



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT ARUA**

CORAM: CHEBORION; MUGENYI AND GASHIRABAKYE, JJA

CRIMINAL APPEAL NO. 331 OF 2017

OBOTE DAVID APPELLANT

VERSUS

UGANDA RESPONDENT

**(Appeal from the High Court of Uganda at Lira (Nabisinde, J) in Criminal Case
No.15 of 2015)**

JUDGMENT OF THE COURT

A. Background

1. Mr. David Obote ('the Appellant') was, pursuant to a plea bargain agreement, convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120 and sentenced to twenty (20) years' imprisonment.
2. The Appellant subsequently lodged the present Appeal on the singular ground that the trial judge erred in law when she relied upon a plea bargain agreement that did not mention failed the time spent on remand in arriving at the negotiated 20-year sentence. Citing the decisions of Rwabugande Moses v Uganda, Criminal Appeal No. 25 of 2014 and Kyalimpa Edward vs Uganda, Criminal Appeal No. 10 of 1995 (both, Supreme Court), learned Counsel urged the Court to vary the sentence by the period of 3 years, 1 month and 17 days that the Appellant had spent on remand as at the date of his sentencing.
3. The Respondent concedes the illegality of the 20-year sentence to the extent that it falls short on the constitutional prerogative to deduct the period a convict has spent on remand. Learned State Counsel invited this Court to invoke its powers under section 11 of the Judicature Act, Cap. 11 and section 132 of the Trial on Indictment Act, Cap. 23 to remedy the error.
4. At the hearing, Mr. Samuel Ondoma of M/s Alaka & Co. Advocates appeared for the Appellants while the Respondent was represented by Mr. Patrick Omia, the Resident Chief State Attorney of Arua.

B. Determination

5. The succinct provisions of Article 23(8) of the Constitution and Guideline 15 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 ('the Sentencing Guidelines'), as elaborately elucidated in Rwabugande Moses v Uganda (supra), enjoin courts to compute applicable sentences by arithmetically deducting the period that convicts have spent on remand.
6. It is well established law that an appellate court may interfere with the sentence imposed by a trial court where the sentence so imposed is tainted with illegality.

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See Kiwalabye vs. Uganda, Criminal Appeal No.143 of 2001 and Kyalimpa Edward vs. Uganda, Criminal Appeal No.10 of 1995 (both, Supreme Court).

7. The constitutional obligation upon a trial court to consider the period spent on remand would, in my view, extend to sentences arrived at by a plea bargain. Accordingly, the 20-year sentence that was handed down by the trial court would be illegal to the extent of its violation of Article 23(8) of the Constitution as clarified by the Rwabugande case.

C. Conclusion

8. In the result, this Appeal against sentence is upheld. The 20-year sentence imposed upon the Appellant by the trial court is hereby varied by deducting therefrom the period of three (3) years, one (1) month and seventeen (17) days that the Appellant spent on remand.

It is so ordered.

Dated and delivered at Kampala this 30th day of March, 2022.



Barishaki Cheborion
Justice of Appeal



Monica K. Mugenyi
Justice of Appeal



Christopher Gashirabake
Justice of Appeal