

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT MBARARA  
CRIMINAL APPEAL NO. 0475 OF 2016**

**TUGUME MOSES ALIAS MACHOMBERO.....APPELLANT  
VERSUS**

**UGANDA.....RESPONDENT**

*(An appeal from the decision of the High Court of Uganda at Rukungiri before Elubu, J. delivered on the 15<sup>th</sup> day of February, 2016 in Criminal Session Case No. 0116 of 2014.)*

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.  
HON. MR. JUSTICE STEPHEN MUSOTA, JA.  
HON. MR. JUSTICE REMMY KASULE, AG. JA.**

**JUDGMENT OF THE COURT.**

**Background**

On the 15<sup>th</sup> day of February, 2016, the High Court (Elubu, J.) sentenced the appellant to 35 years imprisonment, having convicted him of Murder contrary to **Sections 188 and 189** of the **Penal Code Act, Cap. 120**.

The facts of the case may be summarized as follows:

The deceased was the wife of the appellant, and the two lived together in Kambuga Town Council, Rukungiri District. On the 25<sup>th</sup> day of August, 2013, the appellant reported the death of his wife to the area L.C.1 Chairman. He had earlier reported the same death to his neighbours, who went to the couple's home and found the deceased's lifeless body lying there.

The L.C.1 Chairman advised the appellant to report his wife's death to the Police, which he did. The Police went to the house of the appellant to carry out further investigations. A doctor was summoned to carry out an examination on the deceased's body, and he produced a report which was tendered in evidence and marked P. E 3. According to the report, the cause of the deceased's death was respiratory failure due to trauma to the brain stem. At the time of the autopsy, the deceased's neck had no rigor mortis

and was flexible consistent with the possibility that the neck had been twisted to break the neck bones. The doctor also made general observations that the deceased's body had bruises which showed that after she had been killed, the deceased's body was dragged on the ground to the bedroom where it was found lying by the police. The body had been discovered lying supine in the bedroom next to feaces. The body had multiple bruises.

Later, the appellant was arrested and charged with the murder of his wife. The appellant pleaded not guilty.

After hearing the prosecution witnesses, and the appellant in his defence, the learned trial Judge accepted the prosecution case and convicted the appellant as charged. The appellant was sentenced as indicated earlier. The learned trial Judge accepted that the death of the deceased had been caused by the above described injuries inflicted by the appellant.

The appellant, has, with leave of this Court appealed against only the sentence imposed on him by the learned trial Judge. The sole ground of appeal in the appellant's memorandum of appeal is that:

**"The learned trial Judge erred in law and fact when he sentenced the appellant to 35 years' imprisonment, a sentence which did not take into account all the mitigating factors given the circumstances of the case."**

### **Representation.**

At the hearing of the appeal, Counsel Tumwebaze Emmanuel, appeared for the appellant on State Brief. The appellant was not physically present in Court due to the restrictions on movement from the prison facilities put in place by the Government to prevent the spread of Covid-19, but he followed the proceedings via video conferencing; Ms. Alleluya Glory, a State Attorney in the Office of the Director of Public Prosecutions appeared for the respondent. The written submissions filed for the parties prior to the date of the hearing of the appeal were, with the leave of the Court, adopted in support of the respective parties' cases.

### **Appellant's case.**

It was the contention for the appellant that given the mitigating factors in his favour which were brought to the attention of the learned trial Judge in the sentencing proceedings, the sentence imposed on him was such that it should be deemed manifestly excessive. Counsel relied on two cases, where this Court endorsed the principle that very long sentences are never justified where mitigating factors exist in favour of the appellant to justify shorter sentences.

Counsel for the appellant submitted that at the time of the commission of the offence, the appellant was a first offender at the young age of 35 years. Because of his young age, the appellant had a chance to reform and be useful to society after serving a lesser sentence, had one been imposed by the trial Court. The appellant had shown remorse for killing the deceased who was his wife. Keeping the appellant in prison meant that the deceased's young children would be left like orphans without parental love and care.

