

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0311 OF 2010

ORYEM JOHN BOSCO.....APPLICANT

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VERSUS

UGANDA.....RESPONDENT

(Appeal from the judgment of the High Court in Criminal Session case No. 205 of 2009 before Hon. Lady Justice Catherine Bamugemereire dated 15/11/2010)

10 **Coram:** **Hon. Lady Justice Elizabeth Musoke, JA**
Hon. Lady Justice Hellen Obura, JA
Hon Mr. Justice Ezekiel Muhanguzi, JA

JUDGMENT OF THE COURT

15 **Introduction**

The appellant herein was indicted, tried, and convicted on his own plea of guilt for the offence of manslaughter contrary to Sections 191 of the Penal Code Act Cap.120 and sentenced to 20 years imprisonment without remission.

20 **Brief Back ground**

The facts of this case as accepted by the learned trial judge are that on 2/4/2009, the deceased travelled to Kampala from Lira to see her daughter who was studying at Nsambya. She was accompanied by the



appellant. At about 6:00 p.m, the appellant went to Senoga Guest
25 House to book accommodation. He registered as Jenifer and Thomas
residents of Lira District. The appellant who was then alone was
escorted by staff to his room. He ordered for a bottle of soda. When
the soda was being delivered there was a woman in the room who was
later identified as the deceased. The management requested that she
30 registers her presence but the appellant said his registration was
sufficient.

At about 2:00 a.m the receptionist of the guest house heard an alarm of
a woman crying for help. The cry was coming from the appellant's
room. Inside the room a man was seen beating a woman. The
35 receptionist made an alarm. The appellant was ordered to open the
door but he refused and the efforts to break the door were futile but
rescuers broke the window instead.

The deceased was found lying in a pool of blood with multiple cut
wounds. The appellant was found in the same room lying down.
40 Investigations into the charge of murder commenced and a
postmortem revealed external injuries of multiple stab wounds, a
broken neck, lips, breast, back and internal injuries revealed injuries on
the left artery and vein.

The cause of death was described as hemorrhagic shock from multiple
45 stab wound. The appellant was examined and found to be of sound
mind and was charged accordingly.

Initially, the appellant was charged with the offence of murder contrary
to sections 188 and 189 of the Penal Code Act. At trial he pleaded
guilty to the offence of manslaughter. He was accordingly convicted on
50 his own plea of guilty and sentenced to 20 years imprisonment. Being

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dissatisfied with both conviction and sentence, the appellant appealed to this court on the following grounds:-

1. *The learned judge erred in law and fact by illegally convicting appellant on plea of guilty of manslaughter before the appellant agreed to facts of the indictment.*
2. *The learned judge erred in law and fact when she imposed upon appellant harsh excessive custodial imprisonment of 20 years for murder with no option for remission and without deducting remand period.*

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60 **Representation**

At the hearing, the appellant was represented by Mr. Seth Henry Rukundo, learned counsel on state brief and Mr. Ateenyi Ndamurani, Senior Assistant Director of Public Prosecutions represented the respondent. The appellant was present.

65 **Submissions by the appellant**

It was submitted for the appellant that he did not plead to the facts of the amended charge. Counsel relied on *Adan V. R, (1993) EA 446*, and submitted that the learned trial judge erred when she did not follow the procedure of recording a plea. He prayed court to find that the procedure followed by the learned trial Judge was improper.

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On the second ground, counsel submitted that the learned trial Judge erred in law and fact when he sentenced the appellant to 20 years imprisonment without remission. Further, that the learned trial Judge did not take into consideration the period of 17 months the appellant spent on remand. Counsel relied on *Akber Husseing Godi V Uganda, Supreme Court Criminal Appeal No. 3 of 2013* and *Ojok Micheal V*

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Uganda, Court of Appeal Criminal Appeal No. 19 of 2011 and asked this court to allow this ground of appeal and reduce the sentence to 8 years imprisonment.

80 **Submission by the respondent**

Learned counsel for the respondent conceded to the fact that the whole trial was a nullity and this appeal ought to succeed. Counsel pointed out that the way in which the trial was conducted was improper because the appellant did not plead to the amended charge and the facts of the case were not read to him before conviction. Further, that the plea of not guilty ought to have been recorded instead of plea of guilty because the appellant pleaded to manslaughter not to murder as indicted.

