

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 77 OF 2010

1. SSEMANDA CHRISTOPHER

5 **2. MUYINGO DENIS** =====
APPELLANTS

VERSUS

10 **UGANDA**

=====

RESPONDENT

CORAM: HON. MR. JUSTICE RUBBY OPIO AWERI, JA

HON. LADY JUSTICE FAITH E.K. MWONDHA, JA

15 **HON. MR. JUSTICE KENNETH KAKURU, JA**

*(Appeal against the sentence by High Court at Mpigi before Her Lordship
Justice Elizabeth Ibanda Nahamya, J dated 11/5/2010 in Criminal Session
Case No. 97/2010)*

20 **JUDGEMENT OF THE COURT**

This is an appeal against sentence by the High Court of Uganda at Mpigi before Hon. Justice Elizabeth Ibanda Nahamya dated 11/5/2010.

25 The appellants were represented by Ms. Wakabala Susan Sylvia learned counsel and the respondent was represented by Ms. Betty Khisa, learned Ag. Asst. DPP.

It was submitted for the appellant that the sentence was harsh and excessive. That the learned trial judge did not take into account the fact that by the time the appellants are released from prison they would be too old and a burden to society. That the
5 time spent on remand when added to the sentence puts the total sentence to 37 years which in her view is harsh and excessive.

That the victim is alleged to have stolen property belonging to the appellant and that although he was assaulted he did not die immediately but died later in Hospital.

10 Ms. Khisa Betty learned Ag Asst. DPP submitted that the learned trial judge took into account all the mitigating factors and aggravating factors and came to the right decision. That the maximum sentence being death 35 years is not excessive the period of remand having been taken into account. She prayed for
15 the dismissal of this appeal.

We have heard the submissions of both counsel. We have carefully perused the court record especially the allocutus and the reply thereto we have also read carefully the judgment of the trial court.

20 The learned trial judge gave detailed reasons for the sentences. She considered all the mitigating and aggravating factors. The fact that the victim had been killed the way he was. The violence used and the need to protect the innocent lives from persons taking the law into their hands. The fact that the victim was

known and related to the appellants was considered as an aggravating factor.

In mitigation the learned judge considered the age of the appellants, the fact that they could reform and also considered
5 the years they had spent on remand.

Considering that the maximum sentence is death, she sentenced each of the appellants to 35 years imprisonment for the offence of murder.

We have considered the law governing the powers of this Court in
10 an appeal of this nature. We have also considered the principles upon which this court can interfere with the sentence of the trial judge. These principles were set out by the Supreme Court in **Kiwalabye Bernard versus Uganda; Criminal Appeal No. 143 of 2001** as follows:-

15 *“The appellant court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that its results in the sentence imposed to be manifestly excessive or so low as to
20 amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered which passing the sentence or where the sentence imposed is wrong in principle”*

This principle has been applied by this court in a number of cases. most recovery in **Court of Appeal Criminal Appeal No. 322 of 2009; Semakula Yosam versus Uganda** in which this Court declined to interfere with the sentence imposed by the trial Court.

5 See also **James versus R [1950] 18 EACA 147.**

We do not agree with Ms Wakabala learned counsel for the appellants that a sentence of 35 or even 37 years imprisonment in the circumstances of this case is manifestly excessive, the appellants having been convicted of murder which offence carries
10 a maximum sentence of death.

This Court cannot alter a sentence on the mere ground that if the members of the appellant court had been trying the appellant they might have passed a somewhat different sentence. **(See Ogalo S/o Owoura versus R [1954] 24 EACA 270).**

15 We find that the learned trial judge took into account all the mitigating and aggravating factors and carefully considered them before imposing the sentence. We have found no important matter or circumstances which the learned trial judge ignored to consider.

20 We agree with Ms. Betty Khisa learned Ag. Asst. DPP that the learned trial judge considered all the mitigating factors and imposed a just sentence.

We have found no reason to interfere with the discretion of the learned trial Judge.

This appeal accordingly fails. We uphold the sentence of 35 years imprisonment for each of the appellants.

It is so ordered.

Dated at Kampala this **17th** day of **December, 2013**.

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HON. RUBBY OPIO AWERI
JUSTICE OF APPEAL

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HON. FAITH E.K. MWONDHA
JUSTICE OF APPEAL

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.....
HON. KENNETH KAKURU
JUSTICE OF APPEAL

17/12/2013

3:25 P.M

Ms Wakabala Susan Sylvia for the appellant on state brief

20 Faith Turumanya Senior State Attorney holding brief for Betty Khisa Ag. Asst. DPP.

Wakabala:

Matter is coming up for ruling we are ready to receive it.

Court:

This is the judgment of Court.

Delivered by Hon. Kenneth Kakuru, JA.