THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.93 OF 2021

(Arising from High Court Criminal Case No.001 of 2016)

MWIJUKYE HANNINGTON::APPELLANT

VERSUS

UGANDA:::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Mpigi before E.K. Kabanda, J dated 20th September, 2016 in High Court Criminal Session Case No.001 of 2016)

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. LADY JUSTICE HELLEN OBURA, JA

HON. LADY JUSTICE EVA. K. LUSWATA, JA

JUDGMENT OF THE COURT

The appellant was indicted for the offence of murder, in High Court Criminal Case No.001 of 2016 before E.K Kabanda, J at Mpigi. On 20th September, 2016, he was convicted on his own plea of guilty to the offence of murder contrary to sections 188 and 189 of the Penal Code Act, following a plea bargaining process. He was sentenced to 19 years' imprisonment.

Background

The facts of this case as can be discerned from the record are that the deceased, one Mugalansi Robert, and the appellant, Mwijukye Hannington were close friends. The deceased was a butcher while the appellant was a casual worker and the deceased was last seen with the appellant on 24th July, 2015. Namukasa Joyce, a friend of the deceased waited for the deceased but in vain, he never returned home so she went searching for him. Noting that the deceased was last seen with the appellant whose whereabouts were also unknown, Namukasa reported the matter to police. The deceased's body was later found in the chair in his rented home in a pool of blood with deep cut wounds on the head with the neck almost severed. A blood stained knife was also seen nearby. The body was examined at the scene and the cause of death was excessive bleeding. A search for the appellant ensued and he was found in Fort Portal. He was arrested and upon medical examination, he was found to be of normal mental state.

At trial, a plea bargain agreement was entered into between the appellant and the prosecution wherein they agreed to a sentence of 20 years' imprisonment. Having deducted a period of one year that the appellant had spent on remand, the learned trial Judge sentenced him to 19 years' imprisonment.

Being aggrieved with the sentence, the appellant with leave of this Court appealed against the sentence on the following ground.

That the learned trial Judge erred in law and fact in sentencing the appellant to 19 years' imprisonment which was harsh and excessive in the circumstances thereby occasioning a miscarriage of justice.

Representation

At the hearing of the appeal, Mr. Birikano Stephen appeared for the appellant while the respondent was represented by Ms. Nabasa Caroline Hope, Principal Assistant DPP and Ms. Emily Mutuzo, State Attorney.

Appellant's Submissions

Counsel for the appellant submitted that the sentence of 19 years imposed on the appellant was harsh and excessive considering that the appellant was a very young man of 28 years old, was a first offender, remorseful, and pleaded guilty, he therefore did not waste Court's time. In counsel's view, the sentence was harsh considering the said mitigating factors. That the appellant had a high chance of reforming and reconciling with the community. He relied on ***Bikanga Daniel V Uganda, Court of Appeal Criminal Appeal No.38 of 2000*** for the proposition that the age of an accused person is always a material consideration that ought to be taken into account. Counsel prayed that the appeal be allowed and proposed a sentence of 10 years' imprisonment.

Respondent's submissions

Counsel for the respondent objected to the appeal and submitted that the record of appeal clearly showed that the sentence arose out of a plea bargaining

agreement which was properly conducted in accordance with the Judicature (Plea Bargain) Rules, 2016 which prescribe the procedure to be followed in conducting plea bargain. He added that regarding the allegations of the learned trial Judge's sentence being harsh, the discretion of the trial Judge under the Judicature (Plea Bargain) Rules, 2016 is minimal as opposed to an ordinary trial and under Rule 13 of the Judicature (Plea Bargain) Rules, 2016, the trial Judge does not have the power to alter or amend the terms of the Plea Bargain Agreement. That the only remedy available to the learned trial Judge who is not in agreement with the terms of the Plea Bargaining Agreement is to reject it and refer the case to a full trial. He relied on ***Agaba Emmanuel and 2 Others V Uganda, Criminal Appeal No.139 of 2017*** where Court noted that plea bargaining creates an agreement between the prosecutor and the accused, with all the features of an agreement in the law of contract. However, the Court is not privy to the agreement and cannot redefine it.

