT SOROTI

Murder

CRIMINAL SESSION CASE NO. 241 OF 1993.

UGANDA ..... PROSECUTOR

VERSUS

SIMON AMODOI ..... ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

J U D G M E N T:

The accused is indicted for murder contrary to sections 183 and 184 of the Penal Code Act. In the particulars of offence, it is stated that Simon Amodoi, now the accused, on the 15th day of February, 1992 at Kelim village in the Kumi District murdered Erongot Christopher.

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The prosecution case is that on the fateful day at around 7 p.m., the wife of the accused, Janet Mary Agwang, (PW1) was quarreling with Hellen Alupo, the wife of the deceased. In their quarrel, both women exchanged insulting words at each other in which PW1 was insulted that she was holding her vagina in the hand. The reason for the quarrel was that Hellen Alupo suspected PW1 to have told the deceased that she was in love with one Omunuk outside the marriage.

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At that material time, the deceased was approaching home on his return from Kumi Town. When he heard insults involving vagina, he ordered the quarreling party to stop uttering such shameful words before he could reach home. It appears the wife of the accused adhered and stopped the quarrel but the wife of the deceased did not.

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The accused who was inside his house at that time got out armed with a panga. His wife, PW1, who was already on the compound asked him where he was going but he replied that he was going to get some cigarretes at the home of his grandmother, PW2. By then, PW2 was intending to bathe near her house on the adjacent compound, about 130 metres away from the home of the accused. There was only one path passing near the home of PW2 which the accused took and it was also the very path the deceased was following to get back home from the opposite side.

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Before the incident, Abisaki Akurut, (PW2) was at that time intending to bathe near her house. The accused asked her to put on her clothes so that he could pass which she did. At a distance of about 100 metres away from that spot, PW2 heard a cutting noise and soon also heard something falling down.

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She promptly raised an alarm saying, "Amodoi is killing his father," and also that "These people are killing themselves." The "Amodoi" the witness referred to is the accused and 'father' was the deceased who was actually the father of the accused.

Both PW1 and PW3 who answered the alarm heard it somewhat differently. PW1 said she heard the alarm of PW2 as saying, "Amodoi has killed his father; ... but PW3, a brother of the accused, heard: "You people of this area, Amodoi is killing his father." It appears, however, that it was Okiring Stephen Richard, (PW3), the brother of the accused who reached the scene of crime first because he found the accused some distance away but both PW1 and PW2 found he had already fled.

Be that as it may, PW3 seeing the accused standing some distance away from the scene, asked him what made him kill the father. By then the deceased was lying down with a stream of blood flowing from the cut wounds on the left side of the neck and the accused replied: "Okiring, so you can also say that. If you want come here." The witness refused to approach him but instead the accused threw a panga which missed him. Both PW1 and PW2 also confirmed the injury described by PW3 and also said that they found the panga with blood stains at the scene of crime. It was the Parish chief of the area who picked the blood stained panga and handed it to the Police at Kumi.

The following day, the accused was arrested by the L.D.Us from his hiding place in the swamp and was handed to the Police. On that same day, D/IP W. Rakany - PW4 visited the scene of crime. He found a pool of blood but the body was already taken home. He also saw a very severe cut wound on the left side of the neck as the only injury visible. He called a doctor to examine the body after which he authorised the burial. He took a sample of blood and on his return to the Police station, he found a blood stained panga allegedly used in the commission of the crime. He sent the blood sample together with the panga to the Uganda Government Chemist for verification. At the trial, neither the said blood sample nor the panga results were exhibited in court. Also medical report was not tendered in court for no apparent reason.

The accused in his defence, admitted having killed his father on 15.2.92, but said he did not intend to do so. On the fateful day, the accused said at around 3 p.m. he had gone to the swamp about half a mile away from his home to cut firewood. He supplements his income from farming by selling firewood. He returned home at around 5 p.m. with a bundle of firewood and by sunset he was going to fetch more firewood which he had left in the bush.



