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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NO. 129 OF 2012

(CORAM: F.M.S Egonda-Ntende, JA, Hellen Obura, JA and Stephen Musota, JA)

BUHINDA JOSEPH:.....APPELLANT

10

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of Hon. Lady Justice Akiiki-Kiiza holden at Masaka High Court in Criminal Session Case No. 079 of 2010 delivered on 11/05/2012)

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JUDGMENT OF THE COURT

This appeal arises from the decision of the High Court sitting at Masaka delivered on 11th May, 2012 by His Lordship Akiiki-Kizza, J in which the appellant was convicted of the offence of murder contrary to sections 188 & 189 of the Penal Code Act and sentenced to 28 years imprisonment.

20 **Background to the Appeal**

The facts giving rise to this appeal as found by the trial Judge are that on 13/11/2008 at around 8:30 p.m. the deceased, Ninsiima Rebecca who was carrying a child on her back was going back home in the company of a one Gloria Nasasira and PW3 Twine Richard from whose home she had collected milk earlier. As PW3 turned to go back after bidding the two ladies
25 farewell, he saw the appellant armed with a panga. He asked PW3 where he was coming from and his reply was that he had accompanied someone. The appellant then cut PW3 on his arm and he fell down in a sitting position. He also went after the deceased who was about 2 meters away and cut her on the back of her neck and head which caused her to sit down with her head on her chest. PW3 fled the scene, went home and informed his wife about the

5 incident. He returned with other people who found the deceased dead with her child still wrapped on her back and covered in blood but the appellant had fled the area.

The deceased's body was taken to the hospital for a post mortem examination which revealed the cause of death as severe anemia due to external hemorrhage secondary to many cut wounds. The appellant was later arrested in Kiruhura and charged with the offence of murder.

10 He was convicted and sentenced to 28 years imprisonment.

Being dissatisfied with the decision of the trial Judge, the appellant, with the leave of this Court, appealed against sentence only on one ground as amended, namely that;

15 *"The learned trial Judge erred in law and fact when she imposed a sentence of 28 years imprisonment on the appellant which was harsh and excessive in the circumstances."*

At the hearing of this appeal, the appellant was represented by Ms. Margaret Nansubuga on state brief while Ms. Barbara Masinde, a Senior State Attorney from the Office of the Director Public Prosecutions represented the respondent.

20 Counsel for the appellant submitted that the principles for interfering with the sentence of the lower court were stated in the case of ***Kiwalabye Bernard vs Uganda, SCCA No.143 of 2001*** in which the Supreme Court held that the appellate court is not to interfere with the sentence imposed by the trial court which has exercised its discretion unless the exercise of this discretion is such that it results into a sentence which is manifestly excessive or so low to amount to a miscarriage of justice or when court based the sentence on a wrong principle.

25 She contended that the sentence of 28 years imprisonment was manifestly excessive and harsh in view of the mitigating factors on court record. She added that the appellant being 42 years at the time of sentencing, deserved a sentence that would enable him to reform and return to the community.

5 Counsel also submitted that there is need for consistency in sentencing whose objective is rehabilitation as was held by the Supreme Court in ***Mbunya Godfrey vs Uganda, SCCA No. 4 of 2011***. She cited the cases of ***Imakuru Isaac vs Uganda, CACA No. 215 of 2009***; ***Atiku Lino vs Uganda, CACA No. 041 of 2009***; ***Tumwesigye Anthony vs Uganda, CACA No. 46 of 2012***, where this Court reduced the sentences of the appellants for the offence of
10 murder from life imprisonment and 32 years imprisonment respectively to 20 years imprisonment. She prayed that the appellant be given a lenient sentence of 18 years imprisonment so as to afford him an opportunity to reform and become a good citizen of this country.

Conversely, counsel for the respondent opposed the appeal and submitted that the trial court
15 properly applied its mind to the principles on sentencing and arrived at the correct decision. She also submitted that the trial court considered both the mitigating factors and the aggravating factors but found that the latter outweighed the former. She argued that the offence of murder carries a maximum penalty of death and the appellant was only sentenced to 28 years imprisonment. She referred to the cases of ***Byamukama Herbert vs Uganda, CACA No. 194 of 2013***; ***Akbar Hussein Godi vs Uganda, SCCA No. 3 of 2013***; ***Attorney General vs Susan Kigula and ors, SC Const. Appeal No. 3 of 2005***; ***Kyaterekera George William vs Uganda, CACA No. 113 of 2010*** and ***Kisitu Majaidin alias Mpata vs Uganda, CACA No. 28 of 2007*** to support her submissions and prayed that this Court upholds the
20 sentence.

25 **Resolution by the Court**

We have looked at the sentencing record where the trial Judge stated as follows;

“Accused is allegedly a first offender. He has been on remand for 3 years and 5 months. I take this period into account while sentencing him. He has prayed for leniency and is said to be remorseful.

5 *However, he committed a serious offence. Maximum possible sentence on conviction*
is death penalty. He brutally and mercilessly hacked his own wife to death, apparently
for no good reason. Even if he had domestic problems with her, killing her was not the
solution. He has deprived the little child of her mother and prematurely made it
motherless. The relatives and friends of the deceased were deprived of her lover and
10 *company. Accused mercilessly cut off her life. Such behavior in my considered view*
deserves stiff sentence.

Putting everything into consideration, I sentence accused to 28 (twenty eight) years
imprisonment. Right of Appeal explained.”

We note that the trial Judge stated that the appellant is “allegedly a first offender”. There was
15 no justification for the use of the word “allegedly” when it was clear from the prosecution that
no previous record of the appellant was available. It was therefore wrong for the trial Judge
to doubt that the appellant was a first offender. We must emphasize that the fact of being a
first offender is an important factor which ought to be considered in mitigation while
determining the appropriate sentence to be imposed on a convict.

20 We ourselves have considered all the above mitigating factors as well as the aggravating
factors in this case and also taken into account the period the appellant had spent on remand.
We have also looked at the range of sentences imposed in similar offences of murder in the
following cases. In ***Uwihayimaana Molly vs Uganda, Court of Appeal Criminal No. 103 of***
2009 in which the appellant had murdered her husband by hacking, this Court reduced her
25 sentence from death to 30 years imprisonment. This Court in ***Mboinegaba James vs***
Uganda, Criminal Appeal No.511 of 2014 reduced a sentence of 40 years imprisonment for
murder to 30 years. The appellant had gruesomely killed his mother alleging that she refused
to give him land. In ***Wodada Moses vs Uganda, CACA No. 0758 of 2014*** the appellant was
convicted of murder and sentenced to death by the trial Court. Following the decision in
30 ***Attorney General vs Susan Kigula and 417 others (supra)*** a plea in mitigation of sentence

5 was made and the appellant's sentence was reduced to 39 years imprisonment. The appellant
appealed against the sentence to this Court and it was reduced to 25 years imprisonment.

The range of sentences in the above cases is between 25-30 years imprisonment. In the
premises, we find that much as the trial court erred by not considering the fact that the
appellant was a first offender in mitigation, the sentence that he imposed after considering
10 the other factors was within the range of sentences in murder cases and in our view not harsh
and excessive in the circumstances of this case. We therefore find no reason to interfere with
the exercise of the trial Judge's discretion in sentencing the appellant to 28 years
imprisonment.

We accordingly dismiss this appeal and confirm the sentence.

15 We so order.

It should be noted that Egonda-Ntende, JA has not signed this judgment as he did not agree
with the majority decision.

Dated at **Masaka** this 30th day of July2018

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.....
Hon. 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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Hon. Justice Stephen Musota

JUSTICE OF APPEAL

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