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**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT GULU  
CRIMINAL APPEAL NO. 0640 OF 2014**

**AROP GEOFFREY OKOT.....APPELLANT**

**VERSUS**

10 **UGANDA.....RESPONDENT**

*(An appeal from the decision of the High Court at Gulu before  
His Lordship Hon. Justice Wilson Masalu Musene dated  
1<sup>st</sup> March, 2012 in Criminal Case No. 0056 of 2011)*

15 **CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA  
HON. MR. JUSTICE F.M.S EGONDA -NTENDE, JA  
HON. LADY JUSTICE HELLEN OBURA, JA**

**JUDGMENT OF THE COURT**

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This appeal arises from the decision of His Lordship Wilson Masalu Musene J, in High Court *Criminal Case No. 0056 of 2011* delivered on 1<sup>st</sup> March, 2012.

25 The appellant was convicted on his own plea of guilt on four counts of the offence of murder contrary to *Sections 188 and 189* of the Penal Code Act (CAP 120) and sentenced to life imprisonment on one count and 10 years imprisonment on each of the other three counts.

The appellant now appeals against sentence only having obtained leave of this Court to do so at the commencement of the hearing of this appeal.

30 At the hearing of this appeal, learned Counsel *Mr. Walter Okidi Ladwar* appeared for the appellant on state brief while *Mr Martin Rukundo* learned Principal State Attorney appeared for the respondent. The appellant was in Court.



5 **Appellant's case**

Mr Walter Ladwar first sought and was granted extension of time within which to file the Notice of Appeal and the Notice of Appeal that was filed out of time was validated.

10 Counsel contended that, the learned trial Judge while passing sentence did not take into account the period the appellant had spent on remand as required under *Article 23 (8)* of the Constitution. This, Counsel contended, rendered the sentence a nullity. He asked this Court to find the sentence a nullity and set it aside. For the above proposition he relied on *Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014, Kasaija Daudi Vs Uganda, Court of Appeal Criminal Appeal No. 128 of 2008* and *Jamada Nzabaikukize Vs Uganda, Court of Appeal Criminal Appeal No. 0400 of 2014*.

20 He also asked this Court to reduce the sentence to 18 years and upon deducting 1 year and 2 months the period he had spent on remand, the appellant would serve a sentence of 16 years and 10 months from the date of conviction.

**The Respondent's reply**

25 Mr. Rukundo opposed the appeal and supported the sentence. However, he conceded that the learned trial Judge erred in law when he did not deduct the period the appellant had spent on remand, as required under *Article 23 (8)* of the Constitution. He also conceded that the sentence was illegal.

Counsel relied on *Ssemanda Christopher and Another Vs Uganda, Court of Appeal Criminal Appeal No. 77 of 2010, Osherura Owen and Another Vs Uganda, Court of Appeal Criminal Appeal No. 0315 of 2010* and *Ssekamate Charles Vs Uganda, Court of Appeal Criminal Appeal No.67 of 2013*, in which this Court

5 upheld the sentence of life imprisonment passed by the High Court for the offence of murder.

He submitted that, in this case life imprisonment on each count of murder is an appropriate sentence, taking into account the very aggravating factors in this case, that the appellant killed three innocent children and his mother-in-  
10 law who left behind 7 children of tender years. He intentionally set the house on fire and killed people who had nothing to do with the misunderstanding between him and his wife. He submitted that murder carries a maximum sentence of death and urged this Court to find that a sentence of life imprisonment on each count would be appropriate.

15 **Resolution of issues**

We have carefully listened to both Counsel. We have also perused the Court record and the authorities cited to us and those that were not cited.

We have a duty as a first appellate Court to re-appraise all the evidence adduced at the trial and to come up with our own inferences on issues of law  
20 and fact. See:- *Rule 30(1)* of the Rules of this Court and *Bogere Moses And Another Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997*.

