

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBALE
(Coram: Egonda-Ntende, Barishaki, and Kibeedi, JJA)
CRIMINAL APPEAL NO.16 OF 2016
(HCCR Case No.57 of 2014)

BETWEEN

A.1 HAJJI ELIASA NAMUNYU (RIP)

A.2 HAJJI MALIKI WANAMBILI (RIP)

A.3 TABO ABUBAKARI:.....APPELLANTS

A.4 WANDERA LUKEMAN

A.5 MUSIHO UBAIDI (RIP)

A.6 NAMBIRO SHABAN WAMAGHE

VERSUS

UGANDA:.....RESPONDENT

JUDGEMENT OF THE COURT

The appellants appealed to this court against the conviction for murder contrary to Sections 188 and 189 of the Penal Code Act, cap 120 and the sentence of 37 years' imprisonment that was handed down to each one of them by the High Court of Uganda sitting at Mbale.

When the appeal came up for hearing, court was informed that A1(Hajji Eliasa Namungu), A2 (Hajji Maliki Wanambili) and Musiho Ubaidi had passed on. That left only A3(Tabo Abubakari), A4 (Wandera Lukeman) and A6 (Nambiro Shaban) to continue with the appeal.

At the trial before us the surviving appellants were represented as follows:

- Counsel Obonyo Job – For A3 (Tabo Abubakari); and
- Counsel Kyabakaya - For A4 (Wandera Lukeman) and A6 (Nambiro Shaban Wamaghe).

On the other hand, the respondent was represented by Mr. Peter Mugisha, a State Attorney.

Both the appellants and respondents filed written submissions and we reserved our judgement on notice.

On perusing the record of proceedings of the trial court, there was no indication whatsoever that the appellants had ever pleaded to the charges for which they were tried, convicted and sentenced.

From the record of proceedings, on 27.04.2015 when the trial of the case started, it is indicated that the proceedings started by both counsel for the prosecution and the accused tendering into court documents by agreement. Thereafter court started hearing the oral testimonies of the prosecution witnesses.

In **Criminal Appeal No.204 of 2012, Rev.Fr. Santos Wapokra Vs Uganda (Court of Appeal Unreported)**, it was held that plea taking is a fundamental principle of a fair trial as enshrined in Article 28(3)(b) of the constitution of Uganda which provides:

“Every person who is charged with a criminal offence shall ...be informed immediately, in a language that the person understands, of the nature of the offence”.

Further, it was stated that where an accused does not plead to a charge, then the trial is a nullity.

We therefore allow this appeal, quash the proceedings and conviction and set aside the sentences.

We have considered whether in the circumstances of this case, it would be just to order a re-trial. We are of the view that in arriving at any decision, each case must be decided on the basis of its unique facts and circumstances.

The offences for which the appellants were tried under the nullified proceedings were alleged to have been committed almost eight years ago (in 2012). The appellants spent three years on remand and have now served five years out of the sentences of imprisonment handed down to them by the High Court. The mistrial was not the appellants' fault.

In the result we decline to order a re-trial. We order a stay of prosecution and direct immediate release of the appellants.

We so order.

Dated at **Mbale** this 08th Day of August 2020


Hon. Justice Fredrick Egonda-Ntende

Justice of Appeal


Hon. Justice Barishaki Cheborion

Justice of Appeal


Hon. Justice Muzamiru Kibeedi

Justice of Appeal