

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT MBALE**  
*[Coram: Egonda-Ntende, BarishakiCheborion and Kibeedi, JJA]*  
**CRIMINAL APPEAL NO. 511 OF 2016**

(Arising from High Court Criminal Session Case No.. 049 of 2013 at Soroti)

**BETWEEN**

Ogwang James=====Appellant

**AND**

Uganda=====Respondent

*(On appeal against the Judgment of the High Court of Uganda (Wolayo, J.)  
delivered on 6<sup>th</sup> April 2015)*

**JUDGMENT OF THE COURT**

- [1] The appellant, James Ogwang, was indicted of the offence of murder contrary to section 188 and 189 of the Penal Code Act. The particulars of the offence were that on the 30<sup>th</sup> day of June 2012 at Iyalakwe village, Alito Parish, Obalanga sub county in Amuria District he murdered Aucho Mary. He was convicted and sentenced to 36 years' imprisonment. He appealed against both conviction and sentence.
- [2] When this appeal was called for hearing we drew the attention of both counsel for the appellant and respondent to the fact that the record did not disclose whether or not the plea of the appellant had been taken before the trial commenced. MsFatinahNakafeero, Chief State Attorney, in the Office of the Director of Public Prosecutions, appearing for the respondent, conceded that the trial court had not read the indictment out to the appellant nor taken his plea before the trial commenced. She submitted that this was a fatal error to the conviction and sentence and prayed that this

court quashes the conviction and sets aside the sentence imposed upon the appellant. She further prayed that this court orders a re-trial in the interests of justice.

[3] MsLuchivya, learned counsel for the appellant, agreed with the Chief State Attorney only to the extent of quashing the conviction and setting aside the sentence. She opposed the prayer for a re-trial, arguing that it is not in the interests of justice. She prayed that the appellant should be acquitted and liberated forthwith.

[4] Section 60 of the Trial On Indictments Act states,

**‘Pleading to the Indictment**

The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the Court shall cause otherwise to order, and the indictment shall be read over to him or her by the Chief Registrar, or other officer of the Court, and explained if need be by that officer or interpreted by the interpreter of the Court; and the accused person shall be required to plead instantly to the indictment, unless, where the accused person is entitled to service of a copy of the indictment, he or she shall object to the want of such service, and the Court shall find that he or she has not been duly served with a copy.’

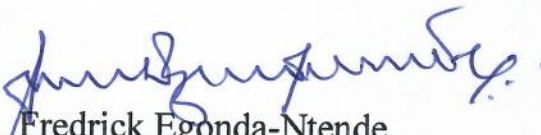
[5] The foregoing provisions are mandatory in nature upon the trial court and provide a basis upon which a trial can proceed. Without complying with the same the subsequent trial is a nullity. See Rev. Father Santos Wapokra v Uganda [2016] UGCA 33.

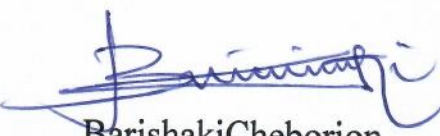
[6] We have examined the record of trial in the court below. It is clear that the trial court did not comply with the above provisions and the subsequent proceedings were therefore a nullity. We hereby quash the conviction of the appellant and set aside the sentence imposed upon him.

[7] As to whether we should order a re-trial or acquit the appellant of the offence with which he was supposed to be charged with, it is our view that the appellant cannot be acquitted as there was no trial so to speak, upon which we can conclude, he should be acquitted.

- [8] With regard to whether we should order a re-trial this is a matter that is within the discretion of this court, depending on the justice of the case. The appellant was on remand for about 21 months, almost close to 2 years. He was tried and convicted on 6<sup>th</sup> April 2015 and sentenced to 36 years' imprisonment which he has been serving to-date. It is almost 7 years. We are not too sure that if we ordered a retrial it would be expeditiously handled not later than the end of this year, in light of the current situation in the country related to Covid-19 pandemic.
- [9] We know that cases as grave as the charges that were raised against the appellant ought to be tried so that both the victim's family, society at large and the appellant are accorded justice. And that justice is seen to be done. Nevertheless, through no fault of the appellant, he has unjustly been locked up for the last 7 years without being afforded an effective trial. The criminal justice system is now operating under severe restrictions and the possibility of allowing this grave charge to hover over the appellant while it would be uncertain when the process would take its course would be to inflict further injustice upon the appellant. In the circumstances of this case we are satisfied that the justice of the case lies with ordering a stay of prosecution, discharging the appellant of the charges he faces and order his immediate liberation from custody, unless he is held on some other lawful charges. We so order.

Dated, signed, and delivered at Mbale this 6<sup>th</sup> day of August 2020

  
Fredrick Egonda-Ntende  
**Justice of Appeal**

  
Barishaki Cheborion  
**Justice of Appeal**

*Muzamiru Kibeedi*  
06/08/2020

Muzamiru Kibeedi  
**Justice of Appeal**