

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

CORAM: ODOKI, C.J., ODER, KAROKORA, KANYEIHAMBA,
KATO, J.J.S.C.

CRIMINAL APPEAL NO. 20 OF 2002

BETWEEN

BAINOMUGISHA HERBERT ::::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA :: RESPONDENT

[Appeal from the decision of the Court of Appeal given at Kampala by Hon. Mukasa-Kikonyogo, DCJ, Engwau and Twinomujuni, J.J.A. on 8/5/02 in Criminal Appeal No. 20 of 2002].

JUDGMENT OF THE COURT

The appellant was indicted, tried, convicted and sentenced to death by the High Court at Bushenyi for murder, contrary to sections 183 and 184 of the Penal Code Act.

He appealed to the Court of Appeal which dismissed it and confirmed conviction and sentence. Hence this appeal.

The background to this case is that on 4th March, 1997, the appellant and his brother, both armed with pangas and accompanied by their mother, went to the home of their father,

Azaria Katsyomezo, which was also the home of his second wife and cut him to death while inflicting serious bodily harm to his second wife and her two children, PW 7 and PW 8.

The appeal to this court was based on two grounds but the appellant, through his counsel abandoned the first ground. Ground 2 as amended reads as follows:

"The learned Justices of Appeal misdirected themselves when they relied on the discredited evidence of PW 6, PW 7 and PW 8 to uphold the appellant's conviction."

Mr. Stephen Mubiru, counsel for the appellant contended that the evidence of the children of the co-wife should not have been relied upon, especially as that of their mother was clearly discredited by the learned trial judge. He further contended that the appellant's evidence that it was his father who attacked him first should have been believed and the courts below should have found that he killed his father after provocation and in self-defence.

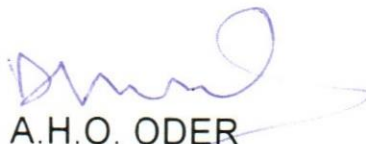
Mrs. Betty Khisa, Senior Principal State Attorney and counsel for the respondent supported both the conviction and sentence. She argued that the evidence of PW 6, PW 7 and PW8 was properly evaluated by both the High Court and the Court of Appeal and the fact that they were all related to the deceased is not a reason for rejecting or discrediting their evidence.

Having heard both counsel and examined the record of proceedings, we are satisfied that the appellant was properly convicted. We find no merit in this appeal. It is accordingly dismissed.

Dated at Mengo this 17th day of February, 2004.



B.J. ODOKI
CHIEF JUSTICE



A.H.O. ODER
JUSTICE OF THE SUPREME COURT



A.N. KAROKORA
JUSTICE OF THE SUPREME COURT



G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT



C.M. KATÓ
JUSTICE OF THE SUPREME COURT