

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCCT 00 – CR- SC- 0020 OF 2016

UGANDA ----- PROSECUTOR

5

VERSUS

MUTEBI RONALD AND

LUBWAMA GEOFREY JEFF ----- ACCUSED

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

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RULING

Both Accused were charged on two accounts. 1) Murder contrary to Section 188 and 189 of the Penal Code Act.

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It is alleged by the Prosecution that both Accused persons and others still at large between 12:00 am – 1:30 am or thereabout in the night of 31.12.2014, to 01.01.15 at Kampala Serena Hotel, along Nile Avenue, in Kampala District, with malice aforethought unlawfully killed Gatete Andrew.

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2) Aggravated Robbery C/S 285 and 286 (2) (b) of the Penal Code Act.

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That the Accused persons and others still at large between 12:00 am and 1:30 am or thereabout in the night of 31.12.14 and 01.01.15 at Kampala Serena Hotel along Nile Avenue in Kampala District robbed one Andrew Gatete of a black berry mobile telephone and a wallet containing unspecified amount of money and immediately before or immediately after the time of the said robbery used a deadly weapon, to wit, a hammer on the said Andrew Gatete.

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Both Accused denied the offences.

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The prosecution had so far called seven witnesses when they tried to put in evidence a charge and caution statement recorded by Pw7 DAIP Apidra Simon Agaba as an exhibit.

Counsel for the Accused objected to the statement being tendered in on the ground that A₁ denied the statement claiming it was obtained by fraud. And that he just signed it after he was promised that he would be released after signing. And that before signing the statement he had
5 been tortured and had a cut wound at the back of his neck which had been stitched by the Police Surgeon. Further that he had also been pinched with pliers by the Police detectives including PW7.

Court accordingly ordered a trial within a trial to determine whether the
10 statement was admissible or not.

Pw1 a Police Officer Apidra Simon Agaba told court that he is a Police officer and an Investigator of Crimes in addition to which he prosecutes offenders. He is attached to Kampala Metropolitan Police.

15 In 2015, he was attached to CPS Kampala and recalls recording a confession statement from A₁, Ronald Mutebi on 15.01.15. While he sits with four other Officers in the room 55, he asked them to leave the room, so that he could create a conducive environment for taking the
20 statement.

Describing the room where the statement was recorded, the witness said it has three tables, one for him and two shared by the other Officers.

25 Though he carries a gun when he is going for operations, that day he was not armed.

He prepared carbon papers and plain papers for taking the statement.

30 A1 was escorted to his room 55 at 3pm by the cells guards, who was also not armed. The Accused was given a seat and on being asked how he was feeling, the Accused said he was okay.

35 He was then asked which other language he speaks and he said Luganda. And opted to use English and Luganda.

That the Accused told the witness that he stopped in Senior 4 and was unemployed and therefore could not earn a living. But that he was
40 ready to confess.

The witness once again introduced himself to him and also explained what a confession statement is and that it can be used in evidence against the maker. The Accused opted to use both English and Luganda when recording the statement.

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That the Accused was in good physical condition and mental state. He was walking ably and without any complications.

When asked if he had been beaten or threatened by the Officer who had escorted him, he replied that he had not been subjected to any of those. They talked freely to each other.

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The charge was read to him and it was explained that murder was an offence under SS. 188 and 189 of the Penal Code Act.

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The Accused stated that he had understood the charge and he signed by putting his names "Mutebi Ronald". The witness countersigned the paper.

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The witness then took the Accused through the caution that **"he needed not state anything, but that whatever he stated would be put down in writing and could be used in evidence"**.

The Accused stated that he understood the caution and he wrote his name beside it. The witness countersigned.

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Asked whether it was true that he and others had killed the deceased, the Accused said it was true.

He told the witness that on 31.12.14 around 8:00pm he was at Kazo Central drinking alcohol with a friend called Geoffrey alias Jeff.

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At about 10pm his friend Geoffrey said that they walk to Casablanca Wandegeya to have fun. Accused had Shs. 1000/- but Geoffrey did not have any money.

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The two walked on foot to Casablanca, Wandegeya. When they found the place was not busy, they continued to Serena Hotel on foot. They reached the gates of Serena Hotel at about midnight. Fire works were being displayed to usher in the New Year.

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Since they did not have money, Geoffrey suggested to A₁ that they remain outside and way lay passers by.

5 A few minutes later, Geoffrey saw a young man walking out of Serena Hotel. Godfrey then asked A₁ to walk ahead, while he Geoffrey trailed the young man from behind. Geoffrey further told A₁ that if he heard him struggling with the young man, he should turn back and join hands with him so that they over power the young man.

10 When A₁ heard the struggles behind him, he turned around to help Geoffrey. He saw Geoffrey holding the young man by the neck and had over powered him.

