THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MASAKA

CRIMINAL APPEAL NO.768 OF 2014

(Arising out of High Court Criminal Case No.0045 of 2000)

SSENYANGE RONALD::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Justice Alividza Elizabeth Jane dated 30th July, 2014 in High Court Mitigation Case No.0134 of 2014)

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA

JUDGMENT OF COURT

The appellant was convicted of murder on the 4th of March, 2003 by E.B Mwangusya, J in High Court Criminal Session case No. 0045 of 2000 at Masaka and sentenced to death. At the time of sentencing, the death penalty was the only sentence stipulated by law for a person convicted of murder.

In ***Susan Kigula and Others V Attorney General, Constitutional Appeal No.003 of 2006,*** the Supreme Court confirmed the decision of the Constitutional Court annulling the mandatory death sentence and ordered that the case files of all persons who had, before then, been convicted of capital offences and sentenced to the then mandatory death penalty be returned to the High Court for mitigation proceedings and re-sentencing.

The matter was subsequently sent back to the High Court for reconsideration of sentence. On 30th July, 2014, Elizabeth Jane Alividza, J upon hearing the parties on mitigation, sentenced the appellant to 40 years imprisonment after considering almost the 14 years which the appellant had spent in custody.

This appeal is against sentence only and the ground of appeal was worded thus;

> *"The learned trial Judge erred in law when she sentenced the appellant to a substituted sentence of 40 years imprisonment which sentence was harsh and manifestly excessive in the circumstances of the case."*

The facts giving rise to the appeal as accepted by the learned trial Judge are that the appellant was a grandson of the deceased and they lived together at the deceased's home at Kyalangongo Village, Rakai District. On 28th August, 2000, the appellant's grandfather was found dead in his house and nobody seemed to know what had caused his death but on information received, the appellant was arrested and on interrogation he is alleged to have admitted having administered poison in the deceased's food and on examination of the

remains of the food, furradan, a highly toxic poison was detected. The appellant is alleged to have taken No.19304 CPL George Okuku to a place in a bush where the remains of the poison had been thrown. The said remains were also tested and furradan was found. The appellant was arrested mainly on the strength of his admission in the Charge and Caution Statement and the findings of the Government analyst. The appellant denied having poisoned his grandfather. He also denied having made the Charge and Caution statement attributed to him. He was tried, convicted and sentenced to suffer death.

At the hearing of the appeal, Counsel Namata Edith appeared for the appellant while the respondent was represented by Mr. Baine Moses.

Counsel for the appellant sought leave of Court under Rule 5 of the Rules of this Court to extend time within which to validate the Notice of Appeal and Memorandum of Appeal leave to appeal against sentence only. Leave was granted.

Counsel for the appellant submitted that the sentence of 40 years imprisonment imposed on the appellant by the re-sentencing Judge was harsh and manifestly excessive considering that he had been in lawful custody for 13 years and 11 months inclusive of the remand period before conviction. She added that the learned re-sentencing Judge ought to have maintained consistency while sentencing the appellant and cited ***Oyita Sam V Uganda, CACA No.307 of 2010*** where this Court reduced the death sentence to 25 years imprisonment and ***Akbar Godi V Uganda, Criminal Appeal No.3 of***

2013, where the appellant murdered his wife and sentenced to 25 years imprisonment which this Court and the Supreme Court upheld. Counsel prayed that this Court reduces the sentence to 20 years imprisonment.

Counsel for the respondent opposed the appeal and submitted that the sentence of 40 years imprisonment was neither harsh nor excessive considering the nature of the offence committed. He submitted that the appellant meticulously and with the highest degree of pre-meditation administered lethal poison to his own grandfather, who had single-handedly brought him up.

Counsel further submitted that the re-sentencing Court taken into consideration both the mitigating and aggravating factors before reaching the decision to sentence the appellant to 40 years imprisonment and there was therefore no reason for this Court to interfere with the sentence. He prayed that the appeal be dismissed and the appellant's sentence of 40 years be confirmed.

We have considered the submissions of both counsel and studied the court record and the authorities availed to us.

