

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HELD AT MBALE

(Coram: Egonda Ntende, Cheborion Barishaki, Muzamiru Kibeedi, JJA)

CRIMINAL APPEAL NO.364 OF 2016

5 **SSEKANDI MUHAMMED** **APPELLANT**

VERSUS

UGANDA **RESPONDENT**

[Appeal from the decision of the High court of Uganda at Mukono (Hon Lady Justice Margaret Mutonyi) dated 07.11.2016 in HCT-14-CR-SC-0077-2016)

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JUDGMENT OF THE COURT

BACKGROUND

15 The appellant was tried and convicted of the offence of murder contrary to Section 188 and 189 of the Penal Code Act and sentenced to 50 years imprisonment.

20 The background facts are that on 24.06.2012 at around 7PM the deceased, a one Amir Balabukeye Kakooza, had gone to the home of Gamwosi Karim located in Namawojjolo-East in Mukono District to sell him milk. The appellant attacked the deceased person, whom he accused of having an affair with his wife, cut him with a panga on the right neck and on the hand seriously injuring him. The deceased bled to death while being rushed to the nearest clinic by Gamwosi Karim and a one Lubega Joseph. The appellant escaped into the bush but was arrested the next day by the police. Subsequently the appellant was tried for murder and convicted and sentenced to 50 years imprisonment.

25 The appellant appeals to this court against the sentence only on two grounds
namely:

1. That the learned trial judge erred in law and fact when she sentenced the
appellant without considering the time spent on remand.
2. The trial judge erred in law and fact when she sentenced the appellant to 50
30 years imprisonment which is manifestly harsh and excessive.

The appellant prayed to this court to allow his appeal, set aside the sentence and
substitute it with a lesser sentence which would result into his release.

APPEARANCES & ARGUMENTS

The appellant was represented by Counsel Obedo Deogracious of Ms Owor &
35 Co Advocates while the respondent was represented by Ms Joanita Tumwikirize
from the office of the Director of Public Prosecutions.

Both parties filed written submissions which they adopted during the hearing.

With regard to ground no. 1, Counsel for the appellant submitted that the trial
judge failed to consider the period the appellant spent on remand which rendered
40 the sentence illegal for contravening the mandatory constitutional provision. For
this submission Counsel relied on Article 23 (8) of the Constitution of the
Republic of Uganda, Wabatuma Bamwine Jamil Vs Uganda, Supreme Court
Criminal Appeal No.74 of 2007 and Rwabugande Moses Vs Uganda, Supreme
Court Criminal Appeal No.25 of 2014(Unreported)

45 With regard to ground no. 2, Counsel for the appellant submitted that the
sentence of 50 years was harsh and excessive in so far as the trial judge did not
consider the mitigating factors namely; that the appellant was a first offender with
no criminal record, he has a family of 4 children who need him during this trying

50 moment and he has now spent 8 years in incarceration inclusive of the years before conviction and after.

55 Counsel further submitted that the trial judge did not follow the principle of Stare decisis et non quieta movera which requires lower courts to abide with previous decisions of higher courts and to maintain consistence in sentencing. For this submission Counsel referred to the case of Magala Ramadhan Vs Uganda Supreme court Criminal Appeal No1 OF 2014 (unreported) where the sentence for each count of murder was 7 years imprisonment; John Kasimbazi & others Vs Uganda, Court of Appeal Criminal Appeal No. 167 of 2013 where this court reduced the sentence of life imprisonment for the conviction of murder to 12 years imprisonment and Oketcho Mugambe & others Vs Uganda, Court of Appeal Criminal Appeal No. 183 of 2009 where the appellant convicted of murder had her sentence reduced by this court to 20 years on each count.

Counsel concluded by inviting this court to allow the appeal, set aside the illegal, harsh and excessive sentence and substitute it with a lesser one which would result in the release of the appellant.

65 Counsel for the respondent opposed the appeal.

As far as ground no. 1 is concerned, Counsel for the respondent submitted that the trial judge had rightly stated that the period spent on remand was included in the sentence of 50 years imprisonment.

70 As for ground no. 2, Counsel for the respondent submitted that the sentence was not harsh and excessive in light of the aggravating factors considered by the trial judge.

Further, Counsel submitted that the maximum sentence for the offence of murder is death and therefore the sentence of 50 years was not illegal. In support of her submission, Counsel cited the case of Kaddu Lawrence Vs Uganda, Supreme

75 Court criminal Appeal No.72 of 2018 (Unreported) where the appellant committed murder using a panga and killed the man alleged to cheat with his wife. His sentence of life imprisonment was not interfered with by the Supreme Court as being legal.

Counsel concluded by inviting us to uphold the sentence and dismiss the appeal.

80 In rejoinder, Counsel for the appellant submitted that the learned trial judge had the responsibility to determine the period of remand so as to enable the appellant to count with precision the actual length of the sentence he is to serve.

In default, the sentence was rendered ambiguous and ought to be vacated. For this submission Counsel relied on the case of Kabiswe Issa Vs Uganda, Supreme Court Criminal appeal No.8 of 2002 and Semakula Grace & Amor Vs Uganda, Court of Appeal Criminal Appeal No.104 OF 2013.

