

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HELD AT JINJA

(Coram: Elizabeth Musoke, Barishaki Cheborion and Hellen Obura, JJA)

CRIMINAL APPEAL NO. 0003 OF 2013

5 NALULE SARAH :::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA :: RESPONDENT

[Appeal from the decision of the High Court of Uganda sitting at Jinja (Hon. Lady Justice Flavia Senoga Anglin) delivered on 8th January 2013 in Criminal Session

10 Case No. HCT-CR-SC-223-2011]

JUDGMENT OF THE COURT

The appellant in this case was convicted of the offence of murder c/s 188 and 189 of the Penal Code Act upon her own plea of guilty and sentenced to 30 years imprisonment.

The facts of the case as established by the prosecution before the trial court were that the appellant and the deceased were husband and wife and lived at upper Kauga village, Mukono District. On the 7/04/2011, the appellant and the deceased were seen entering their house at about 9pm by the landlord. Very early the next morning about 5am, their neighbors found the deceased's body lying by the door of their

Time

house partially burnt with a burnt rope tied around the neck and they immediately called the landlord.

The landlord knocked at their door and the appellant opened. He informed her that her husband`s body was lying outside but she refused to get out of the house alleging
25 that her husband had gone to Kenya. When she later came out, she maintained that the body wasn`t for her husband. The landlord asked the appellant to call her husband`s phone and she allegedly made a call and claimed that he was on his way to Nairobi. The body was later taken for a postmortem to Mulago Hospital. During investigations, a statement was recorded from Nalubega Shadia a nearby shop
30 keeper who told police that on 07/04/2011, the appellant went to her shop, bought a rope, 2 match boxes and an empty sack. A one Katushabe Shamim a 13 year old girl also stated that on the same date, the appellant requested her to escort her to HASS Petrol station where they purchased fuel. At the scene of crime, the police recovered a paraffin container, a broken sim card, burnt sisal rope and a burnt shirt.
35 On 19/05/2011, the police carried out a search at the deceased and appellant`s house and recovered a Nokia Mobile phone N.73 with serial No. 356438015173281 hidden in a pair of socks in the ceiling of the house and a sim card registered to Warid Telecom. Investigations revealed that the sim card identity as Tel: 0700612423 which belonged to the deceased.



40 The call data showed that the last call made to the number was on 7/4/2011 not
8/4/2011 as claimed by the appellant that she had called the deceased and he said
he was on his way to Nairobi, Kenya.

The body of the deceased upon examination showed that the cause of death was
hypovolaemic shock due to severe burn trauma. The appellant was later arrested
45 and upon examination, she was found to be 26 years of age with no injuries and of
normal mental condition.

She was later charged, and upon her own plea of guilty, she was convicted of the
offence of murder and sentenced to 30 years imprisonment.

With leave of court granted under Section 132 (1) (b) of the Trial on Indictments Act,
50 the appellant now appeals to the Court of Appeal against sentence only in the terms
below:

*"The learned trial judge erred in law and fact when she sentenced the appellant to 30
years imprisonment which sentence is illegal, harsh and manifestly excessive."*

At the hearing, the appellant was represented by Mr. John Isabirye on state brief;
55 while Mr. Sam Oola, Senior Assistant Director Public Prosecutions (DPP),
represented the respondent.

Due to the COVID-19 Pandemic restrictions, the appellant was not physically in
court but attended the proceedings via video link to Prison. Both parties sought, and



were granted, leave to proceed by way of written submissions which were already on
60 the court record.

Appellant's Submissions:

Counsel for the appellant submitted that the appellant's period of one year she had
spent on remand was not considered by the learned trial judge. That **Article 23 (8)**
of the Constitution, Guideline 15(1) and (2) of the Constitution (Sentencing
65 **Guidelines for courts of Judicature) (Practice) Directions 2003** and the Supreme
Court decision of **Rwabugande Moses versus Uganda SCCA 25 OF 2014** mandate
court to deduct the period spent on remand from the sentence considered
appropriate after all factors have been taken into account which the learned trial
judge did not do.

