THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 491 OF 2014

GULE SHEIK TWAHA :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(Appeal from the decision of the High Court of Uganda at Nakawa before His Lordship Masalu Musene, J. delivered on 5th June, 2014 in High Court at Nakawa Criminal Session Case No. 302 of 2013)

CORAM: HON. LADY JUSTICE MUSOKE ELIZABETH, JA

HON. LADY JUSTICE HELLEN OBURA, JA

HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA

JUDGMENT OF THE COURT

This is an appeal from the decision of the High Court of Uganda at Nakawa Criminal Session Case No. 302 of 2013 delivered on 5th June, 2014 by Masalu Musene, J. in which the appellant was convicted on five counts of the offence of murder contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120 and sentenced to imprisonment for life on each count, to run concurrently.

Brief Background

The appellant was indicted on five counts of the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. The particulars of the offence in the counts indicated that the appellant had, on the 7th day of August, 2006 at Kobil Petro Station, Bugolobi in the Kampala District, with malice aforethought, killed 5 people namely; Oroto Tom Kennedy, Muganyizi Patrick Kateba, Gatale Claudian, Bagoza Herbert and Okiru Charles. The learned trial Judge convicted the appellant as indicted and sentenced him to imprisonment for life on each count, to run concurrently. Being dissatisfied with the decision of the High Court, the appellant lodged this appeal in this Court on grounds which were formulated in a supplementary memorandum of appeal as follows:

"1. **The learned trial Judge erred in law and in fact when he admitted the charge and caution statement and solely relied on it to convict the Appellant despite evidence on the record that the same had been obtained involuntarily, thus occasioning a miscarriage of justice.**

2. **The learned trial Judge erred in law and in fact in convicting the Appellant based on weak circumstantial evidence thereby occasioning a miscarriage of justice.**

3. **The learned trial Judge erred in law and in fact when he failed to evaluate the whole evidence on record and wrongly rejected the Appellant's defense of Alibi as an afterthought thus arriving at a wrong decision occasioning a miscarriage of justice.**

4. **In the alternative but without prejudice to the above, the learned trial Judge erred in law and in fact when he sentenced the**

Appellant to life imprisonment, which was manifestly harsh, excessive and illegal in the circumstances, and thus occasioned a failure of justice."

Representation

At the hearing of this appeal Mr. Innocent Wanambugo on State Brief and Mr. Andreas Lutalo on private brief, jointly represented the appellant while Ms. Josephine Namatovu, learned Assistant Director of Public Prosecution, represented the respondent. The appellant was in court. This Court granted permission to the parties to file written submissions although only the appellant filed his written submissions, which were accordingly adopted.

Appellant's case.

Mr. Innocent Wanambugo, counsel for the appellant argued grounds 1 and 2 jointly, and grounds 3 and 4 separately. In his submissions on grounds 1 and 2, counsel faulted the learned trial Judge for relying on the appellant's retracted confession, alongside other weak, inconsistent and unreliable evidence to convict the appellant. Counsel pointed out several irregularities which in his view tainted the confession statement. First, that the confession was induced by torture and was not obtained voluntarily; secondly, that the confession was recorded while the appellant was in illegal detention, having been in detention for over 48 hours contrary to the 1995 Constitution; thirdly, that the learned trial Judge had misdirected himself on the standard of proving torture in a trial within a trial when he construed torture to mean only physical torture; fourthly that the learned trial Judge shifted the burden of proof in the trial within a trial to the appellant, yet it should have been on the prosecution; and finally that the learned trial Judge gave undue weight

to the medical report to determine whether the appellant had been tortured and in so doing lowered the standard of proof required to ascertain whether the confession had been obtained voluntarily.

Furthermore, it was counsel's submission that the learned trial Judge relied on weak and unreliable evidence as corroboration of the appellant's retracted confession. He cited the evidence adduced by several prosecution witnesses including PW1 Birungi Sheila, PW3 Lakony Clayton Omona, PW4 Kyenkya Richard and PW5 Okware Zadok as evidence which had been relied on in corroboration and argued that none of those testimonies irresistibly pointed to the guilt of the appellant at all. Counsel relied on **Budri Faustino vs. Uganda, Court of Appeal Criminal Appeal No. 0284 of 2014** and **Katende Semakula vs. Uganda, Supreme Court Criminal Appeal No. 11 of 1994** for the proposition that circumstantial evidence must be construed narrowly and court must, before relying on that evidence, find that the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than guilt. In his view, had the learned trial Judge applied the aforestated principles, he would have found that the appellant had explained away the inculpatory facts and raised cogent hypotheses which were incompatible with his guilt in the circumstances.

