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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*(Coram: Elizabeth Musoke, Hellen Obura & Ezekiel Muhanguzi JJA)*

**CRIMINAL APPEAL NO. 457 OF 2016**

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**AKECH VERONICA.....APPELLANT**

**VERSUS**

**UGANDA.....RESPONDENT**

*(Appeal from the decision of Hon. Lady Justice Margaret Tibulya holden at High Court at Kampala in Criminal Session Case No. 181 of 2013 delivered on 21/11/2013)*

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**JUDGMENT OF THE COURT**

The appellant was indicted, tried and convicted of the offence of murder contrary to section 188 and 189 of the Penal Code Act and was sentenced to death.

The facts as ascertained from the court record are that on the 10<sup>th</sup> day of November, 2005, at about 8 pm, PW4 Bangwe Robinah, left her son, Othieno Louis (the deceased) who was aged 2 years, at the doorsteps of her house to go and look for fire from the nearby neighbors. As PW4 was leaving she noticed that the appellant, was standing in the doorway of her own house about 3 meters away. Upon her return after 5 minutes, PW4 did not find the deceased where she had left him. PW4 saw the appellant running out of the gate of their courtyard. She tried to search for the deceased both inside and outside of the courtyard but in vain. Shortly after 9 pm, PW4 saw Police Officers from Kalerwe Police Post in the company of the appellant, enter in the courtyard and PW6, D/AIP Ariko Simon, found the body of the deceased, dead in the house of the appellant. As a result, PW6 effected the arrest of the appellant and had her taken to Wandegeya Police. The body of the deceased was taken for a post mortem examination the next day, which revealed that he died of haemorrhagic shock

5 secondary to severed neck vessels. The appellant was charged with murder. She was tried, convicted and sentenced to death by the trial court.

Following the Supreme Court decision in **Attorney General vs Susan Kigula and 417 others, Constitutional Application No. 03 of 2006**, which abolished the mandatory death sentence, the case file was remitted to the High Court for mitigation hearing and re-sentencing. Having heard the submissions of both counsel, the learned re-sentencing Judge  
10 sentenced the appellant to 25 years imprisonment.

Being dissatisfied with the decision of the re-sentencing Judge, the appellant appealed to this Court against sentence only on two grounds, namely;

15 *"1. That the learned re-sentencing Judge erred in law and fact when she imposed an ambiguous sentence against the appellant.*

*2. That the learned re-sentencing Judge erred in law and fact when she imposed a manifestly harsh and excessive sentence against the appellant."*

At the hearing of this appeal, Mr. Henry Kunya represented the appellant on State Brief while Ms. Florence Akello Assistant Director Public Prosecution represented the respondent.

20 Counsel for the appellant sought leave to appeal against sentence only which was granted and he submitted that the appellant was sentenced to 25 years imprisonment in addition to the period already spent in prison. He added that the re-sentencing Judge did not take into account the remand period and therefore the sentence was illegal and uncertain. Further that, the sentence was also made to run from the date of re-sentencing instead of the date of  
25 conviction. Counsel prayed that court sets aside the sentence for the reason of illegality and uncertainty and instead impose a fresh appropriate sentence.

On ground 2, counsel submitted that the sentence of 25 years was manifestly harsh and excessive. He referred to the case of **Kamyia Abdullah & 4ors vs Uganda, SCCA No. 24 of**



5 **2015** where the Supreme Court emphasized the need for parity of sentence. He prayed that this Court reduces the sentence of 25 years imprisonment to a sentence between 18-20 years imprisonment.

Conversely, regarding ground 1, counsel for the respondent conceded that the word "including the years spent on remand" was not clear. She emphasized the importance of  
10 taking into account the years a convict has spent on remand in passing sentence and submitted that such period should be deducted from the sentence imposed. She prayed that the sentence of 25 years imprisonment imposed on the appellant by the re-sentencing Judge be quashed and this Court should impose a fresh sentence on the appellant. Counsel invited this Court, in imposing a fresh sentence, to consider the aggravating and mitigating factors  
15 presented by both parties at the time of sentencing.

On ground 2, which in our view should have been argued as an alternative ground, counsel referred to the case of **Livingstone Kakooza vs Uganda, SCCA No. 17 of 1993** where the court stated the circumstances under which an appellate court can alter a sentence by a trial court. She also referred to the case of **David Kasaija vs Uganda, CACA No. 128 of 2008**  
20 where this Court re-echoed the obligation of court under Article 23 (8) to take into account the period a convict has spent on remand.