It is now established law that this Court may interfere with the trial Judge's discretion on sentence only in limited circumstances, which were re-echoed by the Supreme Court in *Kiwalabye Bernard Vs Uganda, Supreme Court*  
25 *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*



5            *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 evident on Court record that the period the appellant had spent on  
remand was not taken into account by the trial Judge as required by *Article 23*  
10 *(8)* of the Constitution, which provides as follows;-

*"Where a person is convicted and sentenced to a term of imprisonment for  
an offence, any period he or she spends in lawful custody in respect of the  
offence before the completion of his or her trial shall be taken into account  
in imposing the term of imprisonment."*

15 *In Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of  
2014*, the Supreme Court stated that, taking into account is necessarily an  
arithmetical exercise. Therefore the period the appellant in this case spent in  
pre-trial detention ought to have been deducted from the sentence. Since the  
trial Judge did not do so, the sentence imposed is a nullity.

20 We now invoke *Section 11* of the Judicature Act (CAP 13) and impose a  
sentence we consider appropriate in the circumstances of this appeal. It  
provides as follows;-

*"11. Court of Appeal to have powers of the Court of original jurisdiction  
For the purpose of hearing and determining an appeal, the Court of  
25 Appeal shall have all the powers, authority and jurisdiction vested under  
any written law in the court from the exercise of the original jurisdiction  
of which the appeal originally emanated."*

There are aggravating factors in this case. The appellant premeditated the  
killing. He spent money to buy petrol and killed people who had nothing to do



5 with the misunderstanding between him and his wife. He killed three innocent children and his mother-in-law. He killed them in a gruesome manner by setting the house on fire.

However, there are also a number of mitigating factors in favour of the appellant. He was remorseful. He was young aged 29 years old. He pleaded  
10 guilty. He left behind 8 children.

*In Kasaija Daudi Vs Uganda, Court of Appeal Criminal Appeal No. 128 OF 2008,* the appellant was convicted of murder and sentenced to life imprisonment. This Court after taking into account the period of 2 ½ years the appellant had spent on remand, reduced the sentence to 18 years imprisonment.

15 *In Higenyi Andrew Paulo Vs Uganda, Court of Appeal Criminal Appeal No. 0085 of 2008,* this Court reduced the sentence of life imprisonment for murder to 20 years.

*In Atiko Lino Vs Uganda, Court of Appeal Criminal Appeal No. 0041 of 2009,* the trial Judge did not take into account the remand period, on appeal, this Court  
20 reduced a sentence of life imprisonment to 20 years imprisonment.

We find that the sentences imposed or confirmed by this Court for murder range from 15 years to 25 years. See;- *Imakuru Isaac Us Uganda, Court of Appeal Criminal Appeal No. 215 of 2009.*

25 Taking into account all the aggravating and mitigating factors of this case and the above cited cases of this Court and those of the Supreme Court, we find that a sentence of 20 years imprisonment on count one of murder would meet the ends of justice. From that sentence we now deduct 1 year and 2 months the appellant had spent on pre-trial detention. He will therefore serve a sentence of 18 years and 10 months in prison on that count.



5 In respect of counts, 2, 3 and 4 we sentence the appellant to serve 15 years imprisonment from which we again deduct one year and two months he spent on remand. He will serve 13 years and 10 months in respect of those counts.

All the sentences in respect of counts 2, 3 and 4 will run concurrently. Sentence in respect of count 1 shall run consecutively with sentences on the  
10 other 3 counts commencing from 1<sup>st</sup> March, 2012 when he was first convicted.

The appellant shall therefore serve a total of 22 years and 8 months in prison from date of his conviction.

We so order.

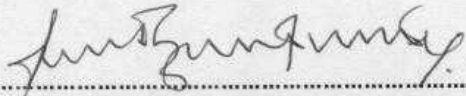
Dated at Gulu this 6<sup>th</sup> day of November 2017.

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**HON. MR. JUSTICE KENNETH KAKURU**  
**JUSTICE OF APPEAL**

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**HON. MR. JUSTICE F.M.S EGONDA -NTENDE**  
**JUSTICE OF APPEAL**

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**HON. LADY JUSTICE HELLEN OBURA**  
**JUSTICE OF APPEAL**

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