On ground 3, counsel faulted the learned trial Judge for misdirecting himself when he rejected the appellant's alibi by reliance on the prosecution evidence alone without properly weighing the defence evidence. He referred to the testimony of the appellant, who, as Defence Witness 1 had testified that on the day of the offence, he was working as a night guard at Kikuubo

Kampala Centre between 12.00 am to 5.30 am and that when he left work, he went for treatment at a clinic as he had developed a severe headache. The appellant had further testified that he reported the sickness to his subject teacher, one Nyakato, and that it was because of that sickness that he missed the examination. Counsel cited **Bogere Moses & Anor vs. Uganda Supreme Court Criminal Appeal No. 1 of 1997** for the proposition that the court must base itself upon the evaluation of the prosecution and defence evidence as a whole before finding that the accused has been placed at the scene of crime. Counsel submitted that had the learned trial Judge followed the principles in **Bogere Moses (supra)**, he would have come to a different conclusion. Counsel then urged this Court to exercise its duty to re-evaluate the whole evidence adduced at the trial and allow this appeal and set aside the conviction and sentence.

On ground 4, counsel submitted in the alternative that were this Court to uphold the conviction, it should set aside the sentence of imprisonment for life which was imposed on the appellant for being illegal and manifestly harsh and excessive in the circumstances. He faulted the learned trial Judge for failing to take into account the period of 7 years, 9 months and 29 days, which the appellant had spent on pre-trial remand. Counsel relied on **Rwabugande Moses vs. Uganda, Supreme Court Criminal Appeal No. 25 of 2014** to state that a sentence arrived at without taking into consideration the period spent on remand is illegal for failure to comply with a mandatory constitutional provision. He then urged this Court to find that the sentence in the present case was illegal and to set it aside.

Besides the illegality, it was counsel's submission that the sentence of imprisonment for life as imposed was inconsistent with the sentences meted out by Court pertaining to similar offences. He referred to the various mitigating factors raised before the trial Court in favour of the appellant; that he was a first offender; the long period the appellant had spent on pre-trial remand; the appellant's young age of 26 years at sentencing; and that the appellant had the capacity to reform. Counsel then prayed that this court finds that the sentence imposed was illegal, harsh and excessive in the circumstances; sets the sentence aside and replace it with lessor prison terms to run concurrently as it may judiciously determine.

Respondent's case.

When this matter last came up for hearing on 21st March, 2019, in the presence of counsel for the respondent, we ruled that any reply by the respondent in this matter was to be filed and served by 29th March, 2019. As counsel for the respondent has neglected to file the said submissions, we shall proceed to determine this appeal without those submissions in order to avoid any further delay in disposal of this appeal.

Resolution of Court

We have carefully considered the submissions of counsel for the appellant, the Court record and authorities and the law cited. 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 Judicature (Court of Appeal Rules) Directions, S.I 13-10.** As a first appellate Court, it is our duty to review and re-evaluate the evidence

adduced at the trial and reach our own conclusion bearing in mind that this Court did not have the same opportunity as the trial Court had, to hear and see the witnesses testify and observe their demeanour. **See: Kifamunte Henry v. Uganda, Supreme Court Criminal Appeal No. 10 of 1997.**

Counsel for the appellant argued grounds 1 and 2 together, and grounds 3 and 4 separately. We shall consider them in that order.

Grounds 1 and 2

The appellant's case on these two grounds was multi-pronged. First, it was argued for the appellant that the trial within a trial was so improperly conducted that the learned trial Judge could have reached a different conclusion about the voluntariness of the confession made by the appellant had that trial been properly conducted.

We note that in his ruling at the end of the trial within a trial, the learned trial Judge properly addressed himself to the law concerning admissibility of a retracted/ repudiated confession statement. He properly cautioned himself about the law and procedure before admitting the confession statement made by the accused in evidence. We observe that the learned trial Judge found that the accused was arrested on 9th August, 2006 and the charge and caution statement was taken on 11th August, 2006. However, as the arresting officer was not called as a witness in this case, it was difficult to ascertain with certainty from any of the prosecution witnesses the date of arrest of the accused. In the result, the appellant's testimony that he was arrested on 8th August, 2006 had to be believed.

