

# THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA SITTING AT MBARARA

## CRIMINAL APPEAL NO.98 OF 2017

AKANKUNDA HERBERT ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

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

*(Appeal arising from the decision of the High Court of Uganda at Rukungiri before Hon. Justice Michael Elubu delivered on the 28<sup>th</sup> day of November, 2016 in Criminal Session Case No. 062 of 2013).*

**CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA**

**HON. JUSTICE STEPHEN MUSOTA, JA**

**HON. JUSTICE REMMY KASULE, AG. JA**

### JUDGMENT OF COURT

The appellant was charged and convicted of Murder contrary to section 188 and 189 of the Penal Code Act and sentenced to 23 years imprisonment. The appellant was dissatisfied with the sentence passed by the trial court and with leave of this court, he appealed against sentence only on the ground that;

1. The learned trial Judge erred in law and fact when he sentenced the appellant to 23 years imprisonment, a sentence which is manifestly harsh and excessive given the circumstances of the case.



## **Background**

The deceased, Kyatuheire Hellena was married to the appellant at the time of her death and they were staying together with 4 children. The two as husband and wife had a lot of disagreements after their marriage and on 5<sup>th</sup> April 2016 after a heated quarrel in their bedroom, the appellant hit the deceased with a hoe on the forehead and she died instantly. One of the appellant's sons heard the fight in the parents' bedroom and saw the appellant move in and out of the bedroom restlessly which prompted the son to go to their bedroom at 3:00am and found no one in the bedroom. The appellant returned at 6:00am in the morning but the deceased was not there. Later the deceased was found dead and her body put inside a sack with 2 big stones and dropped inside a big tank belonging to one Mpakani. The appellant was arrested and taken to police from where he was indicted for murder.

Due to the Regulations to prevent the spread of Covid-19, the appellant participated in the hearing of this appeal through video conferencing and was in constant touch with his lawyer.

## **Representation**

At the hearing of the appeal, Mr. Tumwebaze Emmanuel appeared for the appellant while Mr. Kurugishuri Anthony, a state attorney appeared for the respondent.

Both learned counsel filed written submissions which were adopted by court.

## **Submissions of the appellant**

Counsel for the appellant submitted that the appellant having pleaded guilty to the charge and signed a plea bargaining agreement being sentenced to 23 years imprisonment amounted to a harsh and excessive sentence considering that he did not waste court's time.

Counsel relied on the case of **Livingstone Kakooza Vs Uganda S.C.C.A No. 17 of 1993** in which it was held that the appellate court will only alter a sentence imposed by the trial court if it is evident that the said court acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case.

Counsel further submitted that a plea bargaining agreement was signed and a sentence of 20 years imprisonment was the one agreed upon, however, the appellant was sentenced to a severe sentence of 23 years imprisonment which was not the one agreed upon. Learned counsel thus prayed that the said sentence be set aside and the appellant be re-sentenced to an appropriate sentence.

### **Submissions of the respondent**

In reply, counsel for the respondent argued that the plea bargaining agreement should meet the set standards under the **Judicature (Plea Bargaining) Rules 2016**. Plea bargaining is the process between an accused person and the prosecution in which the accused person agrees to plead guilty to a charge in exchange for the prosecution to drop one or more charges, reduce the charge to a less serious one or recommend a particular sentence, subject to approval by the court. The appellant signed the plea bargaining agreement willingly and voluntarily with his lawyer. Counsel prayed that the appeal be dismissed and sentence of 23 years imprisonment be upheld for being appropriate given the very grave nature of the offence.

### **Resolution by court**

It has been consistently held in numerous cases both by the Supreme Court and the predecessor Court of Appeal for East Africa, and more specifically in the case of **Livingstone Kakooza v Uganda SC Criminal Appeal No. 17 of 1993 [unreported]** that:



*'An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration: See **Ogalo S/O Owoura v R (1954) 21 E.A.C.A. 270.**'*

The foregoing principles are equally applicable in the instant case.

The appellant argues that the 23 year imprisonment sentence handed to him was excessive in the circumstances of the case, because he pleaded guilty and agreed on a 20 year imprisonment sentence in the plea bargaining agreement. Learned counsel for the respondent submitted that the plea bargaining agreement was for 23 years imprisonment sentence which the Court approved and handed down to the appellant.

Part III of the **Judicature (Plea Bargaining) Rules 2016** provides for the procedure and form of making a plea bargaining agreement.

According to the plea bargaining agreement on record, the appellant voluntarily pleaded guilty to the charge of murder and entered into a plea bargaining agreement in the presence of his lawyer, Mwesigye Mark and consented to 23 years imprisonment. The trial Judge properly admitted the plea bargaining agreement onto the record and sentenced the appellant to 23 years imprisonment. It is our considered view that the sentence was properly agreed upon in the plea bargain and it was neither harsh nor excessive.

It was however incumbent upon the trial court to take cognizance of the remand period as provided for under Article 23 (8) of the constitution. We shall therefore alter the sentence imposed by the trial court under S. 11 of the Judicature Act and deduct from the agreed sentence of 23 year imprisonment the period the appellant spent on remand of 7 months and 21 days. The appellant will serve



a sentence of 22 years, 4 months and 9 days imprisonment from the date of conviction of 28<sup>th</sup> November, 2016.

This appeal is accordingly dismissed.

Dated this 13<sup>th</sup> day of October 2020



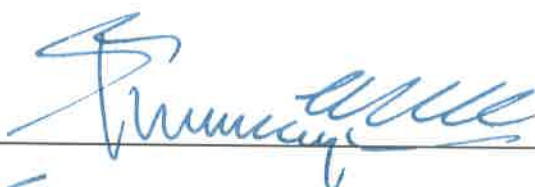
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**Hon. Justice Elizabeth Musoke, JA**



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**Hon. Justice Stephen Musota, JA**



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**Hon. Lady Justice Remmy Kasule, Ag. JA**