

# THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT ARUA

CRIMINAL APPEAL NO.0161 OF 2013

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- 1. OCEN RICHARD
- 2. OGWETE SIMON
- 3. OKELLO GEORGE..... APPELLANTS

VERSUS

UGANDA.....RESPONDENT

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*(Arising out of the judgment and sentence of DR. WINFRED NABISINDE J. Criminal Case No. 0091 of 2011 delivered on the 4<sup>th</sup> of November 2013)*

**Coram: HON.MR. JUSTICE CHEBORION BARISHAKI, JA**  
**HON. LADY. JUSTICE MONICA MUGENYI, JA**  
**HON.MR.JUSTICE CHRISTOPHER GASHIRABAKE, JA**

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### Background.

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The Appellants were charged and convicted for the offence of murder contrary to sections **188** and **189** of the **Penal Code Act**. It was alleged that on the 1<sup>st</sup> January 2011 at around 5:30 pm, at Ajibijibi Village, Oyoro Parish, Myere sub county in Oyam district, the Appellants unlawfully murdered Abang Betty. The deceased sent her 3 children to fetch water from the well. Shortly after they had left one of the children Ayo Jasper came running to the deceased and informed her that they had been attacked at the well by the children of the 1<sup>st</sup> Appellant and even grabbed their jerry cans.

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The deceased immediately walked to the well to see what had befallen her children, but she was attacked instead by the relatives of the Appellants prompting her to raise an alarm for help. Instead of helping her, A1 joined the team of assaulters carrying club, A2 and A3 came with pieces of spilt firewood which they all used to beat the deceased several times all over her body. The deceased sustained injuries on her body, head and face which were covered with

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5 blood. The deceased had already been stripped naked by the accused persons and  
her husband who came following for rescue was also assaulted as soon as he  
reached the scene forcing him to flee the scene before he was rescued by the  
defence secretary. The accused followed while dragging the deceased towards the  
home of the Local Council 1 Chairperson, but she collapsed and fell down  
10 unconscious in the presence of the LC1 chairperson. She died soon thereafter. The  
Appellants thereafter fled the scene abandoning the deceased 's body.

The Appellants were tried and each convicted of murder and sentenced to life  
imprisonment. Now the Appellants appeal against this sentence to this honourable  
court on one ground that:

15                    “The learned trial judge erred in law and fact when she sentenced the  
Appellants to life imprisonment which sentence is harsh and manifestly  
excessive in the circumstances of case”

### **Representation**

The Appellant was Represented by Daisy P. Bandaru. The Respondent was  
20 represented by Ms. Nakafero Fatimah.

### **Submissions of counsel for the Appellant.**

The ground of appeal is that the learned trial Judge erred in law and fact when  
she sentenced the Appellants to life imprisonment which sentence is harsh and  
manifestly excessive in the circumstances of the case. Counsel submitted that this  
25 court will only interfere with a sentence imposed by the trial court in a situation  
where the sentence is either illegal, founded upon a wrong principle of law and  
will equally do so where the trial court has not considered a material factor in the  
case or has imposed a sentenced which is harsh and manifestly excessive in the  
circumstances as seen in **Kizito Senkula VS Uganda; SC Crim Appeal No.24**  
30 **of 2001** and **Ninsiima Gilbert VS. Uganda, CA Criminal Appeal No. 180 of**  
**2010**. Counsel submitted that the sentence of life imprisonment was not only

  
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5 harsh but also manifestly excessive in the circumstances of the case and there is the need for this court as an appellate court to maintain consistency or uniformity in sentencing. In the case of **Mbunya Godfrey VS. Uganda; SC Criminal Appeal NO. OF 2011**, the Supreme Court took cognizance of this principle and held that:

10 “We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistence in sentencing”

In **Attorney General VS. Suzan Kigula and others; SC Constitutional Petition No.03 of 2006** court pointed out that murderers vary in character as others are first offenders some are remorseful, and that court should consider  
15 these factors while its exercising sentencing discretion. Court handed down a 20 years sentence for her after being readmitted to high court for purposes of resentencing. In **Mbunya Godfrey VS. Uganda; SC Crim Appeal No. 4 of 2011**; where the Appellant was a first-time offender, the Supreme Court set aside the sentence of death and substituted it with a term of 25 years’ imprisonment on  
20 the Appellant who had murdered his own wife. In **Akbar Hussein Godi VS Uganda, SC Criminal Appeal No.3 of 2013**, a case which involved murder of a spouse too, the Appellant was sentenced to 25 years in prison which sentence was upheld by the Supreme Court.

Similarly, in **Korobe Joseph VS. Uganda, CA Criminal Appeal No. 243 of**  
25 **2013**, Court of Appeal reduced the sentence to 14 years from 25 years’ imprisonment for murder because he was advanced in age and had shown remorse. Court concluded that the sentences in the instant case were harsh and manifestly excessive in the circumstances. Counsel prayed that courts interfere with the sentence to bring it in uniformity with sentences made in similar offences  
30 as shown above.

