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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL**

**CRIMINAL APPEAL NUMBER 527 OF 2014**

**(Arising from High Court Criminal Session case No.121 of 2013)**

**MWESIGE PETER :: APPELLANT**

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**VERSUS**

**UGANDA :: RESPONDENT**

*(An appeal from of decision of the High Court of Uganda at Fort Portal before Justice Batema, J)*

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**CORAM: HON. MR. JUSTICE. KENNETH KAKURU, JA  
HON. MR. JUSTICE. F. M. S. EGONDA NTENDE, JA  
HON. LADY. JUSTICE ELIZABETH MUSOKE, JA**

**JUDGMENT OF THE COURT**

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This is an appeal from the decision of the High Court sitting at Fort Portal in High Court Criminal Session Case No. 121 of 2012 delivered on the 4<sup>th</sup> day of November, 2013, in which the appellant was convicted of murder contrary to Sections 188 and 189 of the Penal Code Act Cap 120, on his own plea of guilty and was sentenced to 35 years' imprisonment.

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The background to this appeal is that on 15<sup>th</sup> December, 2012, the appellant being a village-mate to the deceased, murdered *Banura Donantino* by cutting her on the head, neck and arms with a panga. He pleaded guilty, was convicted and sentenced to 35 years' imprisonment.

5 With leave of this Court granted under Section 132 (1) (b) of the Trial on  
Indictments Act, the appellant now appeals against sentence alone on sole  
ground which states:-

10 ***'That the sentence passed against the appellant was illegal  
as it contravened Article 23 (8) of the Constitution. In the  
alternative, the sentence was harsh and manifestly excessive  
in the circumstances.'***

### **Appearances**

At the hearing of the appeal, Mr. Deo Kizito, learned Counsel represented  
the appellant on state brief, while Mr. Adam Wasswa, Resident Senior State  
15 Attorney appeared for the respondent. The appellant was present.

### **Submissions**

It was submitted for the appellant that the sentence of 35 years  
imprisonment imposed upon the appellant was illegal as it contravened  
Article 23 (8) of the Constitution. Counsel submitted that the learned trial  
20 Judge erred when he did not take into consideration the pre-trial period of  
11 months which the appellant had spent in lawful custody.

This, Counsel submitted, rendered the sentence illegal, following the  
decision of the Supreme Court in **Rwabugande Moses vs. Uganda,  
Supreme Court Criminal Appeal No. 025 of 2014** (unreported).

25 He asked this Court to find so, set aside the sentence and impose an  
appropriate sentence, which he stated to be 10 years.

5 In the alternative, Counsel submitted that the sentence of 35 years' imprisonment which was passed was harsh and excessive considering that the appellant was remorseful and he pleaded guilty.

Counsel for the respondent opposed the appeal and asked Court to consider the aggravating factors in this case, and the fact that the offence  
10 carried a maximum penalty of death and is a violent offence, the guilty plea notwithstanding. He stated that the offence was pre-meditated and proposed a sentence of 25 years' imprisonment.

### **Decision of the court**

We have listened to both Counsel and carefully studied the Court record  
15 and the authorities cited to us.

We are very much alive to the duty of this Court as the first appellate court to re-appraise the evidence and come up with our own inferences on all questions of fact and law. **See Rule 30 (1) of the Rules of this Court and Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal  
20 No. 10 of 1997.**

We shall proceed to re-evaluate the evidence well aware that this duty extends to the facts and the law relating to sentencing of convicted offenders.

Further still, this court can only interfere with the sentence of the trial  
25 Court if that sentence is illegal or is based on a wrong principle or the court has overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of Justice. **See James**

5 **vs. R [1950] 18 EACA 147 and Kizito Senkula vs. Uganda Criminal Appeal No. 24/2001.**

The Judge, while passing the sentence following a guilty plea of the appellant stated as follows;-

10 *"Upon considering the submissions of both the state and counsel for the accused, I found the act of murdering the deceased in the circumstances so beastly and unjustified. The convict is sentenced to 35 years' imprisonment as prayed by the state."*

15 With due respect to the learned trial Judge, he erred when he failed to take into account the strict provisions of **Article 23 (8)** of the Constitution. This error rendered the sentence illegal and we find so. Consequently we set the sentence aside on that account alone.

20 We now invoke the powers of this Court under **Section 11 of the Judicature Act (CAP 13)** which permits us to exercise the powers of the trial Court, while hearing an appeal, to impose an appropriate sentence.

25 We note that the appellant was 35 years old at the time of conviction. He had a family with 6 children. He committed a serious offence that attracts a maximum sentence of death. Murder is a violent offence. Indeed the appellant way-laid the victim and hacked her to death on mere suspicion of be-witching him. On the other hand, we note that the appellant readily pleaded guilty to the offence. He accepted his mistake and saved Court's time.

5 In **Mattaka versus Republic [1971] E.A 495**, it was stated that a plea of guilty springing from genuine repentance may be treated as a mitigating factor. The appellant deserves some leniency on account of that.

The appellant herein was sentenced on 4<sup>th</sup> November, 2013, when the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 were already operative. **Objective 3(e)** thereof provides  
10 that the guidelines should enhance a mechanism that will promote uniformity, consistency and transparency in sentencing. However, the ultimate responsibility to determine the appropriate sentence lies with the Court after weighing all relevant factors and then exercising its discretion  
15 judiciously.

While sentencing, we are also of the view that there is need to consider one other factor, to wit, the need to give the convicts, especially the very young ones a chance to reform by not keeping them for too long in incarceration.

20 In **Anguyo Robert versus Uganda, Criminal Appeal No. 048 of 2009**, the Court of Appeal sitting at Arua set aside the sentence of 20 years imprisonment and substituted it with imprisonment for 18 years. The appellant in that case was convicted of murder. He assaulted his uncle on the head using a hammer. He was a first offender who readily pleaded  
25 guilty.

In yet another case of **Emeju Juventine vs. Uganda, Court of Appeal Criminal Appeal No. 095 of 2014**, the appellant was convicted of murder on his own plea of guilty. He had murdered his wife with an axe.

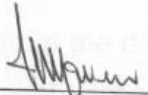
5 The sentence of 23 years imprisonment imposed on him was reduced by this court to 18 years after deducting 2 years spent on remand.

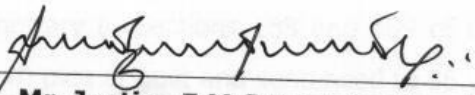
Guided by our findings and the authorities above, we find that the sentence of 35 years' imprisonment imposed on the appellant was harsh and excessive in the circumstances.

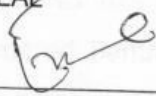
10 Taking into account all the circumstances of this case, we consider a term of 15 years' imprisonment to be commensurate with the gravity of the offence. From that sentence we now deduct the period of 11 months which  
15 the appellant spent on remand. The appellant shall, therefore, serve a term of 14 years imprisonment from the 4<sup>th</sup> day of November, 2013, the date of conviction.

**We so order.**

**Dated at Fort Portal** this 12<sup>th</sup> day of March, 2018

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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 Elizabeth Musoke**  
JUSTICE OF APPEAL