

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

CRIMINAL APPEAL NO.239/2011

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LOMILO PETERAPPELLANT

V E R S U S

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UGANDA.....RESPONDENT

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[Appeal against conviction by the High Court presided over
by Hon. JusticeMargret C. Ouma Oguli
sitting at Soroti on 24th August 2011]

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**CORAM: HON. JUSTICE A. REMMY KASULE, JA
HON. JUSTICE ELDAD MWANGUSYA, JA
HON. JUSTICE RICHARD BUTEERA, JA**

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JUDGMENT OF THE COURT:

This is an appeal against sentence only.

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The appellant was tried and convicted for murder by the High Court presided over by Lady Justice Margret C. Oumo Oguli sitting at Soroti and was sentenced on 24th August 2011 to 45 years.

The background facts to this appeal are the following:-

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The appellant was the Local Council One (LC1) Chairman of Lorikitai village and was a neighbour to the deceased.

5 Sometime in the month of July, 2008 a misunderstanding arose between the family of the appellant and that of the deceased, Abura Nikolina, over allegations that the deceased had bewitched and caused death of one, Auda, a child to the accused person.

10 On the 2nd day of October 2008, the appellant convened a clan meeting to discuss the matter concerning the death of his child but this was rejected by other clan members, who requested to call a government official to be present during the meeting. This idea angered the appellant who looked for a stick and attacked the deceased.

15 He hit the deceased several times on the head and the ribs using a big stick. The deceased bled profusely from the head and fell down then became unconscious, but the appellant continued assaulting her around the right side of the ribs with the help of Lomakol Lucy. Lomakol Lucy had been charged together with the appellant but she escaped and was not tried. The villagers
20 tasked both the appellant and Lomakol Lucy to take the deceased for medical treatment. The two first refused but upon pressure from the public they held the deceased and carried her away pretending that they were taking her for treatment.

25 The deceased was found the next morning hanging on a tree with both legs tied together with kikoyi cloth which the deceased had been wearing on the day of the attack.

The matter was reported to police and both were arrested and accordingly charged with the offence. The appellant was tried convicted and sentenced to 45 years. He had previously appealed against both the conviction and sentence but at the hearing of the appeal he instructed his counsel to withdraw the appeal
5 against conviction and proceed only with the appeal against sentence. The withdrawal was allowed by this Court which also permitted the appeal to proceed against sentence alone.

The only ground of appeal according to the Memorandum of Appeal therefore
10 is that the learned trial judge grossly erred in law and fact when she sentenced the appellant to 45 years imprisonment, a sentence which is harsh and excessive, given the circumstances of the case.

Legal Representation.

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Learned counsel, Mr. Andrew Sebugwawo, represented the appellant on State brief.

Mr. Alex Baganda, a Senior State Attorney appeared for the State.

20 Learned counsel for the appellant submitted that the appellant is a first offender. He had two wives one with four children, the other with five and he was also looking after three orphans. He spent 3 years on pre-trial remand and has spent 4 years in prison after conviction which is a total of seven years. He is now 60 years old.

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In the village the appellant was the Chairman LC1 and he regrets what happened which was as a result of the death of his child that he blamed on the deceased because of witchcraft.

5 Counsel submitted further that the appellant had reformed since his incarceration as evidenced by a letter from the officer in charge Luzira Prison that he had undergone spiritual transformation. He is now a saved Christian who has been baptized.

10 Counsel prayed that for all those reasons stated above Court should reduce the sentence imposed on him and impose less sentence. He referred the Court to a the case of **Adukule Natal vs. Uganda: Court of Appeal Criminal Appeal No.100/2000** to support his submission that this Court has the power to interfere with a sentence imposed by a lower court and to reduce it once the same is
15 harsh and excessive.

Mr. Alex Baganda, the Senior State Attorney, opposed the appeal and prayed for the sentence imposed by the lower court to be upheld.

20 He submitted that as an appellate court this could only interfere with the sentence imposed by the lower court if it was found to be too harsh or too lenient or if it was found that the trial judge had proceeded on a wrong principle or imposed an illegal sentence.

25 He contended that in this case the sentence imposed by the trial judge was lawful and was neither too harsh nor too lenient and was not illegal and therefore this Court should uphold the same.

We have read the whole record and the judgment of the lower Court. We have also heard and considered the submissions of both counsel. Since the only issue is whether this Court should interfere with the sentence imposed by the lower court in this case, we find it appropriate to consider the law on our power, as an
5 appellate court, to interfere with the sentence of a lower court.

The principles upon which this Court as an appellate court can interfere with the sentence imposed by a trial court were set out by the Supreme Court in Kiwalabye Bernard versus Uganda; Criminal Case No.143 of 2001(SC)
10 (unreported). The Court held:

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

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We have read the case of Adukule Natal (supra) that counsel for the appellant referred to us. It does not state a different principle.

This Court in the case of Adukule Natal (supra) interfered with the sentence
25 imposed by the lower court because the court found that the trial judge had proceeded on wrong principles. In that case, the trial judge had imposed an omnibus sentence which is illegal.

The learned trial judge was also found to have been wrong to impose a higher sentence on the appellant than that passed on his co-accused because of what the trial judge considered to be apparent lack of repentance. This was found to be a wrong principle.

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In the instant case, we do not find that the learned trial judge acted illegally or acted on a wrong principle in sentencing the appellant. We do find however that the sentence of 45 years for a man of 60 years old is out of range of sentences in similar cases which makes it manifestly harsh and excessive.

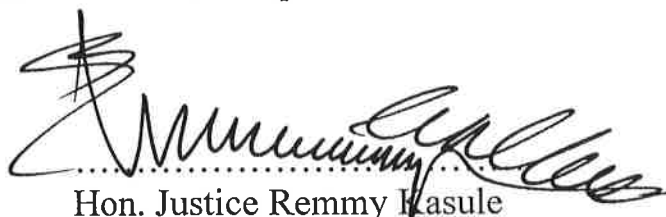
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We are convinced that there is sufficient reason to interfere with the sentence imposed by the lower court given the circumstances of this case.

We do find it necessary to reduce the sentence to 20 years imprisonment which we find to be an appropriate sentence in the circumstances of the case.

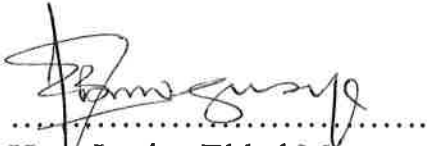
We uphold the conviction and reduce the sentence to twenty years as stated above.

20 Dated at Kampala this 15th of February 2015.



Hon. Justice Remmy Kasule

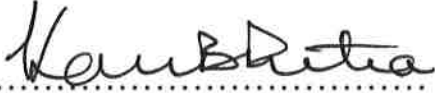
25 JUSTICE OF APPEAL



Hon. Justice Eldad Mwangusya

JUSTICE OF APPEAL

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Hon. Justice Richard Buteera

JUSTICE OF APPEAL.

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