THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA
CRIMINAL APPEAL NO. 0047 OF 2015
(Arising from High Court of Uganda at Masaka Criminal Session Case No. 0039 of 2012)

1. SEMULEMA LEONARD ::::::::::::::::::::::::::::::: APPELLANTS
2. ALIDEKI PATRICK

VERSUS

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

(An appeal from the decision of the High Court of Uganda at Masaka before His Lordship Rugadya Atwoki, J. delivered on 6th February, 2015 in Criminal Session Case No. 0039 of 2012)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA
HON. MR. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF THE COURT

Brief Background

This is a first appeal from the decision of the High Court. The appellants were jointly charged with another, who is not relevant to the present appeal, with the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. They were duly committed and tried on an Indictment containing the above mentioned offence. The facts as accepted by the learned trial Judge were that the three had, on the 5th day of November, 2011, at Makoole Village in Sembabule District, murdered Komujuni Joyce. The learned trial Judge duly convicted them despite their denial of any involvement in the said murder. He sentenced them to imprisonment for life, that is to say, the rest of their biological life to be spent in prison. Being dissatisfied with the decision of the trial Court, the appellants appealed to this Court against sentence only on the sole ground that:

"The Learned trial Judge erred in law and fact when he sentenced the appellants to imprisonment for life i.e for the (sic) biological life in prison which was manifestly harsh and excessive."

Representation

At the hearing of the appeal, Mr. Tusingwire Andrew, learned Counsel, represented the appellants on State Brief, while, Ms. Naluzze Aisha, learned Assistant Director of Public Prosecutions from the Office of the Director of Public Prosecutions, represented the respondent. Counsel for both parties made oral submissions.

Counsel for the appellants informally moved this Court under Rule 43 (3) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10 to obtain leave to appeal to this Court against sentence only as stipulated under Section 132 (1) (b) of the Trial on Indictments Act, Cap.23. Counsel for the respondent did not oppose the application. The leave was accordingly granted by this Court.

Resolution of the Appeal

We have carefully considered the submissions of counsel for both sides, the court record as well as the law and authorities cited and those not cited, which are relevant in the determination of the present appeal. This is a first appeal and we are alive to the duty of this Court as a first appellate court to reappraise the evidence and come up with its own inferences. **See: Rule 30 (1) of the Rules of this Court and Kifamunte Henry v. Uganda Supreme Court Criminal Appeal No. 10 of 1997.**

The above stated duty is not diminished in appeals concerning sentence alone like the present appeal. Even in such cases, the first appellate Court must reappraise the evidence, and make up its mind, on whether the sentence imposed by the trial Court, can be sustained.

On 5th November, 2011, Komujuni Joyce was violently murdered. Earlier that day, her assailants had attacked her with weapons and beaten her. The assailants were in a mob of about 5 people. One of the assailants had "slapped" her on the cheeks with a panga. Another of the assailants decided

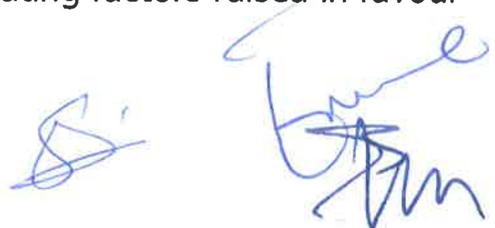
that the deceased be killed. However, Mr. Sekago who was present at the time asked the assailants not to kill the deceased but to take her to the nearby Police Station. So the group walked to the nearby Police Station.

The assailants were not interested in giving up on their mission. When they reached Makoole T/C on the way to the Police Station, they made fresh assaults on the deceased. Other people joined in the beating. The two appellants were very prominent in the assault, they hit the deceased mercilessly on her head with a hoe handle and threw bricks at her. The deceased person inevitably succumbed to the beatings and died a short while later.

The assailants then dragged the body of the deceased to the middle of the road and left it there. After receiving a call about the incident, some Police Officers moved to the scene and found the deceased's body lying in a pool of blood. Her 10 year old child was also found at the scene of crime crying due to the loss of his mother.

The appellants fled from the village in the wake of the said murder. They were later arrested on 3rd December, 2011. They were then charged alongside another who pleaded guilty. The appellants pleaded not guilty and the matter went to full trial. During the trial, they denied any involvement in the offences in question. The 1st appellant said that he was possessed of the right mental capacity and could not beat a human being to death. The 2nd appellant stated that he was not in the village where the deceased was murdered on the fateful day. They insisted that they were innocent. However, the learned trial Judge did not believe them. He convicted them of the murder of the deceased person and sentenced them to spend the rest of their biological lives in prison. The appellants have now appealed only against the sentence imposed by the learned trial Judge. They no longer contest their conviction.

The appellants contended through their counsel that the sentence imposed by the learned trial Judge was harsh and excessive. Further that the learned trial Judge had not taken into account the mitigating factors raised in favour



of the appellants. They contended that had he done so, he would not have sentenced the appellants to spend the rest of their biological lives in prison. They prayed the Court to invoke the powers granted to it under Section 11 of the Judicature Act, Cap. 13 and sentence the appellants to a shorter sentence.

