

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 297 OF 2003

5 **OWORI JOHN MARTIN :::::::::::::::::::: APPELLANT**

VERSUS

UGANDA :::::::::::::::::::: RESPONDENT
(Appeal from Judgement of High Court at Tororo before Hon Lady Justice Faith
Mwodha dated 20th March, 2003 in Criminal Session Case No. 264 of 2002)

10 **CORAM:**

HON JUSTICE G.M. OKELLO, JA
HON JUSTICE A.E.N. MPAGI-BAHIGEINE, JA
HON JUSTICE S.B.K. KAVUMA, JA

JUDGEMENT OF THE COURT

The appellant, Owori John Martin, appeals to this Court against sentence only.

20 He was indicted for the offence of manslaughter contrary to **Sections 187 and 190** of the **Penal Code Act** by the High Court at Tororo. He was convicted and sentenced to 10 years imprisonment on 20-03-03.

25 The sole ground of the appeal is that the sentence is harsh and excessive in the circumstances of the case.

The facts were as follows:

30 On 19-06-2001, the appellant and the deceased who was his son went out for a drink. At around 9.pm, the appellant returned home alone. He was served food by his wife Awino Consolata. Soon thereafter the deceased also returned and he too was served with food.

35 After eating, the deceased asked for ground nuts for roasting, which were given to him. He roasted them in the appellant's house. After sometime the appellant asked the deceased to

leave his house and go to sleep in his own house but the deceased refused and continued roasting groundnuts.

5 The appellant's wife and mother to the deceased grabbed the saucepan and threw the deceased out of the house. As the deceased tried to pick the saucepan and groundnuts, the appellant picked a hoe and cut him on the head.

10 As the deceased groaned in pain, the appellant's mother called some people for help. The appellant started fighting them as well. The deceased died soon thereafter. The appellant was arrested and tried at the High Court at Tororo. At his trial, he pleaded guilty and was sentenced to 10 years imprisonment. Hence this appeal.

15 Mr. Bwengye who appeared for the appellant submitted that the appellant was a first offender, which the learned Judge acknowledged. He had been on remand for one year and eight months. He was aged 53 at the time of sentencing. He was 57 at the hearing of this appeal. He has served 3 years and 11 months of the sentence and this, coupled with the period spent on remand, makes it 5 years and 7 months in custody.

20 Learned counsel asserted that the period spent in custody was sufficient. He has reformed. He is repentant having killed his own son. Learned counsel asserted that a heavy sentence would lead to double jeopardy. In his view, a sentence of 4 years would be sufficient, considering his advanced age of 57.

25 Ms Joan Kagezi, Learned Principal State Attorney, pointed out that the offence of manslaughter carries a maximum of life imprisonment but the appellant only got 10 years which, in her view, should be confirmed. It was a correct sentence considering the appellant's cruelty and recklessness. She prayed Court to uphold it and dismiss the appeal.

The learned Judge observed:

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“Since the convict is a first offender and has pleaded guilty therefore has not wasted Court’s time, he is sentenced to 10 years imprisonment taking into account the period he has been on remand.”

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This Court can only interfere with the sentence if it is illegal or manifestly too harsh or inordinately too low.

5 Under the circumstances of this case where a father killed his own son, he pleaded guilty and was very repentant, we consider a prison term of five (5) years and seven (7) months, representing the period he has been in custody, a sufficient punishment.

He is entitled to an immediate release unless lawfully held on another charge.

10 Dated at Kampala this 14th day of June 2007.

15 **HON. JUSTICE G.M. OKELLO**
JUSTICE OF APPEAL

20 **HON. JUSTICE A.E.N. MPAGI-BAHIGEINE**
JUSTICE OF APPEAL

25 **HON. JUSTICE S.B.K. KAVUMA**
JUSTICE OF APPEAL