In conclusion, counsel submitted that if the aggravating and mitigating factors were considered the appropriate sentence would have been 25 years imprisonment and considering the 8 years the appellant spent on remand, it would have been reduced to 17  
25 years imprisonment.

### **Court Resolution**

We have perused the court record and considered the submissions of counsel and the cases cited to us. We are alive to the fact that it is the duty of this Court, as the first appellate court to re-evaluate all the evidence on record and come to its own conclusion as was held by



5 the Supreme Court in ***Bogere Moses and Another vs Uganda, Supreme Court Criminal Appeal No.1 of 1997.***

Ground 1 regards ambiguity and uncertainty of the sentence imposed by the re-sentencing Judge. While passing sentence, she stated as follows:

10 *“So I considered all these factors that were brought to my attention and I accordingly sentence the accused person to 25 years imprisonment in addition to the time already spent in prison. Any one dissatisfied may appeal within 14 days.”*

15 From the above wording of the sentence, we accept counsel for the appellant’s submission that the sentence is ambiguous and uncertain. In addition we also note that the re-sentencing Judge did not take into consideration the period the appellant had spent on remand as required by Article 23 (8) of the Constitution. In the premises, we find that the sentence of 25 years imprisonment imposed by the re-sentencing Judge is both ambiguous and illegal. We thus set it aside.

20 We now invoke the provisions of section 11 of the Judicature Act which gives this Court the powers, authority and jurisdiction as that of the trial court to impose a sentence of its own which it considers appropriate.

25 In so doing, we shall consider the aggravating and mitigating factors presented in the mitigating proceedings. The aggravating factors were that: the offence and the way it was committed was gruesome on a baby who was too vulnerable and who had actually done nothing to the convict. It was a premeditated murder. The offence was committed out of annoyance, yet the community still has people who can annoy and if the appellant is shown mercy by court, she might go back and execute her earlier motive. She abused the trust of the deceased’s mother who freely let her into her house and allowed her give food to her children. Counsel prayed that this case be treated as one of the rarest of the rare cases and



5 death sentence imposed. The mitigating factors were that: the appellant is repentant and remorseful of her actions, she is an usher in a church at Luzira and possesses several certificates pointing to her change in behavior. She was aged 26 years old at the time of conviction. She has AIDS and is on ARVS. Counsel prayed for a lenient sentence of 20 years imprisonment.

10 We also take into consideration the range of sentences in similar offences to determine an appropriate sentence of our own.

In ***Mbunya Godfrey vs Uganda, SCCA No. 4 of 2011***, the Supreme Court set aside the death sentence and imposed a sentence of 25 years imprisonment. The appellant had been convicted of murder of his wife.

15 In ***Tumwesigye Anthony vs Uganda, CACA No. 46/2012***, the appellant killed the deceased by crushing his head and burying his body in a sandpit. He was convicted of murder and sentenced to 32 years imprisonment. He appealed to this Court which set aside the sentence and substituted it with 20 years imprisonment.

In ***Atiku Lino vs Uganda, CACA No. 0041/2009***, the appellant was convicted of murder and  
20 sentenced to life imprisonment. He attacked the deceased in his house and cut him to death. On appeal, this Court observed that the appellant ought to be given an opportunity to reform and it reduced the sentence to 20 years imprisonment.

We note that the sentencing range in the above similar cases is between 20-25 years. In the premises, we find a sentence of 25 years imprisonment appropriate in the circumstances of  
25 this case. However, since the appellant had spent a period of 2 years and 11 months in lawful custody prior to her conviction, we deduct that period from the 25 years and sentence the appellant to 22 years and 1 month imprisonment to be served from the date of her conviction, that is, 03/10/2008.



5 With the foregoing, ground 2 is overtaken and there is no need to again consider.

In conclusion, we allow the appeal in the above stated terms.

We so order.

Dated at Kampala this 25<sup>th</sup> day of June 2019

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Elizabeth Musoke  
**JUSTICE OF APPEAL**

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Hellen Obura  
**JUSTICE OF APPEAL**

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Ezekiel Muhanguzi  
**JUSTICE OF APPEAL**

25/6/19.

Appellant present.  
Mr. [Name] Counsel for the Appellant  
Mr. [Name] Counsel for the Respondent.  
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delivered in the presence of the  
CWA: [Name] adme.  
25/6/19