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REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT FORT PORTAL
CRIMINAL APPEAL NO. 46 OF 2012

10 Tumwesigye Anthony:.....Appellant

Versus

Uganda :.....Respondent

15 *(An appeal from High Court Judgment (Byabakama Mugenyi, J) dated 17.02.2012 in High Court at Fort-Portal Criminal Case No. 32 of 2011)*

Coram: Hon. Mr. Justice Remmy Kasule, JA

Hon. Mr. Justice Eldad Mwangusya, JA

Hon. Mr. Justice F.M.S. Egonda-Ntende, JA

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JUDGMENT OF THE COURT

25 The appellant with one Munene Isaac, not in this appeal, were convicted of murder contrary to **Sections 188 and 189** of the Penal Code Act and he was sentenced to 32 years imprisonment. The co-accused, Munene Isaac, being below 18 years old at the time the offence was committed was sent to the Family and Children's Court for appropriate orders under **Section 104** of the Children's Act.

5 Having abandoned the ground of appeal that challenged his conviction, the appellant, with leave of this Court, appealed only against sentence contending that the same was harsh and manifestly excessive.

10 Learned Counsel Bahenzire Angella represented the appellant while Principal State Attorney Rose Tumuhaise was for the State.

15 The facts as proved before the trial Judge were that on 19.09.2010 at Musandika village, Kyenjojo District, the appellant and Munene Isaac murdered one Nahabwe Edison Kalisa, a herdsman working for Rev. Canon Kamara. The reason for the murder was because the deceased had caused the arrest of the said Isaac Munene for trying to steal the chicken of the said Rev. Canon Kamara.

20 The deceased's death was due to a deep cut wound on the head, a fractured skull that led to intracranial haemorrhage. The deceased's body was found on 21.09.2010 buried in a muddy swamp/sand pit in an area where the deceased used to dig sand at night.

25 The appellant, Isaac Munene and Mbaine Godfrey were subsequently arrested, charged, prosecuted for murder of the deceased, the appellant and Isaac Munene being convicted, while Mbaine Godfrey, was acquitted. Appellant was subsequently sentenced to 32 years imprisonment. Hence this appeal.

30 Appellant's Counsel has submitted that the trial Judge imposed a harsh and manifestly excessive sentence upon the appellant, without having sufficiently considered the mitigating factors in favour of the appellant.

35 Being aged only 19 years when the offence was committed, the appellant was too young to be sentenced to 32 years. He will leave prison when he is about 51 years and will by then have lost the period to reform into a useful and productive member of his family and the nation.

5 The Judge had also not considered that appellant was a father to two children and supporting two orphans. These, for the next 32 years, will lose the opportunity of sharing the guidance and direction of a father.

10 Appellant's Counsel thus prayed Court to set aside the sentence of 32 years, substitute the same with a lesser sentence so as to enable the appellant reform and be able to support his children and the orphans and be a productive citizen.

15 Respondent's Counsel opposed the appeal. The sentence of 32 years imprisonment had been passed by Court after considering both the mitigating and aggravating factors. These were that appellant was a first offender, had been on remand for 1 year and 4 months, and was aged only 19 old years, thus capable of reforming. As to aggravating factors the Judge noted that the appellant had not respected the life of the deceased who too was young being less than 30 years old. The deceased had been murdered in cold blood and his body buried in the sand. The appellant therefore deserved the 32 years sentence of imprisonment.

25 The principles upon which an appellate Court acts in exercising its jurisdiction to review sentences are that a sentence will not be altered on the mere ground that if the appellate Court members had been trying the appellant, they might have passed somewhat a different sentence. The appellate Court will only interfere with the sentence of the trial Court, if there is an illegality in that the trial Court acted contrary to the law or upon a wrong principle, or overlooked a material factor. The appellate Court will also interfere if the said sentence is harsh and/or manifestly excessive.

30 See: **Jackson Zita v Uganda: Criminal Appeal No. 19 of 1995 (SC)**

and also

5 **Nalongo Naziwa Josephine v Uganda: Criminal Appeal No. 088 of 2009 (COA).**

In passing the sentence of 32 years imprisonment against the appellant the trial Judge stated:

10 **“This Court has observed time and again that human life is sacred and ought to be respected by every individual human being. The deceased in this case was murdered in cold blood and so heartless was the convict in that he even took time to bury the body in the sand so that it is not found. He was clearly devoid of any emotions and coldly calculating. In my**
15 **view the circumstances of this case would call for a very stiff penalty as provided for under the law.**

20 **The convict is a first offender and has been on remand for 1 year 4 months. At 19 years he is still a very young man who, if given chance to reform, could still make meaningful contribution to society. However, being of such age and committing a heinous crime of this magnitude shows he has to be removed from the society for quite a while. Others of similar inclinations should be warned as well”.**

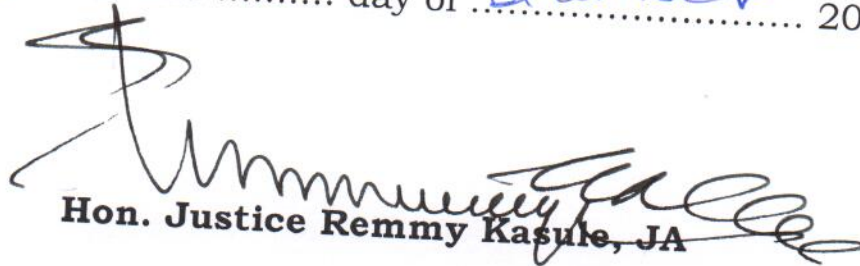
25 While agreeing with the trial Judge that the appellant failed to respect the life of the deceased and that the conduct of the appellant called for a very stiff penalty, we note that the fact that the appellant was a first offender, and a young man aged only 19 years with a chance to reform, was a father of two children and supported two orphans, called for a lesser sentence than what the
30 trial Judge imposed.

We have, on our own, having re-considered both the mitigating and aggravating factors, and considering all the circumstances of the case, concluded that a sentence of 32 years imprisonment was harsh and manifestly excessive. We accordingly set it aside. We
35 substitute the same with a sentence of 20 (twenty) years to be

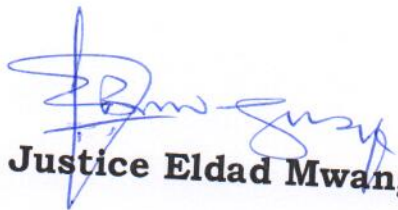
5 served by the appellant. The substituted sentence is to be served with effect from the date of conviction of the appellant of 16.02.2012.

We so order.

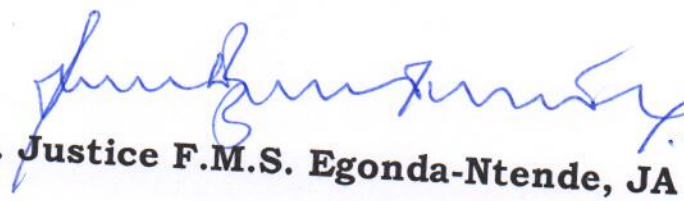
10 Dated at Fort Portal this ^{18th} day of December 2014.


Hon. Justice Remmy Kasule, JA

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Hon. Justice Eldad Mwangusya, JA

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Hon. Justice F.M.S. Egonda-Ntende, JA