

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA SITTING AT MASAKA
CRIMINAL APPEAL NO. 351 OF 2015

1. CPL OKELLO LAWRENCE

2. MUJUNI DENIS ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::: RESPONDENT

(Arising from the judgment of Justice Yorokamu Bamwine in Masaka Criminal Session Case No. 187 of 2003)

CORAM: HON. JUSTICE EGONDA NTENDE, JA

HON. JUSTICE, HELLEN OBURA, JA

HON. JUSTICE, STEPHEN MUSOTA JA

JUDGMENT OF COURT

The appellants were indicted, tried and convicted of Murder C/S 188 and 189 of the Penal Code Act.

Background

From the evidence on record, the appellants are police officers and in the course of their employment, they intercepted a motor vehicle UAB 787T which according to them had been communicated to them by the control officer of Jinja Police to have armed robbers. The appellants intercepted it and as a result of the shooting, the three occupants died.

The appellants were convicted and sentenced to 25 and 20 years imprisonment respectively. Being dissatisfied with the decision of the High Court, the appellants filed this appeal against sentence only on the following grounds;

1. That the learned trial and resentencing judge erred in law and fact when he imposed a sentence of twenty five and twenty years

imprisonment respectively not putting into account pre and post-conviction period thereby occasioning miscarriage of justice.

Representation

5 At the hearing of the appeal, Mr. Kasadha David appeared on state brief for the appellants while Mr. David Bakibinga, Senior State Attorney, appeared for the respondent.

Submissions of the appellants

10 Counsel for the appellants sought leave of court to appeal against sentence alone in accordance with Section 132(1) (b) of the Trial on Indictments Act which this court granted.

15 Counsel submitted that the sentence was a nullity at resentencing because the pronouncements made in the last paragraph purported the sentence to start running on 25th November 2010 which was a big error. Counsel prayed for a fair and lenient sentence because the appellants were serving officers and the murder was not motivated by any extraneous reasons. Counsel prayed that the pre-remand period be considered and since the appellants have been in custody from the time of their arrest, this period should be put into
20 consideration.

Submissions of the respondent

25 Counsel submitted that since the resentencing trial judge did not take into account the remand period, it renders the sentence passed on the appellants illegal. He thus prayed that this court corrects the record by rendering to the appellants a lawful sentence which should be commensurate to the crime that was committed.

The duty of a first appellate court

30 A first appellate court has a duty to re-evaluate the evidence and come to an independent conclusion on the facts and the law, taking into account that it did not see or hear the witnesses (**See Pandya v. R [1957] EA 336; Okeno v. Republic [1972] EA 32; Charles Bitwire v. Uganda SC Cr. App No. 23 of 1985 and Kifamunte Henry v.**

Uganda SC Cr. App. No. 10 of 1997. See also R. 30 of the Court of Appeal Rules)

An appellate court should not interfere with the discretion of a trial court in imposing a sentence unless the trial court acted on a wrong principle or overlooked a material factor or where the sentence is illegal or manifestly excessive or too low to amount to a miscarriage of justice (See **Kyalimpa Edward v. Uganda SC Cr. App No. 10 of 1995, and Kyewalabye Bernard v. Uganda Criminal App. No. 143 of 2001**).

We have been guided by the above principles in resolving this appeal. We have also taken into consideration the submissions made by the parties and the authorities cited. The Constitution provides that the sentencing Court must take into account the period spent on remand.

Article 23(8) of the Constitution provides:

“23. Protection of personal liberty

(8) 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.”

Similarly, in **Abelle Asuman Vs Uganda S.C.C.A No 66 of 2016** it was held *inter alia* that “it does not provide that the taking into account has to be done in an arithmetical way. The constitutional command in **Article 23(8) of the Constitution** is for the Court to take into account the period spent on remand.”

Although the process is not a mathematical exercise as stated above, a sentencing Judge should clearly indicate the mitigating and aggravating factors he/she has taken into account. While sentencing, the trial Judge did not take into account the period the appellants had spent on remand. He also erroneously held that;

“For avoidance of doubt, the sentences shall be served from today..”.

The sentences on resentencing ought to run from the day of conviction since the appellants had been in custody since.

In the result, we have no option but to set aside the sentence and re-sentence the appellants under s.11 of the Judicature Act.

5 On the aggravating factors, the appellants committed murder when they shot at the deceased while they were lying down. There was no mention of their car number plate having been involved in any robbery. The deceased were killed in cold blood by officers of the Government of Uganda who should have protected them. On
10 mitigation, the appellants are remorseful and have actually lived resourceful lives while in prison. Both appellants committed the offence of murder in the same series of events and as such, should get a uniform sentence.

Having considered all the above factors and the period the appellants
15 spent on remand, we sentence each of the appellants to 19 years' imprisonment on each count from the date of conviction which is 2/09/2003. The sentences to run concurrently.

We so order.

20 Dated this 30th Day of July..... 2018

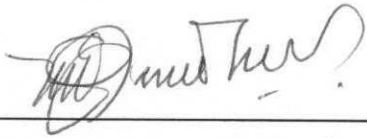


Hon. Justice Egonda Ntende, JA

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Hon. Justice, Hellen Obura, JA



Hon. Justice, Stephen Musota JA