THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
CRIMINAL APPEAL No.0338 of 2017

Coram

{Egonda-Ntende, Bamugemereire & Mulyagonja JJA}

1. OKELLO DOUGLAS alias ONGORA ISAAC
2. ODONGO FELIX alias HASSAN :::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(Appeal from The decision of Dr Winifred Nabisinde in High Court Criminal session Case No.0111 of 2017 delivered on 28th July 2017 at Lira)

Criminal Law – Murder C/s 188 and 189, Attempted Murder C/s 204 of The Penal Code Act – Appeal against Sentence only – Harsh and excessive sentence .

JUDGMENT OF THE COURT

Introduction

The appellants, **Douglas Okello** and **Felix Odongo** were both indicted and convicted of the offence of Murder and Attempted Murder contrary to sections 188, 189 and section 204 of the Penal Code Act, Cap 10 Laws of Uganda respectively. They were each sentenced to 35 years for the offence of Murder and 25 years imprisonment for the offence of Attempted Murder, respectively. The sentences were to run concurrently.

Background

A brief background is that on 23rd December 2016, at Ogili Cell, Alira Parish, Aduku Subcounty in the Apac District, the appellants murdered Maxwell Awal and attempted to murder Sophia Ogwal. The deceased and the appellants were paternal cousins whose respective families had long-standing land wrangles. Douglas Okello was a serving army officer in the Uganda People's Defence Forces at Mbarara. Armed with an SMG rifle, he travelled from Mbarara to Apac where he met with Odong. On 23rd December 2016, Vivian Adong the sister to the deceased was ambushed by the appellants while she was riding a bicycle. They dragged her off to the bush. The assailants, who included both appellants, were both armed with a gun, panga, and iron bar. Vivian Adong managed to escape and when she got home, she informed her family that she had been ambushed by the appellants. The father, in turn, reported the case to the Police at Aduku Police Station.

On the fateful evening, the deceased went to untether animals which had been grazing in a field near their home. He was suddenly shot by the 1st appellant who was hiding in a nearby bush. The gunshot was heard by Sophia Ogwal the mother of the deceased who then run to the scene and spotted the 1st appellant. The 1st appellant hit Sophia Ogwal on the head with the butt of a gun. The 2nd appellant cut Sophia with a matchet, and she started bleeding profusely, and became unconscious. When Sophia gained consciousness at around 9pm, she found

the deceased lying beside her with his pair of trousers removed. He had been shot on the head and the bullet had exited from the mouth. The appellants had already fled the scene. Sophia reported the incident to the neighbours and eventually police.

When the appellants were arrested and indicted, they did not have any lawful defence so they admitted to the crimes. They were subsequently convicted on their own pleas of guilty. The Learned Trial Judge consequently sentenced each of them to 35 years for the offence of murder, and 25 years imprisonment for attempted murder, respectively. The sentences were to run concurrently. Dissatisfied with the sentence, the appellant appealed to this court against sentence only on one ground which stipulates as follows:

1. The Learned Trial Judge erred in law and fact by imposing a manifestly harsh and excessive sentence against the appellants.

Representation

At the hearing of the appeal, the appellant was represented by Mr Okot Douglas Odyek while the respondent was represented by Ms Fatinah Nakafeero, a Chief State Attorney. The appellant was physically present in court. His counsel prayed for and was granted leave of this court to appeal against sentence only. Both counsel relied on written submissions which shall be considered by this court.

Submissions for the Appellant

Counsel for the appellant submitted that the Learned Trial Judge ought to have given adequate weight to the mitigating factors. He faulted the Learned Trial Judge for not considering the fact that the appellants were first time offenders who were remorseful and did not waste court's time by pleading guilty. The appellants were of youthful being aged 27 years and 20 years, respectively. In mitigation the 1st appellant pleaded that he was a married man with 2 children and a wife. He also stated that he was the eldest of 3 siblings who provided for the well-being of their ailing mother. Counsel for the appellant further faulted the Learned Trial Judge for failing to consider the principle of uniformity. He relied on judgments passed by this court in which the court-imposed sentences lower than 35 years' imprisonment for the offence of Murder. Finally, counsel for the appellant invited this court to allow the appeal, set aside the harsh and excessive sentences and to substitute them preferably, with sentences of 17-and 20years' imprisonment.