70 Further, that the learned trial judge did not fully consider all the mitigating
circumstances in the case for example that the appellant was young, aged 26 years
at the time the offence was committed with a possibility of rehabilitation, a first time
offender and regretted killing her husband, which meant that she was remorseful
and repentant. That she pleaded guilty thereby not wasting court's time. He
75 contended that had the learned trial judge considered all the above mitigating
circumstances, she would not have come to such a harsh sentence. He cited
Livingstone Kakooza versus Uganda SC Criminal Appeal No. 17 of
1993(unreported) for the proposition that an appellate court will only alter a
sentence imposed by the trial court if it is evident that the court acted on a wrong



80 principle or overlooked some material factor, or if the sentence was manifestly excessive in view of the circumstances of the case.

Counsel prayed for a lenient sentence of 10 years imprisonment.

Respondent's reply:

The respondent partially opposed the appeal.

85 Counsel conceded that the learned trial judge went ahead to sentence the appellant to 30 years imprisonment without taking into account the period of 1 year and 8 months she had spent on remand. That in light of Article 23 (8) of the constitution and the Supreme Court decision in Rwabugande, the sentence passed was illegal and conceded that it should be set aside.

90 Further, counsel invited court to invoke its powers under section 11 of the Judicature Act and proceed to determine an appropriate sentence against the appellant. He invited court to consider aggravating factors that; the appellant murdered her own husband, killed him in a very grisly brutal, heinous, callous, cruel and painful manner when his body was extensively and severely burnt. That there
95 was meticulous preparation by the appellant prior to execution of the mission to kill her husband to wit; she bought a rope, 2 match boxes, an empty sack and paraffin. That she hid the deceased's mobile phone in the house ceiling after removing the sim card.



Counsel cited many authorities, which we need not reproduce all here but suffice to
100 mention; **Rwabugande Moses v. Uganda Supra, Latif Buulo v. Uganda, SSCA
No.31 of 2017 and Mboneigaba James v. Uganda, SCCA No. 25 of 2017.** He then
submitted that none of the cases cited came close to the instant one in terms of its
gravity. That the appellant charred the whole of the deceased's body with fire. He
contended that a sentence of 30 years would have been deserving against her but
105 the fact that the period she had spent on remand of 1 year and 8 months was not
considered, he prayed that the appellant be sentenced to 28 years and 4 months
imprisonment.

Analysis

It is now settled that for the Court of Appeal, as a first appellate court, to interfere
110 with the sentence imposed by the trial court which exercised its discretion, it must
be shown that the sentence is illegal, or founded upon a wrong principle of the law;
or where the trial Court failed to take into account an important matter or
circumstance; or made an error in principle; or imposed a sentence which is harsh
and manifestly excessive in the circumstances. See **Kamya Johnson Wavamuno
115 Vs Uganda, Supreme Court Criminal Appeal No.16 of 2000 (Unreported);
Kiwalabye Bernard Vs Uganda, Supreme Court Criminal Appeal No. 143 of
2001 (unreported); Wamutabanewe Jamiru Vs Uganda, Supreme Court
Criminal Appeal No. 74 of 2007 and Rwabugande Moses Vs Uganda, Supreme
Court Criminal Appeal No. 25 of 2014**



120 While sentencing the appellant, the trial court stated thus:

125 *"The convict is sentenced to 30 years imprisonment. The offence committed is a very serious one that carries a maximum sentence of death. Though the convict has pleaded guilty and appears repentant, the accused committed the offence which appears to have been well planned considering the apparent preparations that were done by the convict prior to the act, and her subsequent conduct upon being informed that her husband was lying dead outside their house, cannot be condoned by this court.*

130 *Such actions as of the convict's case apprehension in the public have contributed to the breakup of the family system which is the basis upon which a community and eventually the nation is built*

While court has taken note of the children the convict has, in the circumstances, I find that they need to grow up in an environment that is not influenced by the convict."

135 From the above, it is clear that the trial court never took into consideration the period the appellant had spent on remand.

Article 23(8) of the Constitution provides that;

"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the



completion of his or her trial shall be taken into account in imposing the term of
140 imprisonment.”

In **Rwabugande Moses versus Uganda** (Supra), the Supreme Court held 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.

Guideline 15 of the **Constitution Sentencing Guidelines** (Supra) provides;

145 (1) *The court shall take into account any period spent on remand in determining an appropriate sentence.*

(2) *The court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account.*

From the record, it is clear that the learned trial judge never considered the period
150 the appellant had spent on remand of 1 year and 9 months. The sentence meted out on the appellant was therefore illegal and ought to be set aside.