Counsel cited **Byaruhanga Moses vs. Uganda, Court of Appeal Criminal Appeal No. 0144 of 2010**, where the appellant who had been convicted of the murder of his own child was sentenced by the trial Court to 22 years. In that case, on appeal, this Court reduced the sentence imposed on the appellant to 20 years imprisonment.

Counsel urged this Court to consider the **Byaruhanga case** as a persuasive authority for the proposition that in a murder case like the present case, a sentence of 20 years imprisonment is appropriate.

In conclusion, counsel for the appellant prayed this Court to allow the appeal, set aside the sentence of 35 years imposed by the trial Court for being harsh and excessive and substitute a sentence of 20 years imprisonment upon the appellant as appropriate in the circumstances.

### **Respondent's case.**

The response to the appellant's submissions was that the offence of 35 years imprisonment imposed upon the appellant for murder was neither harsh nor manifestly excessive. Counsel for the respondent contended that the learned trial Judge had, during the sentencing proceedings, clearly and exhaustively

taken into account the mitigating factors and all the circumstances of the case before arriving at the sentence.

It was further the contention of counsel for the respondent that the sentence imposed by the learned trial Judge was the prescribed starting point for sentences in cases of murder in the **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**.

Counsel for the respondent therefore prayed to this Court to dismiss the appeal and maintain the sentence imposed upon the appellant by the learned trial Judge.

### **Resolution of Appeal.**

We have read the court record, carefully considered the submissions for both parties, the law applicable, and the authorities cited and those not cited but relevant to the determination of this appeal.

This appeal is against sentence only. Nonetheless, this Court has a duty to review all the materials as regards sentencing which were put before the trial Court, and come up with its own decision as to whether the sentence imposed on the appellant ought to be interfered with or not. **See: Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997; and Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions S.I 13-10** on the duty of this Court as a first appellate Court.

The sentencing proceedings conducted by the trial Court are recorded at pages 38 to 41 of the record of appeal. During sentencing, the learned trial Judge heard the aggravating factors submitted by the state and the mitigating factors submitted by the defence.

At page 40 of the record, the learned trial Judge considered the fact of the appellant being a first offender. The learned trial judge further had regard to the plight of the appellant's children who needed their father's parental love and care, as the deceased in this case, their mother was no longer around which made a case to keep the appellant around to provide parental love to those children. The learned trial Judge also considered the period of 2 ½ years which the appellant had spent on pre-trial remand. These factors were considered as mitigating factors for the appellant.

However, the learned trial Judge considered as he was entitled to do, the following aggravating factors against the appellant: The appellant committed the offence as part of a series of prior incidences of domestic violence involving the appellant frequently assaulting his wife, and that the deceased was a victim of domestic violence. The learned trial Judge further considered the serious nature of the offence of murder which could attract the maximum death sentence, and the brutal manner in which the appellant had committed the offence. The learned trial Judge also considered the acts of the appellant, in the wake of his killing the deceased when the appellant attempted to conceal the murder. The learned trial Judge took the view that the deceased died in a manner of indignity. All the foregoing were aggravating matters in this case.

In appeals against sentence only, this Court will apply the principle of consistency in sentencing. In **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015**, it was observed that:

**"It is the duty of this court while dealing with appeals regarding sentencing to ensure consistency with cases that have similar facts. Consistency is a vital principle of a sentencing regime. It is deeply rooted in the rule of law and requires that laws be applied with equality and without unjustifiable differentiation."**

Because an appellate Court may interfere with the sentence of the trial Court which exceeds the range of sentences approved by the Supreme Court or this Court, it is necessary to review some relevant decided cases.