Further, counsel submitted that the sentence was illegal because the learned trial Judge did not take into consideration the period the appellant had spent on remand. Counsel also conceded to the fact that the learned trial judge erred when he sentenced the appellant to a sentence of 20 years imprisonment without remission. Counsel asked court to invoke section 11 of the Judicature Act and order for a retrial.

95 **Consideration by court**

We have carefully listened to both parties, carefully read the court record and the authorities cited to us. We are alive to the duty of this court as a first appellant court to re-evaluate all the evidence adduced at the trial and to make our own inferences on all issues of law and fact. See: Rule 30(1) of the Rules of this court and *Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No. 10 f 1997*.

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The appellant was charged with the offence of murder contrary to Section 188 and 189 of the Penal Code Act. It was the Prosecution's case that on the 3rd day of April, 2009 at Senga Guest House along Mawanda Road in Kawempe Division, in Kampala District, the appellant murdered Ayat Jennifer Bongoming. When the case came up for trial the appellant pleaded guilty on the 15/11 2010. The indictment was read and explained to him in English which language he stated to understand, he answered as follows:-

110 ***"I have heard and understood. I killed her but I was completely intoxicated"***

115 The court noted that the appellant appeared to be pleading to manslaughter. The court on application of the prosecution allowed the indictment to be amended to a charge of manslaughter contrary to Section 191 of the Penal Code Act. The amended indictment was read and explained to the appellant in English. The appellant upon being asked by court whether he had understood the indictment he replied as follows:-

"I have heard and I agree to unlawfully causing the death of Ayat Jenifer"

120 The court then convicted the appellant of the offence of manslaughter contrary to section 191 of the Penal Code Act on his own plea of guilty. The prosecution then stated the facts of the case.

125 We have carefully studied the court record. We find that the learned trial Judge did not explain to the accused (now the appellant) the facts of the offence before conviction. This is conceded to by counsel for the respondent.

130 An accused person is required to plead to the facts that contain all the ingredients of the offence. The court is required to explain all the ingredients of the offence to the accused before asking whether he/she admits them. See: **Adan V Republic (1973) EA 445.**

135 Accordingly, we quash the conviction and set aside the sentence. Since the appellant had been on remand for one year, had pleaded guilty and was a first offender, we are of the view that the 9 years he has spent in prison are enough and meet the ends of Justice for the offence of manslaughter. We therefore set him free forthwith to allow him reform unless he is being held for a lawful cause. We so order.

140 Before we take leave of this matter, we note that the learned trial Judge also erred in law when she sentenced the appellant to a term of 20 years imprisonment "without remission". In **Wamutabaniwe Jamiru v Uganda, Supreme Court Criminal Appeal No. 74 of 2007**, court noted that remission is a statutory right. Court further noted as follows:-

145 *"Section 84 and 85 of the Prisons Act relate to remission. Suffice it to say that remission is a function of the penal Institution to which a sentenced convict has been committed and it is exercised in tandem with the sentence meted out by court.*

150 *We note that the maximum penalty for the offence of murder which the appellant was convicted of is death and that the sentence he is appealing is less severe than the death penalty he had earlier been handed, nevertheless, given that remission is a function of the penal Institution which has to exercise it in accordance with the prisons Act.*

We find it illogical for any court, let alone the Court of Appeal in the instant matter, to ordain that the appellant shall serve his sentence without remission."

155 We therefore find and hold that any sentence imposed upon a convict/appellant without remission is an illegal sentence.

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We also note that the learned trial judge did not take into account the period the appellant spent on remand. Even if the conviction had been confirmed by this court, we would have found the sentence illegal for this reason also.

160 Dated at Kampala this.....^{8th}.....day of ^{Aug}..... 2019.



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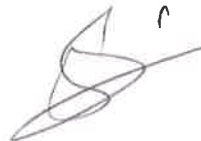
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Elizabeth Musoke
Justice of Appeal

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Hellen Obura
Justice of Appeal

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Ezekiel Muhanguzi
Justice of Appeal

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