

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT TORORO**

HCT- 04 – CR – SC – 0040/2008

UGANDA

PROSECUTOR

VERSUS

WEJULI SADIK DAVID

ACCUSED

JUDGMENT

BEFORE HON. JUSTICE JOHN BOSCO KATUTSI THE JUDGE

Accused at the bar is indicted for Murder an offence contrary to section 188 and punishable under section 189 of the Penal Code Act.

It is alleged that he on the 28th day of November 2006, at Sofia “B” village in the Busia District in Eastern Uganda murdered Florence Namuli Kisuyil.

Sewradda Joseph is the biological father of deceased Namuli Kisuyi and father in – law to the accused. He testified that he received information that his daughter now deceased was not being seen at her home after fighting with her husband. The informant told him that he had seen the accused in the act of carrying away his property from his home.

He got concerned and went to the home of the accused. Neither his daughter nor the accused was at home. He got more concerned and went to check in near by hospital in the Republic of Kenya. Failing to find her there, he went and reported to police.

Police referred him to the L. C. I Chairman of the area. Together with the L. C. I Chairman he went back to the home of the accused. The uncle of accused told them that he had seen accused carrying away property from his home. With the L. C. official they went to police where this time they found the accused. Siwadu Charles is a teacher and area L. C. I chairman of the accused’s village.

He testified that an old man went to his home with a photograph of Weguli now the accused and told him that police had referred him to him. The old man told him that he suspected Weguli now the accused to have killed his daughter now deceased.

The witness went with the old man to the home of the accused. The uncle of the accused told him that the accused had told him that he had problems and that his wife had died and had buried her. The uncle went further to tell him that he had advised accused to go and report to police but before that accused had showed him where he had buried his wife. He went to police with the old man.

There they found the accused. Later the body was exhumed medically examined and buried.

No.14427 Dt. CPL OKOTH ALFRED is the police officer to whom the accused reported to have fought with his wife.

He went to the scene with the O/C CID had the body exhumed and a post mortem examination carried out.

Pastor Muwunge Rolnald is the uncle of the accused. Accused's father was his biological brother. He testified that on 30-11-06 at about 10am. Accused went to his home. He had not seen him for the past two days. Accused told me that his wife had died and he had buried her in a pit latrine. He advised him to go and report to police.

In his unsworn statement accused said that he returned home from work only to find his wife dead. He reported her death to both his relatives and those of his wife. She was buried in his absence as he had gone to police.

This is a charge of Murder. Prosecution is enjoined to prove :-

- (a) That the victim of the alleged murder dead.
- (b) That the cause of death was an unlawful act or omission
- (c) Of malice aforethought and
- (d) By the accused at the bar.

The above ingredients must be proved beyond reasonable doubt needless to say that the onus is always on the prosecution and does not shift to the accused except in circumstances which are irrelevant here.

There is no doubt that FLORENCE NAMULI KISUYI is dead. She is indeed dead and buried. Every homicide is presumed unlawful and the evidence here does not displace the presumption. There is no doubt on the evidence on record that deceased died at the hands of the accused.

The evidence of Accused's uncle indisputably establishes this fact.

The lies told by the accused that he found his wife dead and reported to his relatives and those of his wife lends support to the evidence of the uncle which evidence needless to say does not need support. The only question is the issue of malice aforethought.

Assessors advised me to find that malice aforethought had been established.

I note however that this was husband and wife. There is no evidence of sour relationship prior to this unfortunate incident

Medical examination reveals injuries that can be sustained in a serious fight. Fighting perse does not prove malice afore night. Yes accused did secretly burry the remains of his wife.

This could have been due to panic by a rustic stupid young men. I think under the circumstance it is safe to hold that malice a fore thought has not been proved to the required degree and accept the submission by defence counsel that the accused be found guilty of a lesser offence of Manslaughter contrary to section 187 of the Penal Code act and convicted accordingly.

J.B.Katutsi
Judge
16/10/08

16/10/08

Court as before

Judgment read

J.B.Katutsi
Judge
16/10/08

Namakoye: There is no previous conviction. Pray for deterrence severe enough to cam other would be killers.

Majanga: Accused has been on remand for one year and eleven months. He is young man who is likely to reform . He has two little children . Pray for leniency.

J.B.Katutsi
Judge
13/10/08

SENTENCE AND REASONS

In cold blood the convict killed his wife. Wives are there to be loved, cherished but not be battled to death . He not one, battled his wife to death but went ahead and buried secretly in of all places a pit latrine thus denying her decent burial. Accused's behaviour at the time was not different from that of a beast. He is a beast in a human form.

He needs to **lenonit** at all. He is capable of learning. The husband be the wife battlers should also take note that the Court of Law will not condone such beating behaviour.

I however note to period he said to have been on remand. I deem a sentence of 17 years and to be a remand too long.

He is sentenced accordingly.

J.B.Katutsi
Judge
16/10/08