

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL
CRIMINAL APPEAL NO. 0144 OF 2010**

BYARUHANGA MOSES APPELLANT

VERSUS

UGANDA RESPONDENT

(Appeal from conviction and sentence of the High Court of Uganda at Fort Portal by Hon. Mr. Justice Akiiki Kiiza dated 30th day of July, 2010 in criminal case No. HCT-C.S.C. No0094 of 2006)

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, **BYARUHANGA MOSES**, was indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars were that on the 18th day of November, 2005 at Rwengaju village, Kiko Parish, Rutete Sub County in Kabarole District murdered **TUSIIME**. He was convicted as indicted and sentenced to a term of imprisonment of twenty two years.

He had originally appealed against both the conviction and sentence but when the appeal was called for hearing his Counsel abandoned the grounds related to conviction and with the Leave of Court, argued the ground against sentence only. The ground against sentence was that the sentence passed against the Appellant was manifestly excessive in the circumstances of the case.

The facts of the case as accepted by the trial Judge were that the Appellant was the father of the deceased, an infant aged about seven months. The mother of the deceased had left him with his father when she married another man. The deceased was under the care of his grandmother but when he fell sick the grandmother took him to the Appellant. Later she went to inquire about his health but found him missing. She asked the Appellant where the deceased was and he told her that he knew where he had taken him. The body of the deceased was later found in a swamp and the Appellant admitted having drowned him. He stated that he had decided to kill his own child because he did not see any reason for being disturbed by the child who had been left to him by his mother who got married nearby.

After the Appellant had been convicted the prosecution prayed for a deterrent sentence because, for no justification, he had not given his son a chance to live. On the other hand, Counsel /Appellant, then accused, prayed for a lenient sentence because

the Appellant who was aged twenty nine years had been on remand for over five years, was a first offender and was remorseful. He also had two children to look after.

In passing sentence the trial Judge considered both the mitigating and aggravating factors as submitted by both Counsel but found that the Appellant had failed to live up to his responsibility as a father to the victim who should not have been victimized for the broken relationship of the Appellant and, the mother of the deceased victim. He concluded as follows:

“This to say the least, was a despicable act on his part, and deserves condemnation in the strongest terms possible. He deserves no mercy but an exemplary and deterrent sentence to match his crime. Putting everything into consideration I sentence the accused to 22 (twenty two years) imprisonment”

On his appeal, his Counsel Mr. Bwiruka Richard, repeated the mitigating factors that had been highlighted at the trial and in his view the sentence of twenty two years on top of the period of five years the Appellant had spent on remand was excessive. It was also stated in favour of the Appellant that his confession to the crime was an indication that he had realized his mistake and the purpose of the sentence to which he should have been subjected should have been rehabilitation rather than a lengthy prison term.

Ms Tumuheise Rose, Principal State Attorney in support of the sentence submitted that, given that the maximum sentence for the offence of murder is death, the sentence of twenty two years was not harsh and excessive . She submitted that it was irresponsible of the Appellant to kill his own seven month old child and he was a danger to the remaining members of his family. She prayed that the sentence of twenty two years, which to her was lenient enough, should not be interfered with.

We have considered all the matters in mitigation and aggravation of the sentence as submitted to by both Counsel. We have also considered the criteria for interference with sentence by an Appellate Court as stated by the Supreme Court of Uganda in the case of **Kiwalabye Bernard Vs Uganda Supreme Court Criminal Appeal No 143 f 2001** where the Court set down the following principles:-

“The Appellate 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 it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial Court ignores to consider an important matter or circumstance

which ought to be considered while passing sentence or where the sentence is wrong in principle”

In this case the Appellant was a first offender and he had spent four years and 8 months on remand. He was a relatively young man and had two other children to look after. But, as rightly pointed out by the trial Judge, he committed a despicable act when he killed his own baby instead of nurturing him as a parent ought to have done. This factor alone is aggravating enough to warrant heavy punishment but the weight of the punishment should also take into account the element of reform especially when the offender is relatively young as in this case. Considering that the Appellant had spent almost five years on remand a sentence of twenty two years on top is on the higher side and Court reduces it to twenty years effective from the date of conviction. To that extent the appeal against sentence is allowed. The order of having the Appellant sentenced is set aside. It is substituted by an order that the Appellant, Byaruhanga Moses, be sentenced to twenty (20) years and the sentence is to commence from the date of conviction, that is 30th July, 2010.

Dated at Fort Portal this 18th day of December 2014.

Hon. Mr. Justice Remmy Kasule,
JUSTICE COURT OF APPEAL

Hon. Mr. Eldad Mwangusya,
JUSTICE COURT OF APPEAL

Hon. Mr. Justice F. M. S. Egonda Ntende,
JUSTICE COURT OF APPEAL