In **Kyabire Patrick & 3 Others vs. Uganda, Supreme Court Criminal Appeal No. 0062 of 2018**, a decision delivered on 8<sup>th</sup> May, 2020, the Supreme Court maintained the death sentence which had been approved by the trial Court and the Court of Appeal. In that case, the appellants were part of a mob which had raided a police post, overpowered the police officers and removed certain suspects from the police cells. The suspects had been arrested over the murder of a person. The appellants had removed one of the suspects a lady from the prison cells, taken her to her hut, locked her inside the hut and set it on fire, thereby burning her to ashes. The appellants had also hacked the other suspects they removed from the police cells to death. The Supreme Court stated that the magnitude of the offences committed by the appellants justified the imposition of the death sentence.

In **Adupa Dickens vs. Uganda, Court of Appeal Criminal Appeal No. 0267 of 2017**, this court upheld a sentence of 35 years, considering it appropriate in a case of murder. In that case, the appellant had killed his wife, and mother of his four children in their matrimonial home. After killing his wife, the appellant had attempted to disguise the killing as a suicide.

In **Aharikundira Yustina vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015**, the Supreme Court approved of a sentence of 30 years imprisonment in a case of murder, setting aside the death sentence which had been imposed by the trial Court and upheld by the Court of Appeal. In that case, the appellant had killed her deceased husband by cutting his throat, arms and legs. The arms and legs had been severed from the deceased's body.

In **Akbar Hussein Godi vs. Uganda, Supreme Court Criminal Appeal No. 03 of 2013**, the appellant was convicted of the murder of his wife, by shooting her to death in the High Court which imposed a sentence of 25 years. On appeal, the Court of appeal upheld the sentence and on further appeal, the Supreme Court also upheld the same sentence.

From the above previously decided cases, it may be said that sentences ranging from 25 years up to the death sentence have been deemed appropriate in cases of murder by this Court. The death sentence has been imposed in the rarest of rare cases where the magnitude of the offences committed, justified the imposition of the death sentence. Otherwise, in lesser grave circumstances, sentences of between 25 years to 30 years have been considered appropriate in murder cases.

It must be stated that the trial Court has the discretion to consider the appropriate sentence in each case, considering the peculiar circumstances. The sentence imposed by the trial Court on the appellant of 35 years imprisonment, after having taken into account the remand period of 2 ½ years to the credit of the appellant, is in our view, on the higher end. In the interest of maintaining consistency in sentencing, we shall set it aside.

Pursuant to Section 11 of the Judicature Act, Cap. 13, which gives this Court the powers of the High Court for purposes of determining an appeal from

the High Court in its original jurisdiction, which shall proceed to determine an appropriate sentence.

We have already stated the mitigating and aggravating factors in the instant case, and we shall not repeat them in detail. We shall only emphasize that the offence of which the appellant was convicted is grave in nature, and attracts the death sentence; the appellant killed the deceased in circumstances of domestic violence and in a brutal manner, which must be condemned by this Court.

However, the appellant was 37 ½ years at the time of sentencing, a youthful age with a chance to reform and contribute to society; and may have had a difficult upbringing as an orphan and may have lacked the guidance to shun domestic violence. These serve as mitigating factors.

Considering all the factors of this case, we find that a sentence of 30 years imprisonment is appropriate. From that, we shall deduct the period of 2 ½ years spent by the appellant on remand prior to his conviction. The appellant shall serve a sentence of 27 ½ years imprisonment from the date of his conviction on 15<sup>th</sup> February, 2016.

The sole ground of this appeal, therefore succeeds. Accordingly, the appeal is allowed, and the sentence imposed by the High Court on the appellant having convicted him of the offence of **Murder** contrary to **Sections 188 and 189 of the Penal Code Act, Cap. 120** is varied on the terms proposed hereinabove.

**We so order.**

Dated at Mbarara this ..... 13<sup>th</sup> ..... day of ..... October 2020.

.....  
**Elizabeth Musoke**

Justice of Appeal.



**Stephen Musota**

Justice of Appeal.



**Remmy Kasule**

Ag. Justice of Appeal.