We shall hereafter lay out the relevant portions of the ruling at the end of the trial within a trial to determine whether the confession statement was rightly admitted in evidence. The learned trial Judge stated at page 37 of the record that:

> **"...the evidence on record is that the accused was arrested on 9th day of August, 2006 and the charge and caution statement was taken on 11th day of August, 2006.**
>
> **That was only two days after arrest and so this Court doubts the testimony of the accused that he was tortured in various places around Kampala, and specifically Nambole and Kireka for 3 days on 8th, 9th and 10th of August, 2006. And according to the narrative of accused such systematic torture as detailed would have no doubt disfigured or maimed him or caused grievous harm if not making him collapse altogether. This Court doubts that there was ever such lengthy torture, particularly as submitted by Counsel for the state that when the Accused was medically examined on 12th day of August, 2006, just a day or two after the alleged torture, the medical examination report on record on police form 24 is negative with regard to Accused's alleged lengthy and elaborate torture."**

The learned trial Judge gave a detailed analysis of the medical report which was made by the examining physician regarding the appellant and found that had the accused been assaulted in police custody as he alleged, the physician would have stated so in his report after examining the appellant.

It was also the submission by counsel for the appellant that the learned trial Judge lowered the standard of proof when he relied on the medical report which had been accepted into evidence by consent of the parties. We cannot

accept that criticism. Under **section 66 (3)** of the **Trial on Indictment Act, Cap.23,** any fact or document admitted as an agreed fact or document under **section 66 (2)** of the same Act is deemed to have been proven. Hence any evidence, whether admitted by consent or otherwise is relevant and may be relied on by a judicial officer in reaching his decision. The medical report in issue was useful in determining the allegations by the appellant that he had been assaulted in custody as it should have captured any injuries he had sustained during the said torture. The learned trial Judge was justified in relying on it, and we find no reason to fault him on the matter.

The law on admissibility of a retracted/ repudiated confession is well settled. In **Matovu Musa Kassim vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2002,** the court observed that:

> **"A trial court should accept any confession which has been retracted or repudiated or both retracted and repudiated with caution, and must before founding a conviction on such a confession, be fully satisfied in all circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not necessary in law and the court may act on a confession alone if it is satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true."**

In the present case, the learned trial Judge held a trial within a trial and thereafter ruled that the appellant's retracted confession was voluntarily recorded. He reasoned that the medical examination of the appellant a day

after he recorded the confession statement revealed no injuries to the appellant which would have been the case had the appellant been tortured; that the appellant had not complained of any injuries during that examination; that the appellant's confession was detailed and revealed personal details of the appellant's life, in chronological order like his life struggles, his journey from Mbale to Kampala and his love life, which showed that the confession had been voluntary and true. As regards the confession, the learned trial Judge stated at page 39 of the record that:

> **"In my view, such a detailed and long confession statement cannot be said to have been obtained through coercion. This Court in the circumstances finds and holds that the Police Officer, who was above the rank of Assistance (sic) Inspector of Police properly administered the caution to accused who signed after reading the charge to him and so the confession statement was properly recorded in a room at Jinja Road, Police Station in the language perfectly understood by the Accused as he was of Senior Six ("A level")."**

We are unable to fault the finding of the learned trial Judge because it was supported by evidence on record. We agree with the learned trial Judge that if the appellant had been tortured in police custody as he alleged, the medical examination report could have identified the injuries sustained from the torture. We therefore find, just as did the learned trial Judge, that the appellant's confession statement was voluntarily recorded and was therefore true.