Counsel prayed that this court substitutes the sentence with a sentence of imprisonment for a period of 20years.






**Submissions of Counsel for the Respondent.**

Counsel submitted that whereas the Appellants relied on the case of **Mbunya Godfrey V Uganda, SCCA No.4 of 2011**, counsel submitted that the circumstances under which the sentence of 35 years' imprisonment was reduced to 21 are very distinguishable from the present case because the lower courts failed to include the amount of time spent on remand which is not applicable to a sentence of life imprisonment of the instant case. Counsel submitted that the authority above is very distinguishable from this appeal and opposed the appeal in its entirety supporting the sentence imposed by the learned trial judge.

In responding to the appeal, counsel considered the role of the appellate Court as in **Wamutabaniwe Jamiru V Uganda, SCCA No. 74 of 2007** which agrees with **Kamya Johnson Wavamunno, CA No. 16 of 2000**, where court held that the appellate court is not to interfere with the sentence imposed by the trial court which has exercised its discretion, unless the exercise of the discretion or is such that it results in the sentence imposed to be manifestly excessive of or so slow to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstance which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle.

Likely the principles upon which an appellate court should interfere with a sentence imposed by the trial court were considered by the supreme court case of **Kyalimpa Edward V Uganda, Supreme Court Criminal Appeal No. 10 of 1995** where court referred to the case of **R V DE Haviland (1983) 5 CR. APP. R 109** and held that it is a practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial judge

  
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5 was manifestly so excessive to amount to an injustice, which according to the Appellants is the main focus as regards to the sentence.

Counsel as well submitted on the case of **Karisa Moses V Uganda (SCCA NO. 23 OF 2016)** where the Supreme Court confirmed a life sentence saying that:

10 “An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion, it is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice”

15 Counsel further submitted that the maximum penalty for the offence of murder is death as under the **Penal Code Act Section 189** and at arriving at this sentence the trial Judge had a comprehensive consideration of both the mitigating factors. Counsel further noted that the sentences of life imprisonment meted out to each of the Appellants was neither harsh nor excessive and court rightly directed itself  
20 on the law and applied it to the facts. Counsel relied on the Supreme Court case of **Bashasha Sharif VS Uganda SCCA No. 82 of 2018**, where court noted that while upholding a death sentence “...one of the objectives of sentencing is deterrence. We agree that the manner in which the Appellant killed an innocent child and dismembered his body depicts a depraved person devoid of all  
25 humanity.”

Counsel went on to submit that the judgment is one that deserves to pass a sentence that was deterrent not only to the Appellants but also to the public to learn and respect the law. In the case of **Turyahabwe Ezra & 12 others SCCA NO. 50 of 2015**, the Supreme Court upheld a sentence of life imprisonment for a  
30 murder that arose out of mob justice. Counsel further prayed that court considered the authorities as sufficient for a submission to uphold the sentence of life imprisonment against the Appellant.



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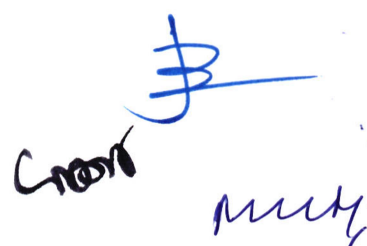
5 In regard to the argument about consistency of sentencing by Counsel for the  
Appellants, counsel disagreed and contended that although they are mindful of  
the principle of consistency in sentencing, each case presents its own facts upon  
which court exercises its discretion and an appropriate sentence is the matter for  
the discretion of a sentencing court. In the case of **Muwonge Fulgensio V**  
10 **Uganda, CACA No. 0586 of 2014** this court justified diversion from the  
principle of consistency in sentencing while dealing with the Appellants appeal  
against a life imprisonment sentence handed down by the resentencing judge  
following the case of Suzan Kigula. Furthermore, relying on the Supreme Court  
case of **Kaddu Kavulu Lawrence V Uganda, SCCA NO. 72 of 2018** the  
15 Supreme Court appeared to cast doubt on the application of the consistency  
principle when it ignored arguments raised for the Appellant about the weight to  
be placed on precedents in sentencing. The said decision would imply that if the  
lower court had taken into account the relevant aggravating and mitigating factors  
prior to the passing of the relevant sentences imposed therein appeared harsher  
20 than those in the relevant precedents. The Supreme court further stated that:

“Counsel for appellants presented to court related cases where the appellants  
were sentenced to lesser imprisonment terms and his view the court of appeal  
ought to have taken those into consideration and given the appellant a  
somewhat similar sentence. It is our view that an appropriate sentence is the  
25 matter for the discretion of a sentencing court. Each case presents its own facts  
upon which a court exercises its discretion.”

Counsel prayed that this honourable court upholds the sentence of life  
imprisonment and dismisses the appeal for it was neither harsh nor manifestly  
excessive.

