

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

5    **CORAM:**                    **HON. LADY JUSTICE L.E.M.MUKASA-KIKONYOGO, DCJ.**  
   **HON. MR. JUSTICE G.M.OKELLO,JA**  
   **HON. LADY JUSTICE C.K.BYAMUGISHA, JA.**

10                                    **CRIMINAL APPEAL NO.191/04**

**BETWEEN**

   AGECE MOSES :..... APPELLANT  
15

**AND**

   UGANDA :..... RESPONDENT

20    ***[Appeal from the decision and sentence of the High Court of Uganda sitting at Lira  
(Aweri-Opio J) dated 15<sup>th</sup> June 2004 arising out of High Court Criminal Session  
Case No.23/04]***

**JUDGEMENT OF THE COURT**

25                                    The appellant Agece Moses was indicted for the offence of murder contrary to sections  
**188** and **189** of the Penal Code Act. It was alleged in the particulars of the indictment  
that on the 20<sup>th</sup> April 2001 at Buga village, Kamdini parish, Oyam County, Apach  
District, he murdered Adong Ketty.

30                                    When he appeared before Aweri-Opio J. on the 15<sup>th</sup> June 2004 he pleaded guilty to a  
lesser offence of manslaughter. He was sentenced to eight years imprisonment. His  
appeal to this court is against the sentence.

One ground of appeal was formulated for our determination. It stated as follows:

***“That much as the sentence was legal, it was harsh and excessive in view of the mitigating factors”.***

In submitting on this ground, Mr Antony Ahimbisibwe, learned counsel for the  
5 appellant, stated that the appellant was a soldier who had gone out on patrol although  
he used the occasion to look for his girl friend. He complained that the trial judge used  
harsh language when he stated that the appellant used the gun for protecting society  
into a machine for hunting for girl friends in the village. He further pointed out that  
the learned judge did not take into account the fact that the appellant met vigilantes  
10 who wanted to disarm him. Other factors that learned counsel considered to be  
favourable to the appellant were that he had been on remand for three years and six  
months and also the circumstances of the case. He suggested a sentence of 4 years.

Ms Wenene, Senior State Attorney, supported the sentence and invited us to dismiss  
15 the appeal as it lacked merit. She pointed out that the sentence was lawful.

This court has repeatedly held in numerous authorities that it will not intervene to  
alter the sentence passed by a trial court unless it is illegal or manifestly excessive or  
too low in the circumstances of the case. In instant appeal, the facts leading to the  
commission of the offence were narrated to court to be the following. The appellant  
20 went to the home of the deceased to look for his girl friend. It was at night. He  
ordered the deceased to open the door. Other people who included Ogwal and Robert  
Okello overheard him. They came and tried to disarm him. They removed the  
magazine containing the bullets from the gun. In the struggle, the appellant shot one  
bullet that hit the deceased in the abdomen. She later died from the wounds inflicted.

25 In sentencing the appellant, the learned judge took into account all the facts that were  
before him. There is no doubt that there was scuffle as Okello and Ogwal tried to  
disarm the appellant. We do not think that the appellant was using the gun to hunt for  
girl friends in the village as the learned judge stated. He was with a gun because he  
30 was a soldier. We tend to agree with the submission of Mr Ahimbisibwe that the  
language used by the trial judge in regard to the use of a gun was rather harsh. This  
was a borderline case to accidental shooting. The appellant had been on remand for  
over three years. We consider a sentence of 8 years on a young man who was a first  
offender who pleaded guilty to the indictment rather harsh and excessive in the

circumstances of this appeal. We accordingly set it aside, and substitute it with a 4-year sentence. The appeal is therefore allowed.

**Dated at Kampala this 18<sup>th</sup> day of April 2006.**

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**L.E.M.Mukasa-Kikonyogo**

**Deputy Chief Justice**

**G.M.Okello**

**Justice of Appeal**

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**C.K.Byamugisha**

**Justice of Appeal**