15 Geoffrey reached into the pockets of the young man, picked a telephone and money purse and handed them over to A₁.

When Geoffrey tried to let go of the young man, he realized that he was weak and laid him on the side of the road.

20 Geoffrey then asked A₁ to stop a bodaboda and they left the scene going to Kazo where they were staying.

25 They arrived at Kazo between 2-2.30am, and Geoffrey paid the bodaboda Shs. 12,000/- and yet before that he had said he did not have any money on him.

A₂ then asked A₁ to hand over the wallet and phone and that they would meet next day.

30 The next day at about 10am, the two met and Geoffrey handed over to A₁ a Blackberry phone and instructed him to sell it at Shs. 100,000/-.

35 Two days later A₁ sold the phone to one Ddamulira in Kazo for Shs. 60,000/-. Ddamulira paid Shs. 40,000/- and promised to pay the balance later.

A₁ took the money to A₂ Geoffrey who gave him Shs. 10,000/- promising to give him more after receiving the balance.

40 A₁ described the way A₂ was dressed when Andrew Gatete was killed. That he was wearing a Khaki cap, a blue stripped T. Shirt and army like boots (similar to those put on by people from Iraq).

Two weeks later A₁ was arrested at Kazo by plain clothed Policemen. Asked about the deceased, A₁ not knowing he had died admitted having been with A₂ that night. He then led Police to A₂'s house. A₂ was
5 arrested on 13.01.15. A search was conducted at his home and among the things recovered were the army like boots.

In conclusion, Mutebi A₁ stated that **"it is true I was with Geoffrey who strangled the boy"**. The statement was read back to him in
10 both English and Luganda and A₁ said he agreed with the contents. He signed as Mutebi Ronald and the witness countersigned.

The Officer asserted that before A₁ made the statement, no promises were made and neither was he threatened or intimidated and no
15 violence was meted out against him.

The charge and caution statement is dated 15.01.15, 3.10pm. A₁'s age was about 27 years and that he had said he stayed in Kazo, Kawempe Division.
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The interaction took about one hour. The statement indicates 14.01.15 but the Officer insists he took it on 15.01.15 and that indicating 14.01.15 was a mistake.

25 The witness further stated that he did not know how A₁ was arrested or that he was arrested by Flying Squad.

When he saw and on 15.01.15 he did not see wounds between his fingers or any bandage or wound at the back of his neck. The language
30 used to record the statement was English but the information was obtained in Luganda

And that it was read back in Luganda to the Accused. There is no Luganda version of the statement as there was no need for it.
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It was emphasized that the witness had never seen Mutebi A₁ before that date when the statement was taken.

The State called another witness Dr. Barungi Tadeus, the Police
40 Surgeon.

After informing court of his qualifications and duties, he testified that on 20.01.15 at 11.40am he was asked to examine A₁ who was charged with murder and aggravated robbery. The request was made by CPS Kampala.

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He examined A₁ on 22.01.15 and found him to be of apparent age of 29 years. He had no physical injuries on his body and his mental status was judged normal. The findings were filled into Police Form 24 on which the request for examination was made. The report was then signed and stamped and sent back to CPS.

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The doctor explained that physical injuries include wounds, bruises, and broken bones. Because scars are healed wounds there are not indicated.

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The Police form 24 was tendered in evidence as Exhibit TTP₁.

In cross examination that witness asserted that he did not see any stitches on the back of the Accused's neck or any swollen jaw, or other injuries.

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In his defence the Accused person Mutebi Ronald stated that he is 34 years and that at the time of the arrest he was 31 years of age. He used to live in Namayumba Village Luweero District most of the time but when in Kampala, he would stay in Kazo.

25

He went to school as far as Primary four. But can read some things and is able to write his name. He can read a Luganda Bible and also understood simple things in English.

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That he was arrested on 12.01.15 by people in plain clothes, from Bwaise, while walking back to his mother's home in Kazo. Time was 5pm and taken to CPS.

On 13.01.15, he was tortured by people from Flying Squad, including Pw1. They picked him from CPS at 2am from a cell where he had been put all by himself, took him to Kisugu and put him in a room without recording his particulars in the counter book.

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The CID Officer was together with others who included Kasiba Katende Faisal and others whose names the Accused does not know. He got to

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know Katenda Faisal at Luzira when he was brought to the ward where Accused was and got to know Kasibante at CPS.

5 Taken from Kisugu and back to CPS on 14.05.15 at 6pm, he was taken before one Aaron Baguma. Baguma called Kasiba and instructed him to handle the Accused. That he was then taken to room 24. As Baguma was handing him over to Kasiba, he kicked him in the chest.

10 That while in room 24, he was tortured by four men from the Flying Squad including Pw1. They put metals between his fingers and tied him with rubber bands. And that the Officer then told the men to press him until he accepted and signed their papers.

15 Accused contends that he had refused to sign papers which had been brought to him.

Also that the CID Officer who was there instructed A₁ to tell his people to come with shillings two million. He was not told what the money was for.