The second limb of the appellant's submissions on grounds 2 and 3 is that the evidence relied on by the learned trial Judge to support the confession statement was weak, unreliable and inconsistent. We note that most of the

prosecution evidence in support of the confession statement was circumstantial in nature. We shall proceed to consider the evidence in question bearing in mind the principles governing circumstantial evidence which were recently discussed in **Kazarwa Henry vs Uganda, Supreme Court Criminal Appeal No. 17 of 2015** where Court cited with approval several authorities and observed that:

> **"This Court in many decisions have (sic) set the circumstances the judge have (sic) to consider and ensure that they exist before a conviction is entered. It was held: In Simon Musoke Vs R [1958] EA 715:- "in a case depending exclusively or partially upon circumstantial evidence, the Court must before deciding upon a conviction find that, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of guilt." See also Teper v. R. (2) AC 480 which held, "it is necessary before drawing the inference of the accused's guilt from the circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference." While Taylor on Evidence (11th Edn.) page 74 state "the circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt."**

The learned trial Judge at pages 59 to 60 of the record stated that:

> **"This Court further found corroboration of the confession statement in the evidence of PW1, Birungi Sheilla, the teacher of the Accused who told this Court that on the fateful day of 7/08/2006, Accused did not attend school and missed Mock examinations."**

From the above excerpt, it is evident that the learned trial Judge found that the fact of missing examinations by the appellant on the date the offence was committed pointed to the appellant's participation in the offence.

Furthermore, the learned trial Judge found the testimony of PW5, Okware Zadok, a police officer who had searched the appellant's house after he was arrested as corroboration of the confession statement. PW5 testified that on searching the said house, he found a long sleeved shirt with blood stains, jungle boot shoes with mud, and two t-shirts and caps of Security Group, the appellant's employer. We note that the said items were neither subjected to laboratory analysis nor exhibited in the trial Court. The said laboratory analysis could have scientifically established to whom the blood on the appellant's shirt belonged to. Although the items on the shirt were never subjected to laboratory analysis, we believe that the said evidence taken together with the confession statement tended to pin down the appellant to the offence. We are of the view that it was not a coincidence that blood stained clothes, as well as the muddied juggle boots were found in the appellant's house in the immediate aftermath of the shooting in question. It was also not a coincidence that the appellant missed examinations on the day of the shooting as his economics teacher (PW1) had testified. In our view, the foregoing evidence implicated the appellant in the shooting in question.

The learned trial Judge also relied on the evidence of PW3 Lakony Clayton Omona to corroborate the confession statement, which bore the criticism of counsel for the appellant. The learned trial Judge found that PW3 had been told by one of the deceased persons, shortly before he had died that the appellant was not happy with his manager and the pump attendant at Kobil Petrol Station. PW3 testified at pages 19 to 20 of the record that:

"Otherwise on the 7th day of August, 2006, there was an incident which took place at night, at a place where the accused was guarding. On that night, I received information that people were shot. I rushed to the scene at around 4.00 am.

When I came out of the vehicle, I saw a pool of blood at the washing bay. Then I saw pump attendants and one security guard dead. One was called Oroto Kennedy. He was a security guard of the company. When I turned the other side, I saw another guard, called Okiro and pump attendant shot but they had not yet died. So I ordered for the two to be rushed to Mulago Hospital. I went to Jinja Road Police station to pick more police men. The two guards deployed were accused and Oroto Kennedy. Accused had a misunderstanding with a pump attendant earlier. So Okiro was brought to replace accused pending investigations of the alleged theft of money. That was one month earlier. While police doing their investigations. I did my internal investigations. I also linked up with police."

The underlined extract of this witness' evidence is somewhat muddled up but reveals that the accused had been replaced at the fuel station about a month earlier to pave way for investigations about his alleged theft of money. It goes without saying that the testimony of PW3 did not implicate the appellant. On the contrary it revealed that the appellant had last gone to the scene of crime about a month earlier. PW3 further testified at page 20 of the record that:

"After 3 days, one Nixon came to the General Manager to assist in investigations. Nixon asked for personal files of the two who had died and that of the accused. We went to MTN (Telephone) where we got a printout. Then after 3 days, Nixon came called me to his workplace. I

found accused there at Violence Crime Crack Unit. Accused had been arrested. I told him I knew accused who had earlier been deployed at scene of crime. I asked the accused and he told me he was being frustrated and wanted to show his satisfaction (sic). He told me he was being frustrated and wanted to show his satisfaction (sic). He told me he was annoyed and repeated it five times. Then he told me he decided to shoot the people at the petrol Station. I walked out a bit. When I returned, I asked why he shot them. Accused never responded. I called Nixon and informed him and thereafter, I left."

In cross examination, PW3 testified at page 21 of the record that:

"I knew Okiro before and in my interaction with him, he did not implicate any one."

