

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA, AT JINJA
CRIMINAL APPEAL NO. 489 OF 2014

*(Arising from High Court Criminal Session Case No. 165 of 2013
before Hon. Justice I. Kawesa Henry)*

OUMA VICENT:.....:APPELLANT

VERSUS

UGANDA :.....:RESPONDENT

CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA

HON. JUSTICE STEPHEN MUSOTA, JA

HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

JUDGMENT OF COURT

The appellant was indicted and convicted of Murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to 25 years imprisonment. He sought and was granted leave to appeal against sentence only on the sole ground that;

“The learned trial Judge erred in law and fact when he failed to take into account the essential mitigating factors and thus passed a sentence that is manifestly excessive.”

Background

The appellant was a step son to the deceased Taaka Jenniffer Nangira and they were also neighbors in Musohe village, Buhche, Parsih,

Buhehe Sub Country in Busia District. On 6th day of February 2012 at around 10.00pm, the deceased and her husband (the appellant's father) were in the house when they heard the appellant passing by their home. The deceased went out and called the appellant and informed him that both she and her husband had gone to bed without food. The appellant never answered back but shortly after, while the deceased was still standing outside of her house she saw the appellant coming back with a stick and a panga. She ran inside the house and informed her husband what she had seen. Suddenly, the appellant kicked the door open and entered inside the house holding both a stick and panga. The appellant started hitting the deceased with the stick after which he cut her twice on the head with the panga.

The deceased began bleeding heavily from the two deep cuts on the head and in a bid to stop the bleeding her husband wrapped her head with grey shorts. He also made an alarm but it was not answered by anyone as it was deep in the night and all other neighbors, save for the appellant, lived a distance from the deceased's home. The deceased's husband reported to the LC.I chairman and the following day the deceased was taken to Buhehe Health centre III where she later died. The incident was reported to police and on 10th February 2012, police visited the scene, drew a sketch plan and recovered exhibits which were taken to Busia police station.

Representation

At the hearing of the appeal, Mr. Jacob Osillo appeared for the appellant while Mr. Ssemalemba Simon (Assistant DPP) appeared for the respondent.

Appellant's arguments

Counsel for the appellant submitted that the 25 year sentence imposed on the appellant was harsh in the circumstances of the case. Considering that the appellant was only 30 at the time of his arrest

and being a 1st time offender, he ought to have been given a lighter sentence with an opportunity to reform. Counsel relied on the Supreme Court decision in **Rwabugande Moses Vs Uganda S.C.C.A No. 25 of 2014** on the principle that court ought to consider both the aggravating and mitigating factors while passing sentence. Counsel prayed that a sentence of 20 years imprisonment would serve the ends of justice.

Respondent's reply

Counsel for the respondent opposed the appeal and submitted that the sentence of 25 years is appropriate considering the circumstances of the case. That the trial Judge considered both the aggravating and the mitigating factors of the case. The murder was gruesome and the deceased had multiple cuts on the scalp which caused her death. He also killed his father's wife in the presence of his father which was traumatizing.

That the Rwabugande case cited by the appellant is distinguishable from the present case. The appellant in Rwabugande was 24 years while the appellant in the present case was 30 years at the time of commission of the offence. Counsel prayed that this court upholds the sentence of 25 years imprisonment.

Consideration of the appeal

A first appellate court, we must review/rehear the evidence and consider all the material facts before the trial Court and come to its own conclusion regarding the facts, taking into account that it has not seen nor heard the witnesses and in this regard, it should be guided by the observations of the trial court regarding the demeanor of witnesses. See **Rule 30 of the Judicature (Court of Appeal Rules) Directions SI 13-10** under which this Court has power to re-appraise the evidence and draw inferences of fact. See also ***Pandya v R [1957] EA p.336 and Kifamunte v Uganda Supreme Court***

Criminal Appeal No. 10 of 1997 and COA Criminal Appeal No. 39 of 1996.

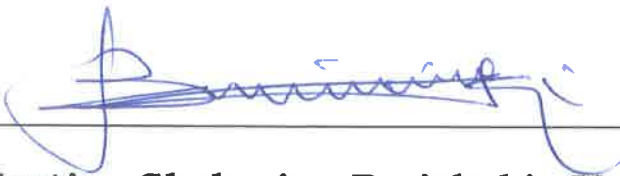
5 It is well settled law that an appellate court should not interfere with
a sentence imposed by a trial court where the trial court has
exercised its discretion on sentence, unless the exercise of that
discretion is such that it results in the sentence imposed to be
manifestly excessive or so low as to amount to a miscarriage of
justice, or where the trial court ignored to consider an important
10 matter or circumstance which ought to be considered while passing
sentence or where the sentence imposed is wrong in principle (see
**Kyewalabye Bernard v. Uganda Supreme Court Criminal Appeal
No. 143 of 2001**). It does not matter that this Court would have
given a different sentence if it had been the one trying the appellant
15 (see **Ogalo s/o Owoura v. R (1954) 24 EACA 270**).

These principles have guided the Court in the resolution of this
appeal. We have also considered the facts, submissions of the parties
and the authorities cited.

20 The appellant complains that the sentence is excessive in the
circumstances of the case. Regarding the mitigating factors, the
sentencing Judge considered that the appellant was a first time
offender and had been on remand for 3 years. On the aggravating
factors, he considered that the offence was committed in a gruesome
murder in the presence of the appellant's father which caused
25 trauma and he depicted no remorse. Sentencing, as a punishment
for an offence is meant to be a retribution as well as a deterrent. It
is also meant to rehabilitate the offender. We find that all these
factors were duly taken into account by the trial sentencing Judge
and we find no reason to interfere with the sentence passed by the
30 trial Judge.

This appeal is therefore dismissed for lack of merit.

Dated this 17th day of May 2019



5 **Hon. Justice Cheborion Barishaki, JA**



Hon. Justice Stephen Musota, JA

10



Hon. Lady Justice Percy Night Tuhaise, JA

15 17.7.19

Appelant present.
Mr. Muzizi for the Resp.
Mr. Muzizi for the Appellant
Hester: Clerk

copy: signed delivered in the presence of the
adv.