20 Further that, after torturing him, they asked him to sign papers so that they would release him and he goes for treatment.

25 At 2pm, Kasiba hit him on the right jaw and Accused claims to have lost two teeth as a result. And after that, they including Pw1 continued beating him with the intention to make him accept to sign the statement, that is put his name on it.

30 It is the further contention of the Accused that he did not know what was in the document they wanted him to sign. He had never been charged by the CID Officer with any case.

35 The CID Officer then hit him on the neck and he fell down as he was dizzy and he was bleeding. Left alone after that he cannot recall how he was taken back to the cell.

40 Later, two men went to the cell with a lady. They included the CID Officer and Faisal Katende. The CID Officer directed Accused to remove his T-Shirt as it was stained with blood.

The woman stitched the wound on the back of A₁'s neck, wiped blood from it and put a plaster. She also gave him panadol promising to bring him more medicine.

5 After the wound was stitched, the CID Officer brought papers and told Accused to write his name there, promising to release him thereafter so that he could go and get treatment.

10 But after putting his name on the papers, he was left in the cell for sometime.

15 The Accused states that he does not know what he signed because he never went to school. But that he was told they were release papers. That he does not know of any other reason he signed the papers as none was explained to him.

20 In cross examination the Accused insisted that it was Pw1 who commanded the Police Officers who tortured him. That he would talk to the Police Officers in Swahili, a language Accused does not know.

25 That the Police never asked in which language he could understand because he was tortured from the time he was arrested. And that he was never asked anything regarding this case and papers were only brought to him by Kasiba who directed him to sign so that he could be released.

30 Nothing was explained to him about the document he signed and the contents thereof were never read to him. Kasiba asked him where he was born and he told him Kazo.

The Accused admits that his name appears on all the pages of the document in his handwriting.

35 That he was treated once he was remanded at Luzira but was never taken anywhere else for examination.

In re-examination, the Accused added that they used pliers on the back and a flat iron on his left hand and other things on the back of his neck.

40 (Court noted the scar on the back of the neck, scar on the right shoulder, and scars on both hands said to be from needle pricks.)

Finally that he did not make the statement and does not know it.

5 Having heard both parties in the trial within a trial and cognizant of the fact that no submissions were made by both Counsel in this respect, I find that such statement as is being contested by A₁ only becomes irrelevant if court having regard to the state of mind of the Accused person and all the surrounding circumstances, finds that the statement was made as a result of violence, force, threat, inducement or promise calculated in the opinion of the court to cause an untrue statement to be made – S.24 Evidence Act.

15 The Accused in the present case denies ever having made the statement and insists that he only wrote his name on it after he was tortured and injured and was then promised to be released if he signed the statement.

20 However, I find that, the Accused's denial is belied by the detailed account he gave of what transpired on the date in question and the part each of the Accused is alleged to have played in the killing of the deceased.

It would take exceptional ingenuity for a Police Officer to come up with such details of an event if he was not told by the alleged maker.

25 The above is coupled with the information regarding the places of residence of the Accused persons who at the time of the recording of the statement were unknown to the Police Officer. There is no plausible evidence that the Officer was part of the arresting team. He only received the Accused person to record the statement.

30 While the Accused denies making the statement and claims that he was tortured, Pw2 the Doctor who examined him a few days after the making of the statement did not find any injuries allegedly inflicted on him by his assailants.

35 Although court found a scar at the back of the Accused's neck the period of time which has elapsed since the Accused was arrested cannot rule out the possibility of his having incurred the injuries later.

40 And court is also left to wonder how he could have possibly written his name on the statement if his fingers were all injured at the time the statement was signed.

5 The possibility that the Doctor Pw2 could have missed the injuries on the neck and the injury alleged to have been inflicted on the right arm of the Accused with a hot iron, and injuries on the back allegedly caused by pliers is very remote.

The Doctor was not known to the Accused person, what reasons would he have to tell lies upon examining the Accused person, court wonders?

10 The medical report was admitted in evidence without any objection from the defence.

Pw1 testified to the State that A1 was in when the statement was taken. This evidence is accepted by the court.

15 The procedure followed in obtaining the statement was described to court. Court finds that it met all the requirements laid out under S.23 of the Evidence Act.

20 The statement was recorded in English but Pw1 told court that he read it back to the Accused in Luganda. And while there is no Luganda translation thereof, the Accused told court that he understood a bit of simple English.

25 The charge and caution statement will therefore be admitted in evidence. The objection of Counsel for the Accused is overruled for all the above reasons.

30 The weight to be placed upon the statement will be determined by court after the whole case has been heard.

Counsel for the Accused will also get an opportunity to cross examine the witness who recorded the statement regarding his evidence.

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FLAVIA SENOGA ANGLIN
JUDGE
31.07.18