

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 179 OF 2003**

1. **OMASIGE CALVIN**

5 2. **OKIA JAMES ::: APPELLANTS**

VERSUS

UGANDA ::: RESPONDENT

CORAM: HON JUSTICE L.E.M. MUKASA-KIKONYOGO, DCJ

10 **HON JUSTICE A.E.N. MPAGI-BAHIGEINE, JA**

HON JUSTICE C.K. BYAMUGISHA, JA

*(Appeal from the decision of the High Court at Soroti by Hon. Mr. Justice Rugadya
Atwoki dated 18th August, 2008 in Criminal Case Session No. 201 of 2001)*

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JUDGEMENT OF THE COURT

The appellants were charged with two counts of murder and attempted murder. They were convicted on both counts. They were each sentenced to death on the first count and three years of imprisonment on the second count. The sentence on the second count was suspended.

20 Being dissatisfied with the conviction and sentence of murder they lodged an appeal to this court against conviction and sentence.

At the hearing of the appeal, learned counsel for the appellants intimated to court that they, appellants were no longer challenging their conviction, instead they sought to challenge the sentence of death.

25 In her submission on sentence Mrs. Kasande – Murangira stated that at the time of conviction there was only one sentence that could be passed. She pointed out that since January 2009 – the Supreme Court in the case of **Attorney General Vs Susan Kigula & 30 417 Others, Constitutional Appeal 3/06** the death penalty is no longer mandatory.

She prayed for setting aside the sentence of death and substituting it with a sentence of 8 years imprisonment.

5 On mitigating factors, learned counsel stated that the appellants were on remand for three years before trial. They were related to the deceased and are now remorseful. They have families and dependants to look after. She prayed that the sentence be reduced to 8 years.

10 In reply Mr. Semalemba Principal State Attorney supported the sentence of death as being justifiable in the circumstances of the case. He pointed out that the evidence led at the trial, showed that the conduct of the appellants before and after the commission of the offence, deserved the sentence of death. Learned counsel stated that according to the testimony off PW4, the deceased's daughter, the appellants came to the home of the deceased and took cover for one hour. When the deceased came, they attacked her with pangas. They chased her across the road for a distance of 15 meters. They continued
15 cutting her to make sure she died. It was his submissions that according to the post mortem report the deceased had 6 deep cut wounds.

He further pointed out that considering the weapons used the conduct of the appellants before and after the commission of the offence, the trial judge was justified to impose the death sentence.

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We have listened to the submissions and the arguments advanced by both counsel. We have perused the record of appeal and the authority cited to us. We agree that since the decision of the Supreme Court in the case cited by Mrs. Kasande – Murangira, the death sentence is no longer mandatory. That notwithstanding each case must be considered on
25 its own merit. In the instant appeal, considering the injuries received and the weapon used, the conduct of the appellants before and after the commission of the offence, irresistibly point to premeditated murder.

In the circumstance we find no merit in the appeal against sentence and we accordingly dismiss it forthwith.

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Dated at Kampala this 6th day of **April 2010**.

L.E.M. MUKASA – KIKONYOGO
DEPUTY CHIEF JUSTICE

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A.E.N MPAGI – BAHIGEINE
JUSTICE OF APPEAL

C.K. BYAMUGISHA
JUSTICE OF APPEAL

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