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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**

**CRIMINAL APPEAL NO. 094 OF 2012**

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA & Stephen Musota, JA)

**SSENYONJO ALBERT DOMINIC Alias KABUTO.....APPELLANT**

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**VERSUS**

**UGANDA.....RESPONDENT**

*(Appeal from the decision of Hon. Justice Singh Choudry holden at Masaka High Court in Criminal Session Case No. 030 of 2012 delivered on 29/3/2012)*

**JUDGMENT OF THE COURT**

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This is an appeal against sentence only. The appellant was convicted on his own plea of guilty of the offence of manslaughter contrary to sections 187 and 190 of the Penal Code Act by Hon. Justice Singh Choudry in the High Court at Masaka and sentenced to 20 years imprisonment.

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The facts giving rise to this appeal as found by the trial Judge are that on 2/02/2010 at about 3: 00 hours the deceased, Lunabala Sunday went with a one Ntulume Kisiri Bosco to Lake Victoria near Nkese Island for fishing. The appellant, and a one Kasenene still at large found them fishing and started assaulting them using oars with which they hit the deceased's head but Ntulume dived into the water and fled. The appellant took the deceased to Nkese Fishing Village and made a report of theft against him and Ntulume to the Chairman Beach Management Unit a one Mr. Kyakuwadde. At about 5:00 hours the deceased's condition

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worsened and the residents gathered to arrest the appellant but police intervened and arrested him. The deceased later died and the appellant was charged with the offence of murder but the indictment was amended to substitute the offence of murder with manslaughter. He pleaded guilty and was convicted on his own plea of guilty and sentenced

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to 20 years imprisonment.

5 Being dissatisfied with the decision of the trial Judge, the appellant with leave of this Court appealed against sentence only on the ground that the learned trial Judge imposed a harsh and excessive sentence upon him.

At the hearing of this appeal, Mr. Tusingwire Andrew represented the appellant on state brief while Ms. Barbara Masinde, Senior State Attorney from the Office of the Director Public  
10 Prosecutions represented the respondent. Mr. Tusingwire submitted that the trial court did not fully consider the mitigating factors in this case especially the fact that the appellant pleaded guilty and did not waste court's time. He referred to the case of ***Ainobushobozi Venancio vs Uganda, CACA No. 242 of 2014*** which sets out the principles for interfering with the sentence imposed by a lower court. Ms. Masinde submitted that the sentence was  
15 vague because it included the 1 year and 11 months the appellant had spent in custody. She invited this Court to set it aside and impose an appropriate sentence taking into account the aggravating factors.

The Supreme Court in ***Kamy Johnson Wavamuno vs Uganda, SCCA No. 16 of 2000*** stated that the appellate court will not interfere with the sentence of the lower court unless  
20 there has been a failure to exercise discretion or to take into account a material consideration, or where an error in principle was made.

Article 23 (8) of the Constitution makes it mandatory for court to take into account while passing a sentence, the period a convict has spent in pre-trial detention. In ***Rwabugande Moses vs Uganda, SCCA No. 25 of 2014*** the Supreme Court held that a sentence arrived  
25 at without taking into consideration the period the appellant has spent on remand is illegal for failure to comply with a mandatory constitutional provision.

The trial Judge in this case, so far as it is relevant to this point, while sentencing the appellant stated thus;

5            “In those circumstances, a proper and short custodial sentence should be 20 years  
             inclusive of 1 year and 11 months the accused has spent in custody.”

We accept counsel for the respondent’s submission that the sentence is vague and it is  
apparent from its wording that the trial Judge did not take into consideration the period of 1  
year and 11 months the appellant spent on remand by crediting it to him. We therefore find  
10 this sentence illegal pursuant to Article 23 (8) of the Constitution and accordingly set it aside.

We invoke the provisions of **section 11 of the Judicature Act** which gives this Court the  
powers, authority and jurisdiction as that of the trial court to impose an appropriate sentence  
of its own. In so doing, we shall consider the aggravating factors and the mitigating factors on  
court record.

15 The mitigating factors presented were that; the appellant is a first offender, he was aged 34  
years at the time the offence was committed and was married with 3 kids, the youngest being  
4 years at that time. He pleaded guilty and did not waste court’s time and was remorseful. On  
the aggravating side, it was presented that the appellant took the law into his hands.

We have also considered a number of decisions that provide the sentencing range to be  
20 meted out in cases of a similar nature including those cited to us by counsel for the appellant  
in order to determine an appropriate sentence.

In **Ahimbisibwe Solomon vs Uganda, CACA No. 0132 of 2010** the appellant was convicted  
on his own plea of guilt for the offence of manslaughter and sentenced to 16 years  
imprisonment. He appealed to this Court which reduced the sentence to 13 years  
25 imprisonment.

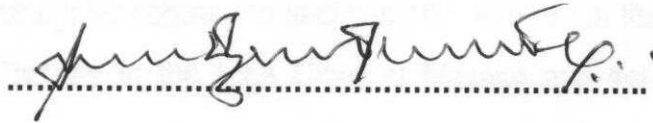
In **Okwaimungu Dominic vs Uganda, CACA No. 0036 of 2014**, the trial court convicted the  
appellant of the offence of murder and sentenced him to 21 years imprisonment. On appeal

5 to this Court, the conviction was quashed and the sentence set aside and the appellant was convicted of manslaughter and sentenced to 15 years imprisonment.

From the above authorities and others we have not cited here, the range of sentences for manslaughter is 10-17 years. In the circumstances, we are of the considered view that the ends of justice will be met by sentencing the appellant to 16 years imprisonment. We take  
10 into account the period of 1 year and 11 months the appellant spent on remand as enjoined by Article 23 (8) of the Constitution. The appellant shall therefore serve a sentence of 14 years imprisonment from the date of conviction which is, 29/3/2012.

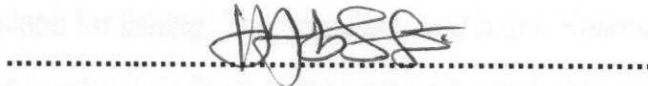
We so order.

15 Dated at **Masaka** this...30<sup>th</sup>...day of...July.....2018



**Hon. Justice F.M.S Egonda-Ntende**

**JUSTICE OF APPEAL**



20 **Hon. Lady Justice Hellen Obura**

**JUSTICE OF APPEAL**



**Hon. Justice Stephen Musota**

**JUSTICE OF APPEAL**