Counsel further submitted that in a plea bargain, the duty to determine the sentence is vested in the parties to the agreement, that is the state and the accused person. That it is through the process of bargaining that the issue of harshness and lenience of sentence are considered. Further that the appellant in this case was charged with murder and the maximum prescribed sentence for the offence of murder under sections 188 and 189 is death. Counsel added that the issue of leniency was duly taken care of when the prosecution agreed to the sentence of 20 years' imprisonment as opposed to the maximum sentence prescribed for the offence under the Penal Code Act.

Counsel contended that all the mitigating factors and aggravating factors were taken into account for example that the appellant was a first offender, appeared remorseful and the period of 12 months the appellant had spent on remand was deducted from the sentence of 20 years. He added that the learned trial Judge can neither be faulted for being harsh nor for failing to give a lenient sentence because the sentences were agreed upon by the parties. He relied on ***Eria Angelo Versus Uganda, Criminal Appeal No.439 of 2015*** where this Court maintained the sentence of 36 years and 8 months' imprisonment having found that the plea bargain agreement was valid.

Court's Consideration

This being a first appeal we are required to evaluate the evidence and make our own inference on all issues of law and fact. This is the requirement of the law under Rule 30(1) of the Rules of this Court. See also ***Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No.10 of 1997.***

This Court can only interfere with the sentence of the trial Court if that sentence is illegal or is based on a wrong principle or the Court has overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. See ***Kiwalabye Bernard V Uganda, Supreme Court Criminal Appeal No.143 of 2001.***

The learned trial Judge is faulted for sentencing the appellant to 19 years' imprisonment which was harsh and excessive in the circumstances thereby occasioning a miscarriage of justice.

The appellant entered into a plea bargain agreement and agreed to a sentence of 20 years himself. He went ahead to append his signature to the said agreement and now contends that the said sentence was harsh and excessive.

The learned trial Judge took into consideration both the aggravating and mitigating factors before sentencing the appellant to 19 years' imprisonment. He stated as follows;

"This Court has taken into consideration the presented aggravating and mitigating factors. Under the circumstances of the commission of the offence of murder in this case, the aggravating circumstances have over weighed the mitigated factors namely;

1) *The manner in which the offence was committed given no pictorial presentation of the deceased.*
2) *The part of the body aimed at i.e in that the deceased's head was severed, therefore as presented by the state, the severity of the offence and manner of its commission is of grievous....*

The Court has not considered the conduct after the facts given that the conduct of the accused and purpose for which accused left the place of the offence remains objective am also constrained to consider the vulnerability of the deceased at the time of the offence as committed i.e during sleep and he had no chance of defending himself.

However, in the event that the accused is a first offender and appears remorseful and having deducted the time of 12 months, the convict has been

on remand. I hereby sentence the convict Mwijukye Hannington to 19 (nineteen) years imprisonment from the date of conviction."

We find that a sentence of 19 years imprisonment for the offence of murder in the circumstances of this case was neither harsh nor excessive. The Supreme Court and this Court have imposed or confirmed sentences in the range of 19 years or even higher than 19 years.

The sentence agreed upon by the parties in their plea bargain agreement was valid. The Appellant was sentenced to a custodial term of imprisonment which he agreed to in the plea bargain agreement.

In ***Eria Angelo Versus Uganda (Supra)***, this Court maintained the sentence of 36 years and 8 months' imprisonment having found that the plea bargain agreement was valid.

In ***Okiria Simon V Uganda, Court of Appeal Criminal Appeal No.658 of 2014***, the appellant was tried and convicted of the offence of murder and was sentenced to 20 years' imprisonment. On appeal, this Court upheld the sentence imposed by the trial Court.

We find no merit in this appeal and accordingly dismiss it.

We find no reason to interfere with the imposed sentence. The sentence of 19 years imposed upon the appellant by the trial Court is hereby confirmed.

We so order.

Dated at Kampala this ....10th.....day of ....November.....2023.

Cheborion Barishaki

JUSTICE OF APPEAL

Hellen Obura

JUSTICE OF APPEAL

Eva. K. Luswata

JUSTICE OF APPEAL