Further still in re-examination, still at page 21 of the record, PW3 stated that:

"Okiro did not mention the name of any one. Accused was replaced at Kobil because of a complaint."

From the above analysis of the above excerpts, we find that the information PW3 got from Okiro shortly before his death did not implicate the appellant as the assailant who committed the offence in question. Counsel's complaints on the point were therefore justified and we sustain them.

We further observe that the learned trial Judge found that the appellant had made a separate admission of his participation in the offence to PW3. He observed as follows at page 61:

"The evidence of PW3 further corroborates the confession statement of the accused to PW2. Accused repeated the same admission before PW3, his branch manager at the time. In my humble view, such conduct by Accused of repeating the same admissions to two persons cannot be said

to be conduct of an innocent person, particularly when he was said to have repeated five times to PW3 that he was annoyed."

We are of the view that the admission made to PW3 was inadmissible as a confession. It was made in contravention of section **23 (1) (a)** of the **Evidence Act, Cap. 6** which is reproduced below:

"23 (1) No confession made by any person while he or she is in the custody of a police officer shall be proved against any such person unless it is made in the immediate presence of—

(a) a police officer of or above the rank of assistant inspector"

The impugned confession was made to PW3 when the appellant was already in police custody. PW3 was not a police officer, and as such, the confession made to him by the appellant should never have been proved against the appellant. The learned trial Judge, therefore, erred when he relied on the said confession in corroboration of the confession statement the appellant had made to PW2 Detective Inspector Kasangaki John.

The learned trial Judge also relied on a dying declaration made to PW4 Kyenkya Richard, by Bagonza Herbert, one of the victims of the shooting in question, shortly before he died. The relevant excerpt of PW4's evidence at page 22 of the record is reproduced below:

"My role was that on 7th day of August, 2006 at 6:30 a.m. I was called by Bogere and Ass. Inspector Apio Grace to report to Jinja Road Police Station. I found the Director C.I.D and the above two. We proceeded to the scene of murder at Bugolobi, where three people were dead and two injured. We recovered the uniform of security group and I proceeded to Mulago to guard the two victims. Bagonza Herbert, one of the victims,

who was family friend called me. The victim was on oxygen. I asked him whether he saw the person who shot him. He told me the person was tall and slender and putting on a red cap of security group. He did not tell me the name of the person but described the appearance."

We note that Bagonza Herbert's dying declaration had failed to precisely identify the appellant. The reference to a "tall, slender person wearing a red cap" was too vague to be deemed a reference to the appellant. No evidence was led on the point to prove that the description was of the appellant and no other person. It, therefore, follows that the learned trial Judge erred when he relied on the evidence of PW4, too, as corroboration of the appellant's confession statement for the above reasons.

All in all, although the testimonies of PW3 and PW4, have been found not to constitute sufficient corroboration, for the reasons stated above, we are mindful of the fact that no particular number of witnesses is required to prove a fact. **See: Section 133 of the Evidence Act, Cap. 6.** Accordingly, we find that the prosecution evidence (especially the evidence of PW1 and PW5) tended to implicate the appellant and sufficiently corroborated the appellant's confession statement as discussed above. Therefore Grounds 1 and 2, must fail.

Ground 3

It was the submission of counsel for the appellant that the learned trial Judge had misdirected himself when he only evaluated the prosecution's evidence, and relied on that evaluation to reject the appellant's alibi, without giving due consideration to the defence version. It is trite law that when the

accused raises the defence of alibi, the trial Court must before convicting him/her be satisfied that the accused has been placed at the scene of crime.

In **Bogere Moses & Another vs. Uganda, Supreme Court Criminal Appeal No. 1 of 1997,** the court observed as follows:

> **"What then amounts to putting an accused person at the scene of crime? We think that the expression must mean proof to the required standard that the accused was at the scene of crime at the material time. To hold that such proof has been achieved, the court must not base itself on the isolated evaluation of the prosecution evidence alone, but must base itself upon the evaluation of the evidence as a whole. Where the prosecution adduces evidence showing that the accused person was at the scene of crime, and the defence not only denies it but also adduces evidence showing that the accused person was elsewhere at the material time, it is incumbent on the court to evaluate both versions judicially give reasons why one and not the other version is accepted. It is a misdirection to accept the one version and then hold that because of that acceptance per se the other version is unsustainable."**

We observe that the learned trial Judge subjected the prosecution evidence to a thorough evaluation but did not evaluate the defence evidence with similar thoroughness or at all. This was a misdirection. Due to that misdirection, he did not evaluate the appellant's unsworn statement that on the day of the offence, he was carrying out his duty as a night guard in Kikuubo, Kampala City Centre and was relieved at 5:30 a.m. He had further stated that after leaving work he felt unwell at about 7:30 a.m and went to a clinic for medication, where after he remained indoors until 8th August, 2006, when he was arrested.

