THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[CORAM: Kakuru, Egonda-Ntende & Obura JJA]

Criminal Appeals No.183 of 2013 & 193 of 2013

(Arising from High Court Criminal Session Case No. HCT-02-CR-SC-0007 of 2005 at Gulu & Mitigation Session No. 247 of 2013 at Kampala)

Between

Ojok Christopher==========Appellant No.1
Akera Innocent==========Appellant No.2

And

Uganda==========Respondent

(On Appeal from the decision of the High Court of Uganda [Paul Mugamba, J.,] sitting at Gulu and delivered on the 9th December 2013)

JUGDEMENT OF THE COURT

Introduction

1. The appellants were indicted of 2 counts. Count 1 was murder contrary to section 188 and 189 (2) of the Penal Code Act. The particulars of offence were that the appellants during the night of 30th and 31st day of March 2004 at Layibi Comboni Missionary Residence, in Gulu District murdered Father Luciano Fulvi. The count 2 was robbery contrary to section 285 and 286 (2) of the Penal Code Act. The appellants on the night of 30th and 31st March 2004 robbed Shs. 2,000,000.00 and 2 phones from Father Luciano Fulvi and in the course of the robbery unlawfully caused the death of the said Father Luciano Fulvi. They were convicted on both counts and sentenced to 30 years imprisonment on each count to be served concurrently. The appellants appeal against sentence only.

2. The appellant sets forth one ground of appeal.

'That the learned trial judge erred in law and fact when he passed a harsh and excessive sentence against the appellants in the circumstances of this case.'

3. The respondent opposed the appeal.

Submissions of Counsel

4. Mr Moses Oyet appeared for the appellants and Ms Rose Tumuheise, Principal State Attorney in the Directorate of Public Prosecutions appeared for the respondent. Mr Moses Oyet in his submissions to us raised a point of law with regard to the sentence against the appellants. He submitted that the trial court had not complied with article 23 (8) of the Constitution while passing sentence in this case. He submitted that the trial court did not deduct the 2 years the appellants had spent on remand from the appropriate sentence. In light of the decision of the Supreme Court in Rwabugande Moses v Uganda S C Criminal Appeal No. 25 of 2014, (unreported), the sentence upon the appellants was illegal and had to be set aside. He submitted that this court should exercise its powers under section 11 of the Judicature Act and impose a fresh sentence upon the appellants.

5. Ms Rose Tumuheise conceded that in light of the authorities the sentence imposed on the appellants was illegal. She agreed that this court should impose a fresh sentence upon the appellants. She proposed that the appropriate sentence was 30 years imprisonment on each count, in light of the aggravating and mitigating factors on record, from which the period spent in pre-trial detention would be deducted.

Analysis

6. We shall start by setting out, in part, the relevant portion of the decision of the trial court.

'I have considered this matter in light of the Sentencing Guidelines. I have taken into account also the respective circumstances of the two convicts bearing in mind what they said in mitigation and the evidence introduced in support. They are both remorseful and look forward to a better future. They are young men whose lives could be applied to something more useful for them and for society. In the circumstances their death sentences are to be commuted to custodial sentences. I take into account the period the convicts have been on remand since 2004 and the fact that both are first offenders.

Consequently Ojok Christopher is sentenced to 30 years imprisonment on count 1 and 30 years imprisonment on count 2. The sentences are to run concurrently. Akera Innocent is sentenced to 30 years imprisonment on count 1 and 30 years imprisonment on count 2. The sentences are to run concurrently.'

7. The Supreme Court in Rwabugande Moses v Uganda (supra), in interpreting article 23 (8) of the Constitution, established a two-step process in sentencing. The trial court had to consider all mitigating and aggravating factors and arrive at what would be the appropriate sentence. The court would then deduct from that appropriate sentence the exact period the convicts had spent on remand and the result would be the sentence imposed upon the convicts. A sentence from which the period spent on remand had not been deducted was illegal.

8. It is not in dispute that the trial court did not deduct from the sentence to be imposed on the appellants the period the appellants had spent on remand. The sentence imposed on the appellants therefore violated article 23 (8) of the Constitution and was therefore illegal. This is conceded by the respondent. We so find.

9. We shall proceed to sentence the appellants to fresh sentences. Appellant No.1 was at the time of the commission of offence only 18 years old. The appellant No. 2 was only 19 years old. They were very young men. They are first offenders. However, they committed a heinous murder in order to steal. Both offences that they committed carry a maximum punishment of the death penalty. In the circumstances of this case we find that the appropriate sentence is 20 years imprisonment on each count. We shall deduct the period of 2 years and 11 months spent on remand from the said sentence.

10. We sentence the appellant no.1 on count 1 to 17 years and 1 month imprisonment. We sentence appellant No.1 on count 2 to 17 years' and 1 month imprisonment. Both sentences shall run concurrently from the 21st March 2007, the date of conviction.

11. We sentence appellant no. 2 to 17 years and 1 month imprisonment on count 1. We sentence the appellant no. 2 to 17 years and 1 month imprisonment on count 2. Both sentences are to run concurrently from the 21st March 2007, the date of conviction.

Signed, dated and delivered at Gulu this 7th day of November 2017

Kenneth Kakuru
Justice of Appeal

Fredrick Egonda-Ntende
Justice of Appeal

Hellen Obura
Justice of Appeal