

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

**CRIMINAL APPEAL NO. 625 OF 2014**

**KAJUNGU EMMANUEL.....APPELLANT**

**VERSUS**

**UGANDA.....RESPONDENT**

*Appeal from the sentence of the High Court Mitigation Case No. 04/2008 at Anticorruption Court Division Kololo by Hon. Justice P.K Mugamba dated 28<sup>th</sup> day of October 2010.*

**CORAM: HON MR. JUSTICE KENNETH KAKURU, JA  
HON. MRJUSTICE BYABAKAMA MUGENYI SIMON, JA**

**HON. MR. JUSTICE ALFONSE C. OWINY-DOLLO, JA**

**JUDGMENT OF THE COURT**

**This is an appeal from the sentence of life imprisonment imposed upon the appellant in High Court Mitigation Case No. 04 of 2008 by Hon. Justice P.K Mugamba (as he then was) dated 28<sup>th</sup> of October 2010.**

**Brief Background**

The appellant was arrested on 7<sup>th</sup> January 2002 and indicted with the offence of murder contrary to **Sections 188 and 189 of the Penal Code Act**. On 13<sup>th</sup> August 2004 the appellant was convicted of murder and sentenced to suffer death by the High Court of Uganda at Rukungiri presided over by Hon. P.K Mugamba. J (as he then was). The appellant then appealed to this Court against conviction and sentence, which appeal was dismissed on 30<sup>th</sup> May 2008.

In February 2009, the Supreme Court in **Attorney General vs Susan Kigula Constitutional Appeal No. 3 of 2006**, declared as unconstitutional the mandatory death sentence and ordered that all cases in which the death penalty had been imposed as a matter of law be sent back to the High Court for consideration of sentence. Since the death penalty was no longer mandatory but remains in place only as the maximum sentence, the re-sentencing procedure required that the courts takes into account mitigating and aggravating factors and impose an appropriate

sentence

In this case the mitigation proceedings were held by the High Court, following which the appellant was sentenced to imprisonment for the rest of his life by Hon. Justice P.K Mugamba J (as he then was) on 28<sup>th</sup> October 2010.

This appeal is in respect of that sentence.

### **Representations**

When this appeal came up for hearing **Ms. Matovu Suwaya** appeared for the appellant on State brief while **Ms. Jenifer Amumpaire** Principal State Attorney appeared for the respondent. Since no appeal lies without leave to this court against sentence only, Ms. Matovu applied and was granted leave to appeal against sentence.

### **The Appellant's case**

It was submitted for the appellant that a sentence of imprisonment for life was harsh and excessive in the circumstances of this case. Counsel

submitted that, the learned trial Judge did not take into account any mitigating factors in favour of the appellant, that had he done so he would have imposed a lesser sentence. Counsel argued that the appellant deserved a lesser sentence as he was repentant, a family man, a first offender and had spent 2 years on remand. That he has now spent 17 years and 2 months in custody. She asked this Court to reduce the sentence to 20 years.

Ms. Amumpaire opposed the appeal and supported the sentence. Counsel argued that the learned Judge had before imposing the sentence considered all the mitigating and aggravating factors and imposed an appropriate sentence in the circumstance of this case.

Counsel argued that there are a number of aggravating factors that made a life sentence appropriate. She pointed them out as the gruesome way the victim was killed by strangulation and suffocation. The fact that the victim trusted the appellant who later killed

her, and the prevalence of gender based violence. She asked Court to confirm the sentence.

We have listened to both counsel, and also carefully read the Court record. This Court may only interfere with a sentence imposed by the High Court in limited circumstances set out by the Supreme Court in **Kiwalabye Bernard versus Uganda: Criminal Appeal No. 143 of 2001** as follows:-

*"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 circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle"*

It is contended by the appellant that a sentence of life imprisonment is harsh and excessive and that the learned Judge did not take into account material factors that would have favoured the appellant.

Before passing sentence the learned Judge stated as follows;

*"I listened to his eloquent delivery and to what the convict has to say. / heard also submissions of the learned State Attorney. As I consider this matter the death sentence looms in the background. It has been six years since the convict was condemned to death. I need not add that the date for confirmation of sentence by the Supreme Court, if it is to be done, is not yet certain. More time is to pass before execution can be carried out I do not doubt that the convict should be saved further mental agony." (Sic)*

We find that the Judge over looked factors that would have been in favour of the appellant. The appellant was first offender as there was no record of any previous convictions. He had spent more than 2 years on remand, he was 27 years at the time he committed the offence in 2002 and was 29 years at the time of conviction. He was a young man capable of reform.

These factors ought to have been considered by<sup>3</sup> the trial Judge. The other factor that ought to have been considered is the need to maintain uniformity of sentence.

*See Kalibobo Jackson vs Uganda Court of Appeal Criminal Appeal No. 45 of 2001, and*

*Naturinda Tamson vs Uganda Court of Appeal Criminal Appeal No. 13 of 2011.*

**In Livingstone Kakooza vs Uganda Supreme Court Criminal appeal No. 17 of 1993.**

**It was held that;**

*"An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration: See Ogalo S/O Owoura v R (1954) 21 E.A.C.A. 270."*

In order to maintain uniformity we have to look at sentences imposed by this Court and the Supreme Court in cases of a similar nature.

**In Nkonge Robert Vs Uganda : Court of Appeal Criminal Appeal No.**

**148 of 2009**, this Court confirmed the death sentence imposed by the High Court. The appellant in that appeal had killed his wife.

In ***Kisitu Majaidin alias Mpata vs Uganda: Court of appeal Criminal Appeal No. 28 of 2007*** this Court upheld a sentence of 30 years imprisonment. The appellant had killed his mother.

In ***Uwihayimana Molly Vs Uganda: Court of Appeal Criminal Appeal No. 103 of 2009***, this Court reduced a death sentence to 30 years imprisonment. The appellant had killed her husband.

In ***Koreta Joseph Vs Uganda: Court of Appeal Criminal Appeal No. 243/2013***, this Court reduced the sentence of 25 years to 14 years noting the advanced age of the appellant the fact that he was very remorseful.

In ***Atuku Margret Opii vs Uganda: Court of Appeal Criminal Appeal No. 123/2008***, this Court reduced the sentence from death to 20 years in imprisonment. The appellant was a single mother of 8 children and the victim had been killed by drowning.

***In Hon. Godi Akbar vs Uganda: Criminal Appeal No 3 of 2013, the***  
Supreme Court confirmed a 25 year imprisonment. The appellant had killed his wife.

Taking into account the mitigating and aggravating factors already set out above, we set aside the sentence of imprisonment for life and impose a sentence of 30 years imprisonment. The sentence shall run from the date of conviction of 13<sup>th</sup> August 2004.

**Dated at Mbarara this .day 26th of October 2016.**

**HON. JUSTICE KENNETH KAKURU**

**JUSTICE OF APPEAL**

**HON. JUSTICE BYABAKAMA MUGENYI SIMON**

**JUSTICE OF APPEAL**

**HON. JUSTICE ALFONSE. C .OWINY- DOLLO**

**JUSTICE OF APPEAL**