We further observe that the learned trial Judge relied on the appellant's confession statement to reject his alibi. We have already made a finding elsewhere in this judgment that the said confession statement was true and voluntary. In our view, it was critical in linking the appellant to the commission of the offence in question.

We have subjected the prosecution and defence evidence to a thorough re-evaluation. We find the appellant's alibi difficult to believe, in light of the testimonies of PW1 and PW5 which we have already analysed elsewhere in this judgment. Therefore, while we agree that the learned trial Judge misdirected himself when he failed to evaluate the appellant's alibi, we find that the said misdirection did not occasion a miscarriage of justice. The said alibi was rightly rejected in view of the prosecution evidence which placed the accused squarely at the scene of the crime.

Therefore Ground 3, too, must fail.

Ground 4

Counsel for the appellants challenged the legality of the sentence imposed in the circumstances, submitting that the learned trial Judge did not consider the period which the appellant had spent on pre-trial remand. The learned trial Judge gave the following reasons for the sentence at pages 65 to 66 of the record:

> **"Sentence and reasons:**
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> **There is no doubt whatsoever that the offences in question are very grave and serious. They involved loss of five lives. No one has the right to unlawfully terminate another person's life over flimsy excuses that**

one was frustrated and annoyed as the convict in this case. I want to take this opportunity to warn people like the convict now and members of the general public that everyone must learn to control their tempers under whatever circumstances. Once life is lost, it is gone forever and cannot come back. In such circumstances, and where the convict killed five people, a deterrent maximum penalty would be called for so as to deter such cruel barbaric crude and uncivilized conduct and behavior (sic). No one should be allowed to play about with a lethal and dangerous weapon like a gun as if he/she was shooting at wild animals in Murchison Falls National Park. This Court is aware of the sentencing guidelines whereby the views of the relatives of the deceased are to be sought. But being an old case of 2006 such relatives cannot be traced and Court cannot keep on waiting. I have considered all the aggravating factors as raised by the Prosecution and actually mentioned some of them.

I at the same time take into consideration the mitigating factors raised by M/S Sylvia Namawejje for convict, particularly age of convict. All in all, I am persuaded not to sentence the convict to death despite the death of the five people he caused. Convict is nevertheless a very dangerous person who deserves to be out of society in the interests of protection of others.

In the circumstances, I do hereby sentence convict to imprisonment for life in each of the five counts. The sentences will run concurrently."

We have quoted at length the reasons given above by the learned trial Judge in order to show that he did not take into consideration the period spent on remand by the appellant. However in **Magezi Gad vs. Uganda, Supreme Court Criminal Appeal No. 17 of 2014,** the Supreme Court observed that a sentence for death or life imprisonment is not amenable to Article 23 (8)

because the said provision applies only where sentence is for a term of imprisonment which is quantifiable and capable of being deducted which was not the case with life or death sentences. In view of the preceding authority, we find that the sentence in this case was legal, as it was a sentence for life imprisonment which would not have been reduced even after the remand period was taken into account.

We are also unable to accept the criticism levied against the learned trial Judge by counsel for the appellant that he did not take into account the mitigating factors in favour of the appellant. On the contrary, he considered the mitigating factors and specifically singled out the appellant's young age which persuaded him not to impose the maximum death penalty. Moreover, the offence in question was of a grave nature, was committed in a brutal manner and caused multiple deaths.

Accordingly, having taken into consideration all the relevant factors, we find that the sentence imposed by the learned trial Judge was neither harsh nor excessive and we uphold it. The appellant shall serve a sentence of imprisonment for life.

On the whole, the appeal against both conviction and sentence must fail for lack of merit.

We so order.

Dated at Kampala this 8th day of Aug 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

8/8/18