**Tumuhairwe v Uganda**

[2000] 2 EA 555 (SCU)

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

**Date of judgment:** 9 March 2000

**Case Number:** 17/99

**Before:** Wambuzi CJ, Tsekooko, Mulenga, Kanyeihamba and

Kikonyogo JJSC

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Criminal law – Murder – Deceased dying of burns – Appellant confessing to setting deceased on fire*

*to two witnesses – Confession done to one witness in the presence of the police and to the other witness*

*alone – Section 24 – Evidence Act – Whether confessions admissible.*

*[2] Evidence – Dying declaration – Corroboration of dying declaration – Whether corroboration a*

*matter of practice or law.*

**Editor’s Summary**

The Appellant and the deceased were husband and wife, respectively. They both lived in the same rented house with a shop operated by the deceased.

On 3 April 1994 at about 9:00 pm the deceased made an alarm which was answered by many people including PW2, the landlady. The deceased told PW2 that she had been set on fire with paraffin.

When PW4 visited the scene, the deceased told him that the Appellant had burnt her. The deceased later died in hospital of a burns-related cause. PW5 stated that the Appellant confessed that he had burnt the deceased because the deceased had refused him sex. This confession was made between the Appellant and PW5. PW3 also stated that the Appellant had confessed to PW3 in the custody of police officers at the scene. The Appellant was charged with murder before the High Court and was convicted and sentenced to death. He appealed to the Court of Appeal and the appeal was dismissed. He then appealed further to the Supreme Court on the grounds that the Court of Appeal had erred in fact and law by rejecting his defence of alibi and admitting the confessions to PW3 and PW5 and admitting the dying declaration to PW4 without corroboration. The ground of alibi was abandoned.

**Held** – The Appellant’s confession to PW3 was inadmissible because it did not comply with section 24 of the Evidence Act which provided that confessions made by a person while he was in the custody of a police officer would not be admissible unless made in the immediate presence of a police officer of or above the rank of an assistant inspector or a magistrate; *PC Kikwemba v Uganda* criminal appeal number

16 of 1991 (UR) followed.

The confession to PW5 was admissible, because section 24 of the Evidence Act was not applicable thereto. This was because the confession was made when the Appellant was not in the custody of the police. The Court of Appeal was therefore justified in admitting the evidence of PW5.

Generally speaking, it was unsafe to base a conviction on a dying declaration solely, unless there was satisfactory corroboration, although that was a matter of practice and not a rule of law. *Okale v Republic*,

*Tuwamoi v Uganda*, *Tomasi and others v Uganda*, *Kalisiti v Uganda* and *Tindigwihura v Uganda* followed.

The dying declaration was corroborated by the confession to PW5 and other circumstantial evidence.

There was sufficient evidence to convict the Appellant.

Appeal dismissed.

**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)

*Kalisiti v Uganda* criminal appeal number 7 of 1987 (UR) – **F**

*Okale v Republic* [1965] EA 555 – **F**

*PC Kikwemba v Uganda* criminal appeal number 16/91 (UR) – **F**

*Tindigwihura v Uganda* criminal.appeal number 9 of 1987 (UR) – **F**

*Tomasi and others v Uganda* [1977] HCB 61 – **F**

*Tuwamoi v Uganda* [1976] EA 84 – **F**