This being a first appellate Court, it has a duty to re-evaluate the evidence, weighing conflicting evidence, and reach its own conclusion on the evidence, bearing in mind that it did not see and hear the witnesses. ***See Rule 30(1) of the Rules of this Court and Kifamunte Henry V Uganda, Supreme Court Criminal Appeal No.10 of 1997.***

An appellate Court is not to interfere with a sentence imposed by a trial Court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed being manifestly excessive or so low to amount to a miscarriage of justice or where a trial Court ignores to consider an important matter or circumstance which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle. See ***Kiwalabye Bernard V Uganda, Supreme Court Criminal Appeal No.143 of 2001.***

Section 132(1) (e) of the Trial on Indictment Act CAP 23 vests this Court with jurisdiction to confirm, vary or reverse conviction and sentence.

It was submitted for the appellant that the sentence of 40 years imposed on him by the learned re-sentencing Judge was harsh and manifestly excessive.

While sentencing the appellant, the learned sentencing Judge stated as follows;

- *"The convict has been remorseful, has no previous conviction and has reformed as proved by the prison reports. I reduce a total of 3 years from the 55 sentence leaving a balance of 52 years imprisonment.*
- *The convict is a youthful offender who has also embarked on formal education to improve himself. I will reduce 2 years from the 52 years leaving a balance of 50 years.*
- *The convict has been in custody since 2000, which is 14 years. The 14 years includes the period he had spent on remand before*

conviction. From the time of resentencing the appellant had been in custody for 11 years. Leaving a balance of 26 years....

This murder was caused by the selfish acts on the convict as a result of a land dispute. Therefore, there is need for a deterrent sentence to deter others from violence as a result of land conflicts. This act compels me to add an additional 3 years on the 37 years sentence making it a total of 40 years imprisonment."

We find that the learned Judge took into consideration both the mitigating and aggravating factors before imposing the sentence.

The Supreme Court has in ***Mbunya Godfrey V Uganda, Supreme Court Criminal Appeal No.4 of 2011,*** emphasized the need to maintain consistency while sentencing persons convicted of similar offences. Court stated that;

"We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."

In ***Uwihayimana Molly V Uganda, Court of Appeal Criminal Appeal No.103 of 2009*** where the trial Court had imposed a death sentence on the appellant for murdering her husband, the Court of Appeal reduced the sentence to 30 years imprisonment.

In ***Kyaterekera George William V Uganda, Court of Appeal Criminal Appeal No.0113 of 2010,*** the appellant was convicted of murder by stabbing

the deceased on the chest with a knife. This Court confirmed a sentence of 30 years imprisonment imposed by the trial Judge.

In the instant case, the victim was the grandfather of the appellant. He brought him up and looked after him since his mother had divorced. This murder was caused by the selfish acts of the appellant as a result of land dispute. The pre-sentence report at page 10 of the record of appeal indicates that the appellant had been brought up in a way that he had no control as he lived with grandparents and had taken it for granted that whatever was in his reach belonged to him and should not be touched.

We note that the appellant was a first offender, he was remorseful, and he was young aged 20 years at the time of commission of the offence and had been in custody since 2000. He spent 2 years and 7 months on remand and since his conviction he had spent 11 years and four months in custody. He had therefore spent 13 years and 11 months in lawful custody.

We have evaluated both the mitigating and aggravating factors on record and applied the principle of uniformity and consistency. We find that the sentence of 40 years imprisonment imposed on the appellant was in the circumstance harsh and manifestly excessive. We therefore set it aside.

We invoke **Section 11 of the Judicature Act Cap 13** which grants this Court the same powers as that of the trial Court to re sentence. The said section states thus;

"For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the Court from the exercise of the original jurisdiction of which the appeal originally emanated."

The sentence of 40 years imprisonment is substituted with a sentence of 30 (thirty) years imprisonment. Therefrom, we deduct the period of 2 years and 7 months he had spent on remand. Therefore, the appellant is to serve a sentence of 27 years and 5 months imprisonment to run from 4th March, 2003, the date of conviction.

We so order

Dated at Masaka this 15th day of Oct 2021.

HON. MR. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

HON. MR. JUSTICE STEPHEN MUSOTA

JUSTICE OF APPEAL

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HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI

JUSTICE OF APPEAL