We find no reason to delve into the aspect whether the appellant’s mitigating factors. We therefore, set aside the sentence passed by the High Court and shall proceed sentence the appellant afresh pursuant to Section 11 of the Judicature Act, which
155 confers this court with the same powers as the High Court. The section provides;

‘11. Court of Appeal to have powers of the court of original jurisdiction.

For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any



160 *written law in the court from the exercise of the original jurisdiction of which
the appeal originally emanated'*

We are alive to the fact that Murder is a capital offence which attracts the death penalty as a maximum punishment as per section 189 of the Penal Code Act.

Guideline 19 and Part I of the Third Schedule of the Constitutional Sentencing
165 Guidelines (supra) provide that the sentencing range for capital offences after taking into account factors that aggravate and mitigate the sentence is from 30 years up to death.

In **Muhwezi Bayon Vs Uganda, Court of Appeal Criminal Appeal No. 198 of 2013**,
this court after reviewing numerous decisions of the Supreme Court and the Court
170 of Appeal had this to say on sentencing;

"Although the circumstances of each case may certainly differ, this court has now established a range within which these sentences fall. The term of imprisonment for murder of a single person ranges between 20 to 35 years imprisonment. In exceptional circumstances the sentence may be higher or lower."

175 We are also alive to the fact that the Appellant's irrational, brutal, gruesome and intentional actions led to loss of a human life.

In the case of **Oyita Sam Vs Uganda, C.A.C.A No. 307 of 2010**, the Appellant assaulted his brother, the deceased victim, over a piece of land over which they were wrangling. He hacked him with an axe on his head while the deceased was asleep



180 causing his death. This Court reduced the death sentence to a term of imprisonment
of 25 years.

In **Francis Bwalatum Vs Uganda, C.A.C.A. No. 48 of 2011**, the Appellant had been
charged and convicted of the offence of murder on two counts and sentenced to 50
years imprisonment on each count to run concurrently. This Court taking into
185 account the mitigating factors reduced the sentence of 50 years on each count to 20
years imprisonment on each count to run concurrently.

In **Kakubi Paul & Muramuzi David Vs Uganda, C.A.C.A. No. 126 of 2008**, the
Appellants had used pangas to hack their victim to death and were sentenced to
death. This Court set aside the death sentence, and instead imposed a custodial
190 sentence of 20 (twenty) years imprisonment as an appropriate punishment in the
circumstances of the case.

In **Stephen & 3 others Vs Uganda, C.A.C.A. No. 159 of 2017**, the deceased had a
land dispute with some of the neighbours. The appellant was sentenced to 41 years
imprisonment. This Court reduced the sentence a 41 years' imprisonment to a
195 sentence of 18 years imprisonment.

In **Adupa Dickens Vs Uganda, C.A.C.A. No. 267 of 2017**, where this court upheld
the sentence of 35 years imprisonment and held that it was neither harsh, nor
manifestly excessive to warrant the intervention of the Appellate Court

In **Aharikundira Yusitina Vs Uganda (supra)**, where the appellant brutally
200 murdered her husband and cut off his body parts in cold blood, the Supreme Court



set aside the death sentence imposed by the trial court and substituted it with a sentence of 30 years imprisonment.

205 Having re-considered both the aggravating and mitigating circumstances of the case as presented before the trial court, and taking into account the period the appellant spent on remand of approximately 1 year and 9 months and the decisions of the Courts of Judicature for similar offences, we are satisfied that a sentence of 25 years imprisonment to be served from the date of conviction will meet the ends of justice in this case.

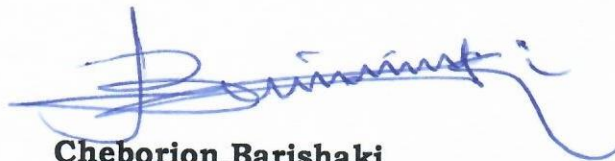
Delivered at Jinja..... this ^{10th} day of ^{Dec} 2021.

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Elizabeth Musoke

JUSTICE OF APPEAL



Cheborion Barishaki

JUSTICE OF APPEAL



Hellen Obura

JUSTICE OF APPEAL