# THE REPUBLIC OF UGANDA

## IN THE COURT OF APPEAL OF UGANDA AT GULU

## CRIMINAL APPEAL NO. 178 OF 2012

**ODWAKA NIXON..... APPELLANT**

**VERSUS**

**UGANDA..... RESPONDENT**

*[Appeal from a decision of the High Court of Uganda at Kampala Before Hon. Wilson Masalu Musene dated 25th day of June 2012 in Criminal Case No. 23 of 2011]*

**CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA**

**HON. MR. JUSTICE F.M.S EGONDA NTENDE, JA**

**HON. LADY JUSTICE HELLEN OBURA, JA**

## JUDGMENT OF THE COURT

This is an appeal from the Judgement of Hon. Wilson Masalu Musene J, dated 25th day of June, 2012 in *High Court Criminal Case No. 23 of 2011* at Gulu, in which the appellant was convicted of the offence of murder contrary to Sections 188 and 189 of the Penal Code Act (Cap 120) and sentenced to life imprisonment.

Being dissatisfied with the decision of the High Court, the appellant filed this appeal.

Initially the memorandum of appeal contained one ground and the other was set out in the alternative, as follows:-

1) *The learned trial Judge erred in law and fact when she failed to comply with Article 23 (8) of the Constitution of the Republic of Uganda and in the result rendering the sentence illegal.*

2) *(With leave) that the learned Judge erred in law and fact when she passed a manifestly harsh and excessive sentence of life imprisonment against the appellant.*

When the appeal came up for hearing, the appellant was represented by learned counsel *Ms. Akello Alice Latigo* while *Ms. Caroline Nabasa* learned Senior Assistant Director of Public Prosecutions appeared for the respondent.

Ms. Akello sought and was granted leave to appeal against sentence alone. However, she later sought and was allowed to amend the Memorandum of Appeal to include a ground of appeal against conviction. Leave was granted and a fresh ground of appeal was introduced.

It reads as follows;-

> *The learned trial Judge erred in law and in fact when she failed to properly evaluate the evidence on record and reached a wrong conclusion that malice aforethought had been proved, and in the result wrongly convicted the appellant of the offence of murder.*

Ms. Nabasa learned Senior Assistant Director of Public Prosecutions, thereafter stated that, the respondent concedes the evidence on record as adduced at the trial was insufficient to sustain a conviction on the offence of murder as the ingredient of malice aforethought had not been proved beyond reasonable doubt.

She noted that from the record, it is clear that the appellant was drunk at the material time. The beating meted on his mother, the victim now deceased was generalised. Further that, although one witness stated that the appellant had been seen strangling the deceased, the medical evidence does not support it.

Having listened to the above statement, this Court set aside the conviction of murder and substituted it with that of manslaughter. The Court invoked *Section 11* of the Judicature Act and ordered the parties to make their submission on sentence only.

Ms. Akello submitted that, the appellant was at the time 40 years old, and was now blind. He had spent 1 year 10 months and 23 days on remand and proposed a sentence of 10 years for which the pre-trial detention would be deducted, leaving the appellant to serve a sentence of 8 years, 1 month and 7 days starting from the date of conviction.

Ms. Nabasa submitted that, there were a number of aggravating factors, namely the prevalence of domestic violence, the appellant having killed his own mother in a humiliating manner and the fact that, the maximum sentence for manslaughter is life imprisonment. She proposed a sentence of 15 years for which the pre-trial detention period would be deducted.

We have listened to both counsel and perused the court record. The appellant killed his own mother who was old and frail. The killing resulted from unprovoked assault.

He did not stop the assault when others called upon him to do so. Indeed domestic violence especially against old defenceless women appears to be rampart.

However there are mitigating factors.

The appellant is a first offender, there is evidence that he was drunk at the time. He appeared to have regretted his action immediately thereafter.

In *Livingstone Kakooza vs Uganda, Supreme Court Criminal Appeal No. 17 of 1993,* the appellant was convicted of manslaughter and sentenced to 18 years imprisonment. On appeal to the Supreme Court, the sentence was reduced to 10 years imprisonment.

In *Ahimbisibwe Solomon vs Uganda, Court of Appeal Criminal Appeal No. 0132 of 2010,* the appellant was convicted of manslaughter and was sentenced to 16 years imprisonment. On appeal to the Court of Appeal the sentence was reduced to 13 years.

In *Ainbushobozi Venencio vs Uganda, Court of Appeal Criminal Appeal No. 242 of 2014,* where this Court reduced a sentence of 18 years to 12 years on the conviction of manslaughter.

Taking into account all the circumstances of this case, we are satisfied that a sentence of 10 years imprisonment will meet the ends of justice. The appellant having spent 1 year, 10 months and 23 days in pre-trial detention, he shall now serve 8 years, 1 month and 23 days in prison commencing from 25th June 2012 the date he was convicted.

We so order.

**Dated** at **Gulu** this 25 IE day of Sept 2017.

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**HON. MR. JUSTICE KENNETH KAKURU**

**JUSTICE OF APPEAL**

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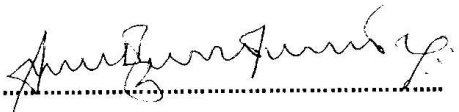

**HON. MR. JUSTICE F.M.S EGONDA NTENDE**

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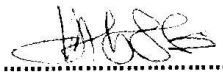

**HON. LADY JUSTICE HELLEN OBURA**

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