THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 12 OF 2009
(Arising from High Court at Masaka Criminal Session Case No.043 of 2009)

1. KALANDA JOSEPH
2. KAYIRA ABDU alias KAYIWA..... APPELLANTS

VERSUS

UGANDA ..... RESPONDENT

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

JUDGMENT OF THE COURT:

The two appellants were charged, tried and convicted for murder and aggravated robbery by the High Court sitting in Masaka.

The appeal is against sentence only but for the purpose of putting our judgment and that of the trial court in proper perspective we shall state the facts of the case.

The background facts as accepted by the trial court are the following:-

"The deceased was a motor cycle rider for hire (boda boda) at Kalangala Town. He was last seen alive on the evening of 25.07.2007

carrying two passengers on the said motor cycle. His body was discovered on 26.07.2007 lying in a forest about $2^1/_2$ kilometers from Kalangala Town. The motor cycle was missing. Kayira Abdu (A1) (the first appellant) was arrested on the 26.07.2007 at about 3.00 a.m. at Buchang village, Masaka District, when he was intercepted while rolling a motor cycle with another person who managed to flee with the motor cycle. The deceased's motor cycle registration number UDE 960L was recovered from Buyanja village on the 3.08.2007 from a home said to belong to the mother of Kalanda Joseph (A2) (the second appellant). He was arrested a few days later."

The two appellants were upon conviction sentenced to 45 years imprisonment on each count to run concurrently. The appellants were aggrieved by the sentence, hence this appeal.

Representation.

At the hearing of the appeal, the appellants were represented by learned counsel, Mr. Henry Kuunya on state brief.

The respondent was represented by Mr. Fred Kakooza, a Senior Principal State Attorney.

Submissions by counsel for the appellants.

It was submitted for the appellants that the sentence of 45 years was manifestly harsh and excessive. Counsel contended that one of the reasons for punishment is to enable the offender to reform and since the appellants were still young they

should have been given a sentence that enables them to return to the community when they are still productive.

According to counsel the first appellant was now a religious person who is now in Primary five in the prison and the second appellant has discovered he has a talent in music and is now engaged in writing songs while in prison.

He prayed to Court to consider those factors in favour of the appellant and by reason thereof give lenient sentences to the appellants. Further, appellants' counsel submitted that each of the appellants has a family and family responsibilities to attend to as well as parents and children to look after. Those factors should have been considered favourably for the appellants. It should also have been considered favourably that the motor cycle that was robbed was recovered although the owner had died. Counsel prayed court to consider all these factors in favour of the appellants and by reason thereof give lenient sentence to each appellant.

Submissions of counsel for respondent.

Mr. Kakooza for the State submitted that this Court, as an appellate court, cannot interfere with the sentence imposed by the lower court unless that sentence was illegal which, in this case, it was not. He submitted that the learned trial judge had not proceeded on a wrong principle. The trial judge, according to counsel, had considered the facts that the two appellants were young people and had spent $3^1/_2$ years on remand.

He submitted that the judge exercised leniency when he did not impose a death sentence in the circumstances of the case, where the robbery and the were committed in very nasty circumstances. He prayed to this Court to maintain the sentence of 45 years imposed by the High Court on each appellant.

The decision of Court.

The appellants prayed the Court to interfere with the sentence imposed by the trial court and reduce it essentially for being too harsh and excessive. The role of an appellate court in regard to sentencing was stated in the case of **Nilsson v Republic [1970] EA 599 as follows:-**

> **"Before an appeal against sentence can succeed this Court must be satisfied that there exist to a sufficient extent circumstances entitling it to vary the order of the Court below. These are stated in Ogalo son of Owoura v R (1954) 21 E.A.C.A 270…, in the following words:**
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> > **'The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless, as was said in James v R., (1950) 18 E.A.C.A 147, *'it is evident that the judge has acted upon some wrong principle or overlooked some material factor.'* To this we would also add a third criterion, namely, that the sentence is manifestly**

excessive in view of the circumstances of the case: R v Shershewsky, (1912) C.C.A. 28 T.L.R. 364."

In the instant case each of the appellants was convicted of murder and aggravated robbery for each of which offences the law prescribes a maximum sentence of death. The appellant robbed the victim of the offences of his motor cycle and murdered him. Counsel for the appellants submitted that the appellants were first offenders and they had been on remand for over three and a half years which are factors that should have been considered to reduce their sentences.

We note that in the allocatus counsel for the appellants at the High Court raised those issues. The period spent on remand by the appellants was considered by the trial judge. He also considered their family background and obligations. The trial judge had to balance those considerations with other factors.

He considered that the offences of robbery of motor bicycles and the murder of the riders was rampant and the court had to send out a strong warning message that it would not handle such offenders with kid gloves. It was the trial judge's view that: **"there may be people of the convicts' caliber out there who must be sent a strong warning to desist such obnoxious conduct."** was fully justified.

We also find that the learned trial judge exercised his discretion with all due consideration when he sentenced each of the appellants to 45 years imprisonment. The sentence is legal. We do not find it harsh or manifestly excessive or in any way based on a wrong principle. The appellants were spared of the maximum death sentence in this case of aggravated robbery and murder of an innocent hard working person. The deceased too had a family he was working to support. He

lost his life, and his family lost his support, through the crime committed by a appellants.

We do not find any convincing reason to interfere with the sentence.

We find no merit in the appeal and accordingly dismiss it.

We confirm the conviction and the sentence imposed upon each appellant by the trial Court.

Dated this day at Kampala..... 12th of June.....2015.

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Hon. Mr. Justice Remmy Kasule
JUSTICE OF APPEAL

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Hon. Mr. Justice Eldad Mwangusya
JUSTICE OF APPEAL

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Hon. Mr. Justice Richard Buteera
JUSTICE OF APPEAL