

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[Coram: Egonda-Ntende, Bamugemereire & Mulyagonja, JJA]

CRIMINAL APPEAL NO. 200 OF 2016

(Arising from High Court of Uganda Criminal Session Case No. 014 of 2014 at
Lira)

BETWEEN

Okaka Benson=====Appellant

AND

Uganda=====Respondent

*(Appeal against the Sentences of the High Court of Uganda (Rugadya, J.)
delivered on the 18 July 2016)*

JUDGMENT OF THE COURT

Introduction

- [1] The appellant was indicted of 2 offences of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offences were that on the 12th August 2013 in Abecye village, in Kole District the appellant murdered Iblo Brenda and Opio Kizito. The deceased persons were his wife and child respectively. He pleaded guilty to the 2 offences and was convicted as charged on 18th July 2016. He was sentenced to 22 years' imprisonment on each count to run concurrently.
- [2] Dissatisfied with the sentencing order of the trial court the appellant appealed against the sentencing decision on the sole ground,

‘That the learned Judge erred in law and fact when he passed a manifestly harsh and excessive sentence in the circumstances of the instant case and thereby occasioning a miscarriage of justice.’

- [3] The respondent supported the decision of the court below and opposed the appeal.
- [4] The appellant was represented by Mr. Joseph Sabiti Omara while the respondent was represented by Ms Joanita Tumwikirize, State Attorney, in the Office of the Director of Public Prosecutions. Both counsel filed written submissions in the matter upon which this court has proceeded to consider this appeal.

Facts of the Case

- [5] The facts of this case are that the appellant returned home and found some money lying on the floor in the house. He suspected that his wife had helped herself to some money he kept for a SACCO to which he belonged and acted as Treasurer. He assaulted his wife who was holding a baby. The baby fell down and died of suffocation. The wife too died as a result of the injuries sustained. He was charged with murder of his wife and child to which he pleaded guilty. He was convicted on both counts and sentenced to 22 years’ imprisonment on each count to run concurrently.
- [6] In the court below the state submitted that these crimes ought to attract a sentence of 20 years’ imprisonment while the appellant’s counsel at the time submitted that the appropriate sentence should be 17 years’ imprisonment. The trial court after reviewing the mitigating and aggravating factors determined that the optimal sentence for the offences in question was 25 years’ imprisonment and deducting the period of 3 years spent on remand it sentenced the appellant to 22 years’ imprisonment on each count to run concurrently.

Submissions of Counsel

- [7] Mr Joseph Sabiti Omara, counsel for the appellant, submitted that the sentences in question were manifestly harsh and excessive. He referred to Susan Kigula v Uganda HCT-CR-SC-0115 of 2011(unreported) where a wife was sentenced to 20 years' imprisonment for murdering a husband. He also referred to Emeju Juventine v Uganda CACA No. 95 of 2014 (unreported) where the appellant who on a guilty plea was convicted of murder of his spouse and sentenced to 23 years' imprisonment had his sentence reduced to 18 years' imprisonment. He also referred us to Nkurunziza Julius v Uganda (CACA No. 12 of 2009) [2022] UGCA 65 where an appellant convicted on his own plea of guilt had his sentence fixed at 17 years' imprisonment by this court. The court treated the guilty plea as a mitigating factor.
- [8] Mr Omara further submitted that courts were obliged in accordance with guideline no. 6 of the Sentencing Guidelines and Mbunya Godfrey v Uganda SCCA No. 2 of 2011(unreported) to ensure that much as circumstances permit there was uniformity and consistency in sentencing even though no 2 offences are identical in all respects. He prayed that this court reduces the sentence imposed on the appellant to 15 years' imprisonment on each count to run concurrently.
- [9] Ms Joanita Tumwikirize, counsel for the respondent, submitted that there were no circumstances that existed in this particular case to warrant this court interfering with the decision of the trial court with regard to the sentence imposed on the appellant. In her view the appellant in fact got off with a lenient sentence. She referred to Nkongwe Robert v Uganda (CACA No. 148 of 2009) [2015] UGCA 61 in which a sentence of death was upheld by this court against an appellant that had murdered his wife. She referred to Sunday Gordon v Uganda (CACA No 103 of 2006) [2015] UGCA 67, where a sentence of life imprisonment was upheld for an appellant that had murdered his wife. She referred to Florence Abbo v Uganda (CACA No. 168 of 2018) [2023 UGCA 17 where a sentence of 40 years' imprisonment was upheld by this court for an appellant that caused the death of her own son. She therefore

submitted that a sentence of 22 years' imprisonment in this case should not be interfered with.

Analysis

- [10] The law with regard to when an appellate court may interfere with a sentence of the trial court is well-settled. Ordinarily an appellate court will not interfere with a sentence of the trial court, unless the trial court acted on some wrong principle, overlooked a material fact, or the sentence was manifestly harsh and excessive in the circumstances of the case. See Livingstone Kakooza v Uganda [1994] UGSC 17; Bernard Kiwalabyev Uganda SC Criminal Appeal No. 143 of 2001 (unreported); and Kyalimpa Edward v Uganda (CACA No. 130 of 1999) [2003] UGCA 8.
- [11] We note that all the decisions referred to us by learned counsel for the respondent were not in respect of a conviction for murder that had arisen on a guilty plea. They are therefore distinguishable. In the case before us the appellant was convicted on a guilty plea and this is a factor that ought to reflect in the sentence determined for the offences he was convicted of. To that extent those cases were not helpful for purposes of consistency and uniformity in sentencing with regard to this particular appellant.
- [12] In Mwesige Peter v Uganda [2018] UGCA 10 the appellant who had killed his spouse and was convicted on his own plea of guilty was sentenced to 35 years' imprisonment. This court reduced the sentence of imprisonment to 15 years on account of the guilty plea.
- [13] In Emeju Juventine v Uganda (supra) the appellant on a guilty plea was convicted of murder of his spouse and sentenced to 23 years' imprisonment. This court reduced the sentence to 18 years' imprisonment.

[14] In Anguyo Robert v Uganda [2016] UGCA 39 the appellant had been convicted on his own plea of guilty for murdering his wife. He was sentenced to 20 years' imprisonment. This court reduced it to 18 years' imprisonment.

[15] It would appear that on a guilty plea for murder the sentencing range imposed by the courts is between 15 to 18 years' imprisonment. In the circumstances of this particular case we agree with the appellant that a sentence of 22 years' imprisonment was rather manifestly harsh and excessive. We set it aside.

Decision

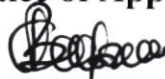
[16] We find that a sentence of 15 years' imprisonment on each count would be optimal. We deduct therefrom the period of 3 years spent on remand. We order the appellant to serve both sentences of 12 years' imprisonment, concurrently, from 12th July 2016, the date of conviction.

Signed, dated and delivered this 25th day of May 2023



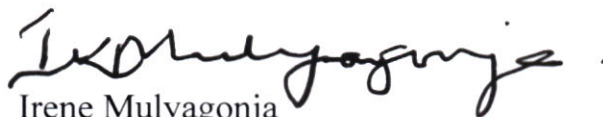
Fredrick Egonda-Ntende

Justice of Appeal



Catherine Bamugemereire

Justice of Appeal



Irene Mulyagonja

Justice of Appeal