

**IN THE COURT OF APPEAL OF UGANDA**  
**AT FORT PORTAL**

**CRIMINAL APPEAL NO. 0412 OF 2009**

*(Arising from High Court at Fort Portal Criminal Session Case No. 139 of 2011)*

Mugabe Stephen:.....Appellant

## Versus

15 Uganda .....Respondent

**Coram: Hon. Mr. Justice Remmy Kasule, JA**

**Hon. Mr. Justice Eldad Mwangusya, JA**

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

## JUDGMENT

The appellant was indicted for the offence of murder c/s 188 and 189 of the Penal Code Act. The particulars were that on the 6<sup>th</sup> day of May 2011 at Nyakakika village in the Kamwenge District he murdered one, ABRAHAM NATUKUNDA.

5 He was arraigned before the High Court sitting at Fort Portal  
(Batema, J.) on 9<sup>th</sup> December, 2013 and pleaded guilty to the  
indictment. He was convicted accordingly and sentenced to death.  
He appeals against the sentence on the ground "that the sentence of  
10 death given by the trial Judge was manifestly excessive, harsh and  
unfair in the circumstances".

The facts of the case, as narrated by the prosecution and admitted  
by the appellant, were that following an allegation of rape against  
the appellant, he was heard threatening that he would kill a  
member of the deceased's family. The deceased was aged twelve  
15 years and on the fateful day he was sent by his father to sell milk at  
a nearby Trading Centre. He never returned home. The relatives  
made a search for him and his body was discovered in a house in a  
banana plantation belonging to one, Kyalimpa. The appellant had  
been seen coming out of this house. On examination of the body of  
20 the deceased, it was revealed that the stomach had been cut open  
and the heart and lungs had been removed. His private parts had  
also been cut off and were missing from his body. The cause of  
death was severe haemorrhage due to cut wounds and the body  
parts removed.

25 After his conviction the prosecution submitted that the appellant  
was not a first offender. He was serving a twenty seven year  
sentence for rape and, given the gravity of the offence and the  
brutal manner in which the murder was executed on a defenceless  
young boy, the prosecution prayed for a fifty year term of  
30 imprisonment.

In mitigation the defence prayed for a lenient sentence. Court was  
invited to take into consideration the fact that the appellant had  
been on remand for more than two years and was serving a twenty  
seven year sentence, which he would complete when he was over  
35 fifty seven years. He was twenty seven at the time of his arrest. It  
was stated that he had had time to reflect on his crime and was



5 remorseful. He had readily pleaded guilty and he had three brothers to look after who looked forward to seeing him back from prison.

10 In passing sentence, the trial Judge acknowledged that the appellant had readily pleaded guilty to a murder charge, was still a young man and was looking after three brothers. However he expressed in very strong words the aggravation factor, that was the manner in which an innocent young boy was killed and his body dismembered. He looked at all the sentencing options open to him, and came to the conclusion that in the circumstances under  
15 which the young boy was killed, a death penalty was the most appropriate sentence.

Mr. Acellam Collins represented the appellant both at trial and on appeal. The Respondent was represented by Mr. Brian Kalinaki, a Principal State Attorney.

20 Mr. Acellam submitted that the death sentence, though legal was excessive. He, like he did at the trial at the High Court, raised factors which to him should have mitigated the sentence passed against the appellant. According to him the trial Judge did not consider the remand period he had spent on remand, that he was  
25 already serving a sentence of 27 years, had learnt a lesson from his action, had pleaded guilty and saved court's time, was looking after his siblings and that he was remorseful. While agreeing with the trial Judge about the brutality of the killing, he submitted that a more lenient sentence should be considered by this Court.

30 Mr. Brian Kalinaki, on the other hand, supported the sentence of death passed on the appellant. He submitted that the trial Judge had considered all the mitigating and aggravating factors before opting to pass the death sentence. He considered that the appellant was not a first offender and was serving a sentence after being  
35 convicted for rape.



5 The principles upon which an appellate Court will act in exercising  
its jurisdiction to review sentences, have been re-stated in  
numerous decisions of our Courts following the case of Ogalo s/o  
Owoura V. R (1954) 21 EACA 270. The appellate Court will only  
10 interfere when it is evident that the trial Judge has acted on some  
wrong principle or overlooked some material factor or that the  
sentence is manifestly excessive in view of the circumstances of the  
case. In the case of NAMWANJE PAULINE versus UGANDA  
Supreme Court Criminal Appeal No. 14 of 2009, where the Supreme  
Court declined to interfere with the death sentence passed on the  
15 appellant, it was stated at follows:-

**"We were urged to allow the appellant to make mitigation on  
the sentence. We note that the appellant was sentenced to  
death on 05.03.2003, long before our decision in the case of  
Susan Kigula and 417 others vs Attorney General [Supreme  
20 Court Appeal No. 03 of 2006]. So no mitigation of the sentence  
was made in the High Court. But submissions in mitigation  
were made in the Court of Appeal. The Court of Appeal found  
no merit in those submissions and so the Court upheld the  
death sentence. There was no appeal on this aspect of the  
25 case.**

**However, Mr. Tumwine in rejoinder to Assistant DPP,  
submissions, half heartedly asked us to pass a "sentence lesser  
than death", if we uphold the conviction for murder. Obviously,  
learned Counsel for the appellant was unable to point to any  
30 circumstances that go to mitigate the death sentence and nor can we  
find any. Accordingly, we reject the plea. As a result we confirm the  
death sentence".**

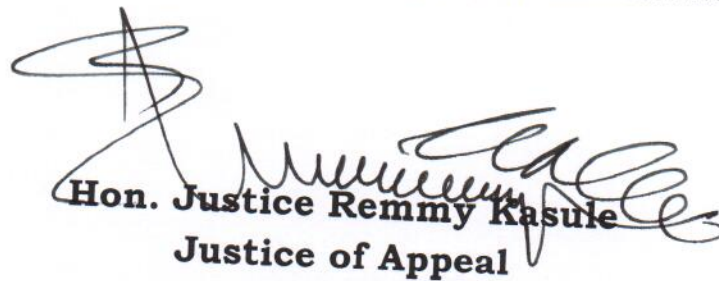
The killing in the above case was not as cold bloodied and senseless  
as the killing in this case, where after the killing, the body was  
35 dismembered and some organs removed, whatever the reason. In  
this case the appellant is not a first offender, which contrary to the

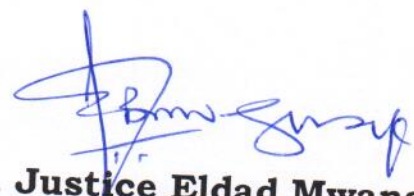
5 submissions of his Counsel is an aggravating factor rather than a mitigating factor. The brothers he purportedly looks after may miss him as a relative but as a convict already serving a long term sentence he cannot look after them.

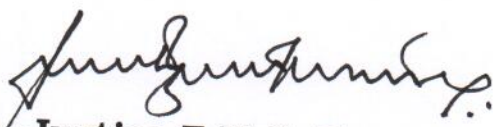
10 In the circumstances of this case we do not find any factor that would go towards mitigating the sentence and we dismiss the appeal and uphold the Death Penalty imposed by the High Court.

We so order.

Dated at Fort Portal this <sup>18</sup> day of <sup>December</sup> 2014.

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**Hon. Justice Remmy Kasule**  
**Justice of Appeal**

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**Hon. Justice Eldad Mwangusya**  
**Justice of Appeal**

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**Hon. Justice F.M.S. Egonda-Ntende**  
**Justice of Appeal**