

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 127 OF 2009
ARISING FROM CRIMINAL SESSION CASE NO 407/09

TOM SANDE SAZI Alias

HUSSEIN SADAM.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

(Appeal from a sentence of the High Court of Uganda at Nakawa before His Lordship the Hon. Mr. Justice Joseph Murangira dated the 1st day of June in criminal session case No. 407/09).

CORAM:

HON. MR. JUSTICE ELADAD MWANGUSYA, JA
HON. LADY JUSTICE FAITH E. MWONDHA, JA
HON. MR. JUSTICE KENNETH KAKURU, JA

JUDGMENT OF THE COURT

The appellant was convicted of the offence of murder on the 1st day of June 2009 by *Hon. Justice Joseph Murangira* High Court of Uganda at Nakawa in criminal session case No. 407 of 2009.

He pleaded guilty to the charge and was sentenced to 18 years imprisonment.

He appealed to this Court on two grounds. One on the severalty of sentence, the other on its legality.

At the hearing of this appeal **Ms. Wakabala Susan Sylvia** appeared for the appellant on State brief. **Ms. Betty Kissa** learned Assistant Director of Public Prosecution (D.P.P) appeared for the respondent. The appellant was in Court.

Ms. Wakabala learned counsel for the appellant abandoned the first ground of appeal. She maintained ground two of the appeal which is set out in the memorandum of appeal as follows;-

“That the learned trial Judge erred in law when he did not subtract from the sentence the period the appellant spent on remand”.

She submitted that it is a requirement under **Article 23(8)** of the Constitution for Court to take into account the period a convict has spent on remand before passing the sentence.

She submitted further that in this particular case the learned trial Judge failed to comply with the above provision of the Constitution.

She submitted further that the learned trial Judge just alluded to the period the appellant had spent on remand but did not take it into account while passing sentence.

She cited the Supreme Court Authority of **Kizito Senkula vs. Uganda; Supreme Court Criminal Appeal NO. 24 of 2001.** (Unreported).

She submitted further that in this particular case the learned trial Judge ought to have subtracted the period the appellant spent on remand of 2 years and 3 months from the sentence of 18 years.

She prayed for this Court to reduce the sentence accordingly.

Ms. Betty Kissa learned Assistant Director of Public Prosecution opposed the appeal. She submitted that the appeal had no merit as the learned trial Judge had at page 6 of the proceedings clearly taken into account the 2 years and 3 months the appellant had spent on remand.

She submitted that the sentence was not illegal and prayed for this Court to up hold it.

We agree with Ms. Wakabala learned counsel for the appellant that Court must take into account the provisions of **Article 23(8)** of the Constitution while passing sentences. The Article stipulates as follows:-

“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.”(Emphasis added).

In the instant case the trial Judge before pronouncing the sentence stated as follows;-

Sentence and reasons for the sentence:

“Before passing the sentence against the convict, the following factors are put into consideration:

- a) The case of Attorney General vs. Kigula Susan & 417 others, Constitutional Appeal No. 3 of 2006, which case the death penalty/sentence not mandatory. The Court to conduct the mitigation process before sentencing.***
- b) All submissions of both counsels for the parties in mitigation.***
- c) The convict pleaded guilty; hence he did not waste the Court’s time and resources. He is pleading guilty is a sign of repentant and being remorseful.***
- d) The convict is a young man who could be given an opportunity to live a better and reformed life given the chance.***
- e) There was loss of life of the deceased in cold blood. And such conduct of the convict should not be treated with the kind gloves.***

f) The convict has been on remand for a period of 2 years and 3 months which period is considered when passing.

Considering the above factors, I do not deem it necessary to pass a death sentence against the convict. Accordingly, the convict is sentenced to 18 (eighteen) years imprisonment in prison”.

With all due respect to learned counsel for the appellant we do not agree with her that the learned trial Judge just alluded to the period the appellant spent on remand and did not take that period into a consideration while passing the sentence.

Clearly in our view the learned trial Judge complied with the provisions of **Article 23 (8)** of the Constitution which requires that the period a convicted person spends in lawful custody be taken into account by Court before passing a sentence.

Taking into account the remand period does not mean subtracting the period from the sentence imposed as suggested by learned counsel for the appellant.

The memorandum of appeal itself faults the learned trial Judge for having failed to subtract the remand period while passing the sentence.

The pertinent part reads as follows:-

“..... the learned trial Judge erred when he did not subtract from the sentence ”.

Article 23 (8) does not require the Court to “Subtract” from the sentence the remand period. What is required of Court is to take that period into account.

The Supreme Court in the **Kizito Senkula case** (Supra) clarified this when it held as follows;-

“As we understand the provisions of Article 23 (8) of the Constitution, it means that when a trial Court imposes a term of imprisonment as sentence on a convicted person the Court should take into account the period which the person spent in remand prior to his /her conviction.

Taking into account does not mean an arithmetical exercise.”

In the instant case we are satisfied that the learned trial Judge complied with the **Article 23 (8)** of the Constitution as he took into account the 2 years and 3 months period the appellant had spent in a lawful custody before imposing the sentence of 18 years imprisonment. This sentence clearly begin to run from the date of conviction.

This appeal has no merit, it accordingly fails and is hereby dismissed.

The sentence imposed by the trial Court is hereby up held.

Dated at **Kampala** this **24th** day of **March** 2014.

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HON. MR. JUSTICE ELDAD MWANGUSYA, JA
JUSTICE OF APPEAL

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HON. LADY JUSTICE FAITH E. MWONDHA, JA
JUSTICE OF APPEAL

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HON. MR. JUSTICE KENNETH KAKURU, JA
JUSTICE OF APPEAL