ANALYSIS BY THE COURT

It is now settled that for the Court of Appeal, as a first appellant court, to interfere with the sentence imposed by the trial court which exercised its discretion, it must be shown that the sentence is illegal, or founded upon a wrong principle of the law; or where the trial Court failed to take into account an important matter or circumstance; or made an error in principle; or imposed a sentence which is harsh and manifestly excessive in the circumstances. See Kamya Johnson Wavamuno Vs Uganda, Supreme Court Criminal Appeal No.16 of 2000 (Unreported); Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported); Wamutabanewe Jamiru Vs Uganda, Supreme Court Criminal Appeal No. 74 of 2007 and Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014

100 It is with the above principles in mind that we shall now proceed to analyse the grounds of appeal.

GROUND NO. 1- REMAND PERIOD

The complaint of the appellant under ground no. 1 is that the trial judge did not take into account the remand period when sentencing the appellant to 50 years imprisonment which rendered the sentence illegal.

105 The respondent did not agree.

In sentencing the appellant the trial judge stated thus:

"...he is sentenced to 50 years imprisonment period spent on remand inclusive."

110 Article 23 (8) of the Constitution of the Republic of Uganda, 1995 imposes a mandatory obligation on the court to take into account the remand period while sentencing an accused person in the following terms:

115 *"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."*

The question that arises is whether the phraseology used by the trial judge while sentencing the appellant namely, **"50 years imprisonment period spent on remand inclusive"**, fulfilled the mandatory constitutional obligation on her part to **"take into account"** the remand period?

120 In the circumstances of this case, we are satisfied that it did not. The sentence imposed by the trial judge was vague and confusing. The trial judge did not indicate when the sentence commences. Section 106 (2) of the Trial on Indictments Act requires that sentences are to commence from the day the sentence is imposed. The judgment does not indicate whether the remand period was credited to the convict or otherwise taken into account. A judgment
125 is supposed to speak for itself so that the convict knows from the judgment itself the imprisonment term he/she is to serve with sufficient precision and not

to be left by court to be at the mercy of the implementing authorities to put an interpretation to what the court meant.

130 In *Tatyama Fred V Uganda, Court of Appeal Criminal Appeal No.107 of 2012*, the learned trial Judge while sentencing that appellant noted that she had considered all the circumstances of the case and the period spent on remand before sentencing the appellant to twenty years imprisonment. This Court found that the said sentence was vague as the trial Judge was silent on
135 whether the period of 3 years that the appellant had spent on remand had been deducted from the final sentence. This Court reduced the sentence to 17 years and 4 months after taking into account the period that the appellant had spent on remand.

In the same vein, we find that the words used by the trial judge fell short of the
140 standard set out in Article 23 of the constitution of the Republic of Uganda, 1995. Accordingly the sentences imposed by the trial judge are hereby set aside for being illegal and exercising our powers under section 11 of the Judicature Act, proceed to impose a fresh sentence upon the appellants. It is unnecessary to consider ground 2, whether or not the sentences were
145 manifestly harsh and excessive.

The appellant was at the time of commission of the offence about 32 years of age and thus capable of reform. He is a first offender. These are mitigating factors. However, he terminated life in a very gruesome manner and robbed the family of the deceased a bread winner.

150 This Court is likewise bound to follow the principle of "parity" and "Consistency" while sentencing while bearing in mind that the circumstances under which the offences are committed are not necessarily identical. See Sentencing Principle No.6(c) of the Constitution (Sentencing Guidelines for

155 Courts of Judicature) Practice Directions, 2013 – Legal Notice No.8 of 2013
and Aharikundira Yustina Vs Uganda, Supreme Court Criminal Appeal No. 27
of 2015.

160 In Akbar Hussein Godi Vs Uganda, Supreme Court Criminal Appeal No.03 of
2013 where the appellant had shot his wife to death after having previously
threatened her several times to kill her, a sentence of 25 years' imprisonment
was imposed on appeal for the offense of murder.

165 In Rwabugande Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014
where the trial court had sentenced the appellant to 35 years for beating the
deceased to death with his herdsman for failing to release appellant's cattle
which had trespassed into the deceased's land, the Supreme Court reduced the
sentence to 21 years on appeal.


In Aharikundira Yustina Vs Uganda (supra) where the appellant brutally
murdered her husband and cut off his body parts in cold blood, the Supreme
Court set aside the death sentence imposed by the trial court and substituted it
with a sentence of 30 years imprisonment.

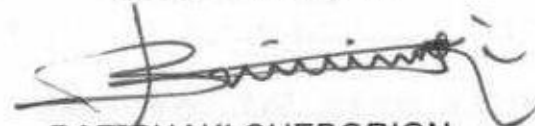
170 **DECISION.**

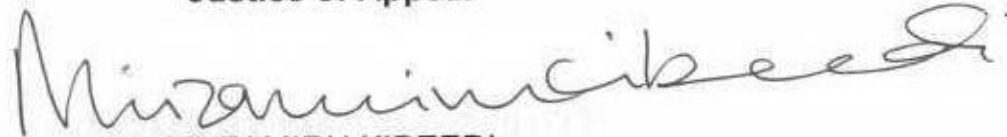
1. The appeal is allowed.
2. The sentence of 50 years imprisonment imposed by the High Court is hereby
set aside.
3. The appellant is hereby sentenced to 20 years' imprisonment. From that term,
175 we deduct the period of 4 years 4 months and 6 days that the appellant spent
on pre-trial detention.

4. We therefore sentence the appellant to a term of 15 years 7 months and 24 days' imprisonment to be served from the 31st day of October 2016, the date of conviction.

180 Signed, dated and delivered at Mbale this ^{15th} day of ^{September} 2020.


185 **FREDRICK EGONDA-NTENDE**
Justice of Appeal


190 **BARISHAKI CHEBORION**
Justice of Appeal


195 **MUZAMIRU KIBEEEDI**
Justice of Appeal