**Bagatagira v Uganda**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 24 August 2005

**Case Number:** 4/04

**Before:** Oder, Tsekooko, Karokora, Mulenga and Kanyeihamba JJSC

**Sourced by:** LawAfrica

*[1] Appellate procedure – Duty of a first Appellate Court – Re-evaluation of evidence on record –*

*Whether Court of Appeal had adequately discharged its duty.*

*[2] Criminal law – Murder – Deceased cut with a panga – Whether evidence proved that the appellant*

*inflicted fatal injuries.*

*[3] Criminal procedure – Constitutional law – Sentencing – Mandatory death sentences – Whether*

*mandatory death sentences were constitutional.*

*[4] Evidence – Alibi – Identification – Appellant claiming to have been in Tanzania – Whether*

*prosecution had disproved the alibi.*

**Editor’s Summary**

The appellant was tried and convicted of the offence of murder by the High Court. At his trial, evidence was adduced by the prosecution to the effect that on 1 July 1999, the appellant cut the deceased, whom he apparently owed some money, with a *panga*. Testimony was heard from one witness who saw the appellant cut the deceased and from another who testified that he met the appellant fleeing the scene with the *panga*. After the attack, the appellant disappeared from the village. He was eventually arrested in

Tanzania some ten months later. In his defence the appellant claimed that he was not at the scene on the material day as he had gone to Tanzania to seek employment. The trial court rejected the alibi defence and convicted him. His first appeal to the Court of Appeal was dismissed.

He now appealed to the Supreme Court on the grounds that the Court of Appeal had failed to evaluate the appellant’s evidence and that it had relied on evidence that was tainted with falsehoods, contradictions and inconsistencies. He also appealed that he had not been allowed to mitigate regarding the sentence.

**Held** – The evidence of the two witnesses, who had known the appellant since childhood, together with the fact that the incident happened in broad daylight disproved the appellant’s alibi. The Court of Appeal had re-evaluated the evidence regarding the alibi and had been in agreement with the trial court that the appellant was at the scene and that his alibi should be rejected.

There was no inconsistency between the evidence of the first prosecution witness and the post-mortem report. Accordingly, the courts below could not be faulted for finding that the witnesses’ testimony was reliable.

With regard to the issue of mitigation, confirmation of the sentence would be postponed until determination of the appeal in Constitutional Petition number 6 of 2003.

Appeal against conviction dismissed, confirmation of sentence deferred.

**Cases referred to in judgment:**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Tajar v Uganda* EACA criminal appeal number 167 of 1969

*Zahura v Uganda* Supreme Court criminal appeal number 16 of 2004