In addition, he was going away at that time because he did not want to hear shameful words in the quarrel between his wife (PW1) and the wife of the deceased one Hellen Alupo in which it was said one of them was handling her vagina in the hand.

On his way to collect firewood, the accused said he asked his grandmother, PW2, to put on her clothes so that he could pass. PW2 had removed her clothes because she wanted to bathe. As he was passing, he saw the deceased wrestling with his wife, Hellen Alupo at a distance of about ten paces from the path he was following. Alupo escaped and ran towards him for help but the deceased also followed her. The deceased then grabbed the panga which the accused had and in a bid to cut his wife, he cut the accused instead on the left arm twice. As a result of that provocation, the accused said in self defence, he also grabbed the panga and revenged. He said he did not intend to kill his father but the panga strayed and cut the deceased on the left side of the neck which resulted into his death.

The accused maintained that before the incident, he was friendly to his deceased father and that he had never quarreled with the deceased on any single occasion in the past. Even on the fateful day, he had not picked a quarrel with the deceased. He denied telling his wife, PW1 and his brother, PW2 at Kumi Police station that the injuries on his left arm were caused by the L.D.Us who arrested him. He admitted that the L.D.Us arrested him at his hiding place in the swamp but denied being tortured on his way to the Police station or at all. He claimed it was him who sent a boy called Emmanuel Outokol who was coming back from a well to ask the L.D.Us to take him to the Police station. He never talked to his wife or brother at Kumi Police station because they found he had already been taken to court. If anything it was his mother alone who used to take food for him in the Police custody.

In their submissions, both the learned Counsel agreed that the victim, Erongot Christopher, actually died. Although the prosecution did not produce medical evidence, the fact of death and the cause of it could be established otherwise than by medical evidence: R. v. Cheya & Anor. (1973) EA 500. In the instant case, eye witnesses testified that Erongot Christopher actually died. As there is no dispute from both sides over the death of the deceased Erongot Christopher, the prosecution has established that element.

The prosecution has to establish that that death was caused unlawfully with malice aforethought. The defence submission is that the accused admitted killing his deceased father but did not intend to do so.



The evidence on record is nothing but guess work. Medical evidence was available but was not adduced in court to prove the cause of death, it is submitted. Evidence is that the deceased was violent that night and PW1 also informed court that the deceased was drunk that night. That evidence, it is submitted, is consistent with the accused's story that when he was going to fetch firewood, Alupo rushed to him for help and it was in the peak of struggle over the panga that both the deceased and the accused sustained injuries. In the premises, the prosecution has failed, it is submitted, to prove the element of malice aforethought beyond reasonable doubt. There was provocation and self defence in the circumstances. 5 10

The prosecution submission is that the wife of the accused, PW1, informed court that on three different occasions, she had seen her husband sharpen his panga before the incident. The accused and his father used to quarrel, each vowing to kill one another. His grandmother, PW2, testified that Hellen Alupo did not quarrel with PW1 while standing on her (PW2's) compound on the material day. Both PW1 and PW2 heard the deceased talking as he was returning from Kumi Town, stopping the women quarreling on the compound. The accused also heard his father stop the women from quarreling but picked his panga and answered his wife that he was going to get cigarretes from his grandmother - PW2. He told PW2 to dress up to allow him pass without mentioning anything about cigarretes. Within a very short time, PW2 heard a sound of cutting and something falling down. She immediately raised an alarm that Amodoi now the accused was killing his father. All the prosecution witnesses who visited the scene of crime, saw a severe cut wound on the left side of the deceased's neck. The accused confirmed also that he had cut his deceased father on that spot of the body. The accused ran away from the scene of crime without telling those who answered the alarm why he had cut his father. PW3 who talked to him, the accused never complained that the father assaulted him. PW1 and PW2 said that there was no fight that night between Alupo and the deceased and that there was no sign of struggle at all at the scene. The accused threw the panga at PW3 but missed him. All that sampled, it is submitted, the conduct of the accused immediately before and shortly after the incident tended to show that he had the intention to kill his father for reasons best known to him. 15 20 25 30 35