### 30 **Consideration of Court**

This is a first appellate court and as such this court is required under **Rule 30  
(1)(a) of the Judicature ( Court of Appeal Rules) Directions S.I 13-10** to re-  
appraise the evidence and make its inferences on issues of law and fact while

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5 making allowance for the fact that they did not see the witnesses in order to observe their demeanor. See **Kifamunte vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997 and Pandy vs. R [1957] E.A 336.**

This is an appeal against the sentence passed by the trial court. It is now settled law that for an appellate court to interfere with the discretion of the trial court while passing sentence, it must be shown that the sentence is illegal or founded upon a wrong principle of the law, or where the trial court failed to take into account an important matter or circumstance, or made an error in principle, or imposed a sentence which is harsh and manifestly excessive in the circumstances. See: **Kiwalabye Bernard vs. Uganda, Supreme Court Criminal Appeal No. 15 143 of 2001.**

Under the Constitutional sentencing guidelines, **principle 6** lays down the General sentencing principles which include:

- a. Gravity of the offence, including the degree of culpability of the offender;
- b. The nature of the offence
- 20 c. The need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances;
- d. Any information provided to the court concerning the effect of the offence on the victim or the community including victim impact statement or community impact statement;
- 25 e. The offender's personal, family, community or cultural background
- f. Any outcomes of restorative justice processes that have occurred, or are likely to occur, in relation to the particular case.
- g. The circumstances prevailing at the time the offence was committed up to the time of sentencing.
- 30 h. Any previous convictions of the offender; or
- i. Any other circumstances court considers relevant.



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5 **Under principle 24,**

1. In capital offences, the court shall consider imposing a sentence of imprisonment for life where the circumstances of the offence do not justify a sentence of death.
2. in determining whether the circumstances of an offence or offender justify imposing a death sentence or imprisonment of life, court shall consider the factors aggravating or mitigating a death sentence.

Under the third schedule the sentencing range for murder cases starts from 35 years. It is evident from the record of the trial court that the Court put all the above into consideration.

15 It is now an established position of the law that a sentencing court is bound by the principle of consistency. This principle is to the effect that the sentences passed by the trial Court must as much as circumstances may permit, be similar to those passed in previously decided cases having a resemblance of facts. See: **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015.**

**Guideline No. 6(c) of the (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** provides that:

25 “Every court shall when sentencing an offender take into account the need for consistency sentencing an offender take into the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances”

30 We agree with the above position of the law. In order to enhance uniformity in sentencing consistency is very key. It also in a way upholds the principle of equity that justice should not only be done but must be seen to be done.

We are also alive to the fact that the offence with which the Appellant was convicted carries a maximum penalty of death. However, it has to be noted that as court is guided by the principle of consistency it has to put into consideration



5 the aggravating and mitigating factors, nature of the offence in addition to other  
factors, the circumstances prevailing at the time the offence was committed. It is  
very evident on the record that the trial court was very alive to all these factors as  
guided under Principle 6 of the Sentencing guidelines, court noted the fact that  
despite the fact that the Appellants were first offenders and had children to look  
10 after, the deceased had permanently left her children innocently. It was not an  
issue of self-defence but she was left defenceless by the Appellants. The principle  
of consistency does not rob court of its duty to exercise its discretion in a matter  
before it. But rather it guides court as it exercises its discretion to reach a just  
decision. We are therefore persuaded by the position of the law in the case cited  
15 by Counsel for the Respondent **Kaddu Kavulu Lawrence vs. Uganda, SCCA  
No. 72 of 2018**, where the Supreme Court held that:

“Counsel for the Appellants presented to court related cases where the  
Appellants were sentenced to lesser imprisonment terms and in his view the  
court of appeal ought to have taken those into consideration and given the  
20 Appellant a somewhat similar sentence. It is our view that an appropriate  
sentence is the matter for the discretion of a sentencing court. Each case  
presents its own facts upon which a court exercises its discretion”

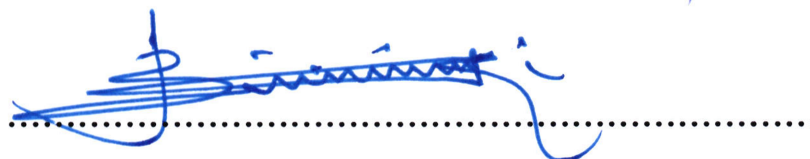
Considering the circumstances of this case and the way the deceased was killed  
we find that the sentence of the lower court was not harsh and excessive.

25 We therefore find that the Appeal has no merit.


The sentence of the lower court is therefore upheld.

We so order

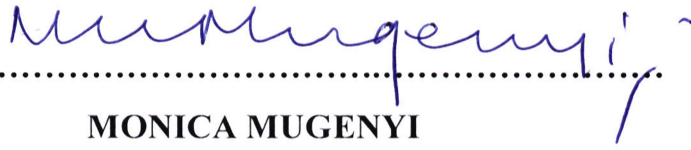
Dated at Arua this ..... day of ..... 2023

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**CHEBORION BARISHAKI**  
**JUSTICE OF APPEAL**

  
C. Barishaki

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**MONICA MUGENYI**  
**JUSTICE OF APPEAL**

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**CHRISTOPHER GASHIRABAKE**  
**JUSTICE OF APPEAL**