Counsel for the respondent opposed the appeal. She submitted that the sentence imposed in the circumstances was justified. In her view, the appellants could have been sentenced to suffer the death punishment, owing to the manner in which they murdered the deceased, but they were not. It was also submitted for the respondent that all the relevant mitigating factors had been taken into consideration by the court prior to sentencing the appellant. Therefore, the sentence imposed in the circumstances was justifiable and ought to be maintained by this Court. They maintained that there was no ground to interfere with the sentence which was passed due to the exercise of the learned trial Judge's discretion.

In the relevant passage prior to imposing the sentence on the appellants, the learned trial Judge had this to say at page 43 of the record:

> **"The two accused persons were convicted of murder. They beat to death their sister in law whom they accused of killing her husband, their brother. Revenge and killing is abhorable. Court condemns it. The matter ought to have been taken to the police.**
>
> **It is the same with you, the relatives of the deceased could have killed you there would be no end to justice (sic).**
>
> **Mitigating factors were that the two have spent 3 years on remand. They appeared remorseful each pleaded for leniency. Each stated that they have family responsibilities.**
>
> **The aggravating factors however, were that the victim was killed in the most horrendous manner. She was matched for I (sic) mile while assaulting her. This was in front of her own child. The trauma caused will live with him for the rest of his life. And they were relatives.**
>
> **The state asked for the death sentence. Defence asked for life imprisonment.**

I have considered all the above including the 3 years on remand and I sentence Semulema Leonard and Alideki Patrick to imprisonment for life i.e for their biological life in prison. I so order."

It is true as submitted by counsel for the appellants that although the Court was informed that the appellants were first offenders who were of the youthful ages of 33 years and 42 years respectively, the same were not taken into account prior to sentencing. In **Kamya Johnson Wavamuno vs. Uganda, Supreme Court Criminal Appeal No. 16 of 2000**, the Court observed that:

> **"It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or a failure to take into account a material consideration, or an error in principle was made. It is not sufficient that the members of the court would have exercised their discretion differently."**

In our view, being first offenders and their youthful age, were material considerations which should have been taken into account prior to sentencing the appellants. These were not taken into account. This Court cannot speculate that the learned trial Judge would have imposed the same sentence even if he had taken into account those material considerations. Therefore, owing to that failure, we have no option but to interfere with the sentence imposed in the circumstances and we hereby set it aside.

We shall now proceed to determine an appropriate sentence by virtue of the powers of this Court derived from section 11 of the Judicature Act, Cap.13. We note the following mitigating factors which were raised for the appellants that; they were first offenders; they were of the youthful ages of 33 years and 42 years respectively at the time of the commission of the offence; they were remorseful and they had family responsibilities. However, the 2nd appellant was adamant even during the allocutus that he was innocent and that he had been wrongly convicted.

In addition, it has been established that offenders who participate in mob justice will not be sentenced as harshly as those who did not. This is because as stated in **Kamya Abdullah and 4 others vs. Uganda, Supreme Court**

Criminal Appeal No. 0024 of 2015, such persons do not act with the pre-meditation of those murderers who execute their victims in cold blood. In that case, it was observed that:

> **"...Counsel for the appellants in his submissions stated that many of those who take part in mob justice do so without thinking. They do so because others are doing so. We agree, furthermore, a mob in its perverted sense of justice thinks it is administering justice while at the same time ignoring the importance of affording the suspects the rights to defend themselves in a formal trial.**
>
> **Without downplaying the seriousness of offences committed by a mob by way of enforcing their misguided form of justice, a wrong practice in our communities which admittedly must be discouraged, we cannot ignore the fact that, in terms of sheer criminality, <u>such people cannot be and should not be put on the same plane in sentencing as those who plan their crimes and execute them in cold blood.</u>"**

The aggravating circumstances were that; the injuries inflicted on the victim were fatal; the victim suffered over a long period of time; the victim had a child who would miss her parental care; the victim was murdered in the presence of her child; the appellants, being brothers-in law, breached her trust and the trust of their nephew (the victim's child) whom they left orphaned.

After due consideration of the mitigating and aggravating factors, we form the view that the manner of the commission of the present case places it in a category that would attract a heavy sentence. **Mutatina Godfrey & another vs. Uganda, Supreme Court Criminal Appeal No. 0061 of 2015**, the Supreme Court declined to interfere with a sentence of 36 years imprisonment which had been substituted by the Court of Appeal for a sentence of 40 years the trial Court had imposed on the appellant upon conviction for the offence of Murder. Further, **in Aharikundira Yustina vs Uganda, Supreme Court Criminal Appeal No. 0027 of 2015,** the appellant had brutally murdered her husband and cut off his body parts in cold blood, the Supreme Court set aside the death sentence imposed by the

trial Court and maintained by the Court of Appeal. It substituted thereof, a sentence of 30 years imprisonment.

Bearing in mind the facts of this case and the precedents considered, we have come to the conclusion that a sentence of 35 years imprisonment would be appropriate in the circumstances. It would give the appellants a chance at rehabilitation in a bid to have them reform. From that sentence we shall deduct the period of 3 years, which each one of the appellants had spent in lawful custody while attending trial. Each one therefore will serve a term of imprisonment of 32 years from the date of conviction. This appeal is so disposed of.

We so order.

Dated at Masaka this ......20th...... day of ......Nov.,...... 2019.

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Elizabeth Musoke

Justice of Appeal

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Ezekiel Muhanguzi

Justice of Appeal

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Remmy Kasule

Ag. Justice of Appeal