

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MASAKA**  
**CRIMINAL APPEAL NO. 608 OF 2014**

**TIBUUZA EDWARD.....APPELLANT**

5

**VERSUS**

**UGANDA.....RESPONDENT**

*(An appeal against the judgment of the High Court at Masaka in Criminal Session Case No. 50 of 2011 before Hon. Justice Akiiki Kiiza dated 9/5/2012)*

10

**Coram:                   Hon. Lady Justice Elizabeth Musoke, JA**  
**Hon. Mr. Justice Ezekiel Muhanguzi, JA**  
**Hon. Mr. Justice Remmy Kasule, AG. JA**

**JUDGMENT OF THE COURT**

15

The appellant herein was indicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120, convicted on his own plea of guilt and sentenced to 14 years imprisonment.

**Brief background**

20

The facts that the appellant pleaded guilty to at trial are that on the 26<sup>th</sup> day of December, 2010, at around 7:00pm, the appellant returned home and picked a quarrel with his wife and he started beating her. The appellant had been assaulting her on that day. She decided to run



away leaving the appellant behind with their children. The appellant picked a club and hit the deceased (his son with his wife) on the head; the club pierced the deceased's head and got stuck into his head. The  
25 deceased died instantly. The appellant's wife reported the incident to the LC's who arrested the appellant.

The deceased was examined on PF48B and was found to be aged 2 years and a half and the cause of death was anemia due to over  
30 bleeding, the report was exhibited as PE1.

The appellant was examined on PF24 and was found to be 43 years old. He had bruises on right chin and was found to be of sound mind.

He was charged with murder, tried and convicted on his own plea of guilty and sentenced to 14 years imprisonment.

35 Being dissatisfied with the sentence of the trial court, the appellant sought and was granted leave to appeal against sentence only under section 132(1) (b) of the Trial on Indictments Act and Rule 43(3) (a) of the Rules of this court. The sole ground of appeal is as follows:-

40 ***"The learned Judge erred in law and fact when he sentenced the appellant to 14 years imprisonment which sentence is harsh and manifestly excessive in the circumstances."***

### **Representation.**

The appellant was represented by Ms. Regina Tronera Babukiika, learned counsel on state brief while the respondent was represented  
45 by Mr. David Ndamurani Ateenyi, Senior Assistant Director of Public Prosecutions. The appellant was in court.

## **Submissions for the appellant**

Ms. Babukiika relied on Rule 30(1) of the Rules of this Court and the  
50 case of *Abelle Asuman vs. Uganda, Supreme Court Criminal Appeal No. 66 of 2016*, for the proposition that an appellate court will only interfere with the discretion of the trial court in sentencing if it appears that the trial court acted on a wrong principle or overlooked some material facts or where the sentence is illegal or manifestly excessive as  
55 to amount to a miscarriage of justice.

Counsel submitted that the learned trial Judge overlooked some material facts that the appellant did not intend to kill the deceased (his son) because it was as a result of the fight between him and his wife. She argued that if the learned trial Judge had taken into account the  
60 fact that the appellant accidentally hit the deceased, he would have sentenced the appellant to a lower sentence than that of 14 years imprisonment.

She prayed court to substitute the sentence of 14 years imprisonment with a sentence of 8 years imprisonment taking into consideration the  
65 fact that the murder in this case was accidental.

## **Submissions for the respondent.**

The Senior Assistant DPP opposed the appeal and supported the sentence of the trial court and argued that the learned trial Judge took into account all the mitigating and aggravating factors before  
70 sentencing the appellant.

Counsel pointed out that the appellant hit the deceased after the wife had run away leaving behind the appellant and their children and therefore the deceased was not hit by accident.



75 He submitted that given the maximum sentence for the offence of murder, the sentence of 14 years imprisonment was an exercise in the dispensation of mercy on the part of the learned trial Judge. Counsel prayed court to disallow the appeal and uphold the sentence of 14 years imprisonment.

### **Consideration by court.**

80 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 are alive to the duty of this Court as a first appellate Court to re-appraise all the evidence on record and to come up with its own  
85 inferences. See: - *Rule 30(1)* of the Rules of this Court and ***Bogere Moses Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.***

This Court may not interfere with the discretion of the trial Court in sentencing except in specific instances set out in the law. The principles under which an appellate court can interfere with the sentence of the  
90 trial Court were set out in ***James s/o Yoram Vs R, (1950)18 P. 147*** as follows:-

*"It may be that had this court been trying the appellant, it might have imposed a lesser severe sentence but that by itself is not a ground for interference and this court will not ordinarily interfere with the discretion  
95 exercised by a trial judge in the matter of sentence. Unless it is evident that the judge had acted on some wrong principle or over looked some material factor"*

See also: - ***Ogalo s/o Owoura Vs R, (1954) 24 EACA 270.***

100 The same principles were reiterated by the Supreme Court in ***Kiwalabye Vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001*** as follows:-

105 ***“The appellate court is not to interfere with 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 or where a trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle.”***

110 While passing the sentence at pages 10 and 11 of the record of appeal, the learned trial Judge stated as follows:-

***“Accused is admittedly a first offender. He has pleaded guilty saving the court’s time and resources. He has been on remand for 1 year and 4 months. \*\*\* (sic) him and wife but accidentally hit the victim.***

115 ***However, accused committed serious offence. A child died in the allude (sic) between adults. He was an innocent by nature, the accused should have found to settle the problems with his wife amicably instead of fighting. The victim lost his life at such tender age. He was derived (sic) his life by father. Accused deserves an appropriate sentence.***

120 ***Having put into consideration I sentence him for 14 (fourteen) years imprisonment.”(Sic)***

125 From the above passage, we find and hold that the learned trial Judge took into account both aggravating and mitigating factors before sentencing the appellant. We do not agree with counsel for the appellant that the learned trial Judge failed to consider the fact that the deceased was accidentally killed and that the sentence of 14 years imprisonment in the circumstances of this case is manifestly excessive,



the appellant having been convicted of murder which offence carries a maximum sentence of death.

130 We have found no important matter, circumstances or principle which the learned trial Judge ignored to consider and as such we find no reason to interfere with the discretion of the learned trial Judge.

This appeal accordingly fails. We uphold the sentence of 14 years imprisonment. It is so ordered.

Dated at Masaka this.....9<sup>th</sup>.....day of.....Dec.....2019.

135



.....  
**Elizabeth Musoke**  
**Justice of Appeal**

140



.....  
**Ezekiel Muhanguzi**  
**Justice of Appeal**

145



.....  
**Remmy Kasule**  
**Ag. Justice of Appeal**