THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

CRIMINAL APPEAL NO.333 OF 2017

OKORI ISAAC..... APPELLANT

VERSUS

UGANDA ..... RESPONDENT

CORAM: **Hon. Mr. Justice Kenneth Kakuru, JA**
Hon. Lady Justice Percy Night Tuhaise, JA
Hon. Mr. Justice Remmy Kasule, Ag. JA

JUDGMENT OF THE COURT

The appellant was indicted on the offence of murder, in High Court Criminal Case No. 109 of 2016 before Hon. Lady Justice Dr. Winfred Nabisinde, at Lira. On 30th March 2017 he was convicted on his own plea of guilt of the offence of murder contrary to *Sections 188* and *189* of the Penal Code Act, following a plea bargaining process. He was sentenced to 20 years imprisonment.

With leave of Court he now appeals against sentence alone.

The first ground challenges the legality of sentence while in the second ground, which is set out in the alternative, he appeals against its severity contending that it is harsh and manifestly excessive in the circumstances of the case.

Representation

When the appeal came up for hearing *Mr. Walter Okidi Ladwar* learned Counsel appeared for the appellant while *Mr. Patrick Omia* learned Senior State Attorney appeared for the respondent. The appellant was present in Court.

Appellant's case

It was submitted for the appellant on the first ground that; the learned trial Judge failed to ascertain the exact age of the appellant at the time of the commission of the offence. Had she done so, she would have found that the appellant on 30th March 2017, when the offence was committed, was a child below the age of 18 years. Counsel referred to the charge sheet and the plea bargain forms at that time.

There was a medical examination report on the Court record indicating the age of the appellant to be "above 18 years". The Judge therefore had no basis upon which to ascertain the exact age of the appellant at the trial.

The medical examination report was inconclusive and the reasons why the medical officer who examined him came to the conclusion that he did was not known. The medical officer ought to have used known scientific methods to ascertain the age but he did not.

On the second ground of appeal Counsel submitted that, a sentence of 20 years imprisonment for murder in the circumstances of this case was harsh and manifestly excessive in the circumstances of the case.

The appellant had killed the deceased because he was his mother's secret lover. The father was still alive. The deceased was unhappy with the relationship. He was a first offender and the murder was not premeditated. He is young and deserved a lesser sentence.

He asked this Court to reduce the sentence to 15 years imprisonment.

Respondent's reply

Mr. Omia for the respondent opposed the appeal and supported the sentence. He submitted that, the sentence was legal and was neither harsh nor manifestly excessive in the circumstances of this case. The sentence was imposed following a plea bargaining process and ought to be confirmed. The Judge had taken into account all aggravating and mitigating factors into account and imposed an appropriate sentence of 20 years for the offence of murder. He asked this Court to confirm it.

Resolution

This being a first appeal we are required to evaluate the evidence and make our own inferences on all issues of law and fact. This is the requirement of the law under Rule 30 (1) of the Rules of this Court. See also *Kifamunte Henry Vs Uganda: Supreme Court Criminal Appeal No. 10 of 1997* and *Bogere Moses Vs Uganda Supreme Court Criminal Appeal No. 1 of 1997.*

As a first appellate Court we can only interfere with the trial Judge's discretion in sentencing in limited instances. They were set out by this Court in *Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No.143 of 2001,* as follows;-

> *"The appellate Court is not to interfere with the 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 while passing the sentence or where the sentence imposed is wrong in principle."*

In *Ogalo s/o Owoura vs R. (1954) 21 E.A.C.A. 126, R. vs Mohamedali Jamal (1948) 15 E.A.C.A. 126* the Court of appeal for East Africa noted further that even if the appellate Court would have imposed a different sentence it cannot do so without first having found fault with the decision of the trial Judge.

Although Mr. Ladwar appears to have abandoned the first ground of appeal in respect of legality of sentence we have considered it necessary to resolve it. The appellant himself on his plea bargain agreement stated that he was 20 years old. The offence was committed on 25th May 2016. The plea bargain agreement is dated 30th March 2017. It follows therefore that, 3 months prior to the signing of the agreement he was already above the age of 18 years. This tallies with the age set out in exhibit P.2, Police Form 24, where upon physical examination, the medical officer indicated the appellant's age as 'above 18 years'. Ambiguous at it appears, when read together with the appellant's own indication that he was 20 years in March 2017. We are satisfied that the appellant was above the age of 18 years at the time of the commission of the offence. This ground stands dismissed.

The second ground is in respect of severity of sentence. In this case, the appellant went through a plea bargaining process at the High Court. He bargained for sentence of 20 years himself. On that basis he pleaded guilty to the offence. Now he contends that it was harsh and manifestly excessive. That argument does not appeal to us.

A sentence of 20 years for the offence of murder in the circumstances of this case cannot be said to be harsh or manifestly excessive. This Court and the Supreme Court have imposed or confirmed sentences higher than 20 years in circumstances not so different from those in the case from which this appeal emanates.

In *Omusenu Sande Vs Uganda, Court of Appeal Criminal Appeal No. 29 of 2011,* the appellant was convicted of murder and sentenced to 30 years imprisonment. This Court reduced the sentence to 20 years imprisonment.

In *Byaruhanga Moses Vs Uganda, Court of Appeal Criminal Appeal No. 144 of 2010,* this Court reduced a sentence of 22 years imprisonment to 20 years imprisonment for the offence of murder.

In *Marani Adam & Another Vs Uganda, Court of Appeal Criminal Appeal No. 829 of 2014,* the appellant was convicted of murder and sentenced 40 years imprisonment. This Court reduced the sentence to 27 years imprisonment.

In *Mboinegaba James Vs Uganda, Court of Appeal Criminal Appeal No. 0511 of 2014,* this Court reduced a sentence of 40 years imprisonment to 30 years imprisonment.

In *Tumwesigye Anthony Vs Uganda, Court of Appeal Criminal Appeal No. 46 of 2012,* this Court reduced a sentence of 32 years imprisonment to 20 years imprisonment.

In *Opio Daniel Vs Uganda, Court of Appeal Criminal Appeal No. 032 of 2011,* this Court reduced a sentence of 25 years imprisonment to 20 years imprisonment for the offence of murder.

In *Okiria Simon Vs Uganda, Court of Appeal Criminal Appeal No. 658 of 2014,* the appellant was tried and convicted of the offence of murder and was sentenced to 20 years imprisonment. On appeal, this Court upheld the sentence imposed by the trial Court.

We cannot interfere with the sentence because it is neither harsh nor excessive. It is a legal sentence, as the learned Judge took into account all mitigating and aggravating factors. She did not over look any important factor nor did she apply a wrong principle. It would be erroneous for this Court to find that the sentence of 20 years imprisonment for the offence of murder is manifestly harsh and excessive, when it was the appellant himself who bargained for it at the trial, during the plea bargaining proceedings. We find no merit in this ground and we dismiss it.

All the grounds having failed, we find no merit in this appeal and we hereby dismiss it.

The sentence of 20 years imposed upon the appellant by the trial Court is hereby confirmed and the same is to be served as from the date of conviction of 30th March 2017.

We so order.

Dated at **Gulu** this 20th day of Dec 2019.

Kenneth Kakuru

JUSTICE OF APPEAL

Percy Night Tuhaise

JUSTICE OF APPEAL

Remmy Kasule

Ag. JUSTICE OF APPEAL