There was no provocation, it is submitted, as alleged by the accused as the incident took so short a time. The defence of provocation is available if the act complained of was so sudden and the accused acted in the heat of passion without any moment to cool down. Words uttered by the father to stop women quarreling did not annoy the accused. Any reasonable person, it is submitted, would have stopped the quarreling women which the deceased did exactly but the accused said he was only disgusted with the words. 40

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It is further submitted that the accused did not indicate the defence of provocation early enough or that of self defence. He told PW1 and PW3 at Kumi Police station that the injuries on his left arm were caused by the L.D.Us on his arrest. He lied because he did not tell his wife - PW1 or his brother - PW3 that his father attacked him. Instead the accused cut a particular part of the body as it was still bright enough as he said it was at sunset. The weapon used was a panga which is a deadly weapon capable of causing death, especially as it cut the neck which is a vulnerable part of the body. All that evidence, it is submitted, shows that the accused had intended to kill his deceased father.


From both sides of the coin as submitted above, I have no doubt in my mind, as the gentlemen assessors did, that whoever killed the deceased, did so with malice aforethought and in that regard, I entirely agree with the submission of the learned Counsel for the prosecution. Chain of events as clearly stated by the learned State prosecutor is in the evidence on record which shows that the killer had the intention of murdering the deceased.

The only question now is who was that killer? Evidence is that the wife of the accused, PW1, saw the accused leave their home armed with a panga which was eventually found with blood stains on it at the scene. She identified it. PW2 whom the accused asked to put on her clothes soon heard a sound of cutting and something fell down. She raised an alarm while implicating the accused with what had happened. PW3 who answered the alarm found the accused at the scene with that panga. The accused also admitted that he used that panga to cut the deceased. In the premises, it was the accused who caused the death of the deceased with malice aforethought.


The defence of provocation or self-defence does not apply in the instant case. On the material day, there was no quarrel or fight between the accused and his deceased father. The quarrel between the two women did not annoy him in any way to the extent of making him attack his father the way he did. If any, he should have stopped that quarrel which the deceased did as a reasonable person would have done. There is also an overwhelming evidence that the deceased did not fight his wife Hellen Alupo on that fateful day nor was there any evidence that the deceased was violent that night as alleged. Even if the body was smelling crude enguli, there is no evidence that the deceased picked a fight with the accused. He died in fact without uttering any word at all. Past quarrels between the accused and the deceased availed them a cooling moment. Even the old scars shown to the court were not a result of cuts by a panga as the gentlemen assessors and I found.

They were very faint indeed and consistent with the story that L.D.Us roughed up the accused on his arrest for this offence. Both his wife and his brother in fact confirmed this in their evidence. The accused did not shake them on that evidence nor did the defence raise the defence of provocation or self-defence to the prosecution witnesses. The defence of provocation or self-defence is concocted as an after-thought and is false. There was no grudge between the accused and the prosecution witnesses and nobody threatened them to say what they had told the court as alleged.


In the end result, I am in agreement with the opinions of the gentlemen assessors that the accused be found guilty as charged. The accused is therefore found guilty of murder, contrary to sections 183 and 184 of the Penal Code Act and he is accordingly convicted.

  
STEVEN GEORGE ENGWAU  
JUDGE  
4.4.94.

19.5.94: Accused before the court.  
Mr. Kakembo for the accused on State brief present.  
Ms Nandawula for the State present.  
Judgment delivered in open court.

  
STEVEN GEORGE ENGWAU  
JUDGE  
19.5.94.

SENTENCE: There is only one punishment for murder under sections 183 and 184 of the Penal Code Act. In the premises, the accused shall suffer death in a manner as by law prescribed.

  
STEVEN GEORGE ENGWAU  
JUDGE  
19.5.94.