Submissions for the Respondent

Counsel for the respondent opposed the appeal in its entirety. His contention was that the Learned Trial Judge made a comprehensive consideration of both the mitigating and aggravating factors. Counsel emphasized that the Learned Trial Judge took into consideration the remorsefulness of the appellants, their age, family responsibilities and the fact that they were first time offenders. Counsel also contended that the

Learned Trial Judge considered the aggravating factors, that it was a premeditated gruesome killing coupled with mass brutality, savagery and terror caused in the family of the deceased. Counsel then prayed to this court to uphold the sentence and dismisses the appeal for it was neither illegal nor manifestly excessive.

Consideration by the Court

We are alive to the duty of this court as a first appellate court, to subject the evidence and all the material that was available to the trial Judge to a fresh and exhaustive scrutiny. We are entitled to draw our own conclusions and inferences, bearing in mind, however, that we did not have the opportunity to see the witnesses testify. **Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10, See also; Fr. Narcensio Begumisa & Ors v Eric Tibebaaga SCCA No.17 of 2002, Kifamunte Henry v Uganda SCCA No. 10 of 1997, The Executive Director of National Environmental Management Authority (NEMA) v Solid State Limited SCCA No.15 of 2015 (unreported) and Pandya Vs R [1957] EA 336.**

We do remind ourselves that this appeal is against sentence only. It is trite that an appellate Court will only interfere with a sentence imposed by the trial Court if it is evident that the trial court acted on a wrong principle or took into consideration factors which they ought not to take into consideration or overlooked matters which they ought to have taken into consideration or passed a sentence which was illegal or

manifestly excessive or so low as to cause an injustice. **See Sekandi Hassan v Uganda SCCA No.25 of 2019, Livingstone Kakooza v Uganda SCCA No. 17 of 1993 [unreported] and Jackson Zita v Uganda, SCCA No. 19 of 1995.**

The appellants were convicted on their own pleas of guilty and were sentenced to 35- and 25-years imprisonment for the offence of Murder and Attempted Murder, respectively, to run concurrently. The appellants found this sentence to be harsh and excessive and also argued that the Learned Trial Judge did not take the mitigating factors into consideration.

In her sentencing remarks the Learned Trial Judge reasoned that,

> "The State Attorney in her submissions stated that there are no previous known records against the convicts; this court will therefore treat each of them as first offenders. In my view, having taken cognisance of the circumstances under which this offence was committed it is my finding that this was a senseless killing that should have been avoided; the convicts had at their disposal other lawful means of resolving any misunderstanding he (read they *sic*) may have had with the deceased or victim, but instead chose to take the law in their own hands with such devastating results. It is also clear from the evidence that the convicts are both adults of sound mental status and did what he (read they *sic*) did deliberately. I have also considered the impact it would have on both families and

the community generally. I have also noted that in such a case, the maximum sentence would have been the death penalty; however, I find that this is the rarest of the rare sentences and must be handed down in extreme cases. I have also thought about the family and the consequences this death will have on them. I therefore find that the convicts being adults need... (sic) a long and deterrent custodial sentence to enable each of them to rethink about his lives. While the starting range in terms of years would be at least (35) years imprisonment, that being the case, I have also taken into account the age of the deceased and the convict. Taking into account all the circumstances of the case as noted above, and the fact that these convicts have been on pre-trial remand for just one month, but readily admitted their guilt at the first available opportunity and appeared remorseful for their actions, I find that while I would have passed the death penalty in this case, but according to our laws, the plea of guilty will work as a mitigating factor in their favour. Taking into account the fact that both convicts are still young men who have realised their folly and pleaded guilty to their crimes at the first opportunity, I will exercise a degree of leniency. For that reason, despite the Plea of guilty, I find that a sentence of (35) thirty-five years imprisonment will be appropriate for Count 1.... I therefore find that the aggravating circumstances in this count also outweigh the mitigating circumstances. Both convicts deserve a serious

punishment for their role in this offence. All in all, I find that a sentence of 25 (twenty-five) years imprisonment will be appropriate for each of them."

We have evaluated the sentencing remarks of the learned trial Judge and find that she did not take into consideration all the aggravating and mitigation factors. We not that she was elaborate and reasoned and that the learned trial Judge cannot be faulted for laying a basis for the sentence she passed. However, we note that the learned trial Judge did not take into consideration the fact that the appellants were first offenders who had pleaded guilty. Had the learned trial Judge taken cognisance of the pleas of guilty and all antecedents, she ought to have found that a sentence of 35 years imprisonment for a first offender who pleaded guilty was harsh and excessive. This court will bear this in mind and will also be guided by the sentences that have been passed in previous cases based on similar facts. This is necessary in order to maintain parity and consistency in sentencing. In **Mbunya Godfrey v Uganda SCCA No. 04 of 2011**, the appellant had been sentenced to death for the murder of his wife. The Supreme Court observed that;

"We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing". See also **Aharikundira Yusitina v Uganda SCCA No. 27 of 2015**.

We shall evaluate the sentencing ranges of both offences separately, starting with the sentence of 35 years' imprisonment

for the offence of murder. In **Stephen Wamboya v Uganda CACA No.005 of 2017**, this court reduced a 25-year prison sentence for the offence of murder to 20 years eventually arrived at a sentence 16 years upon subtracting the time that the appellant had spent on remand.

In **Atiku Lino v Uganda CACA No.0041 of 2009**, this court set aside a sentence of life imprisonment for the offence of Murder and replaced it with 20 years' imprisonment after taking into consideration the mitigating factors in the case.

In **Tuhumwire Mary v Uganda CACA No.352 of 2015** this court reduced a 25-year sentence for the offence of Murder to 10 years. this court considered the fact that the appellant pleaded guilty at the start of the trial and that she had a family to look after.

In **Onyabo Bosco v Uganda CACA No.737 of 2014**, the appellant was indicted and convicted of the offence of Murder and sentenced to 45 years imprisonment. On appeal, this court reduced the sentence to 20 years' imprisonment for the offence of Murder.

In Ntambi **Robert v Uganda CACA No.334 of 2019**, this court found that a sentence of 20 years for the offence of Murder was neither harsh nor excessive.

For the offence of attempted murder, the sentencing ranges are seen in, **Mwesigwa John & 3 Ors v Uganda CACA No.164 & 394 of 2014** where this court reduced a sentence from 20 years' imprisonment for the offence of Attempted Murder to 7 years imprisonment.

In **Mohammed Yasin Sekajolo v Uganda SCCA No.18 0f 1999** the Supreme Court set aside a sentence of 8 years for the offence of Attempted Murder and replaced it with 6 years' imprisonment.

We note that the learned Judge in her sentencing remarks did not seem to fully appreciate the importance of pleas of guilty and did not consider the youthful age of the offenders. We, on the other hand take cognisance of the fact that both appellants pleaded guilty and redeemed the amount of time a full trial might have taken. We note also that A1 was only 27 years while A2 was just 20 years at the time. A1 left two young children. A2 was a student who was described as, 'having been caught in the web'. They had each spent 6 months and 3 days in pre-trial detention. We have considered the above decisions of the appellate courts for similarly placed offences. Clearly the sentences of 35 years and 25 years meted out, were excessive and out of range. We therefore set aside the sentences of 35 years and 25 years imprisonment passed against each of the two appellants.

When an accused person pleads guilty, the court ought to be seen to exercise leniency. A discount on a sentence reflects the fact that there has been no need for a full trial and that time and expenses have been saved and, in particular, victims of crime and witnesses have been spared the trauma and anxiety of having to give evidence and to be cross-examined. And, the witnesses are spared the ordeal of reliving tragic events.

Therefore, offenders who admit guilt should benefit from pleas of guilty by getting up to a third or even half, off their sentence potential sentences. Trial courts should always exercise this mandate each time they record a plea of guilty. Clearly if someone is not a first offender, they cannot benefit fully but can still have some of their jail time discounted.

Under section 11 of the Judicature Act this court is clothed with the Jurisdiction to pass fresh sentences against the two appellants. Bearing in mind the fact that the two appellants pleaded guilty, were youthful first offenders, and had no previous record of wrong doing, we find a sentence 15 years' imprisonment for the offence of Murder and 8 years' imprisonment for the offence of Attempted Murder appropriate in the circumstances. From these we shall deduct the time spent on remand.

Each of the appellants had spent 6 months and 3 days on remand therefore this period will be deducted from their final sentences.

In the result the two appellants, Douglas Okello and Felix Odong will each serve a sentence of 14years, 5 months and 27 days' imprisonment, for the offence of Murder c/s 188 and 189 of the PCA and each will also serve 7 years, 5 months and 27 days' imprisonment for the offence of Attempted Murder c/s 187 and 190 of the PCA; respectively. Each of the sentences shall run concurrently from the date of their conviction which was 28.7.2017.

Dated at **Gulu** this ..... **day** of 2023

FREDRICK EGONDA-NTENDE,
JUSTICE OF APPEAL

CATHERINE BAMUGEMEREIRE,
JUSTICE OF APPEAL

IRENE MULYAGONJA,
JUSTICE OF APPEAL