THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Coram of Justices: Hon. Mr. Justice Richard Buteera Deputy Chief Justice,

Hon. Lady Justice Catherine Bamugemereire JA,

Hon. Mr. Justice Remmy Kasule Ag JA.

CRIMINAL APPEAL No. 103 OF 2015

- TOMUSANGE LASTO
- BULEGA RICHARD

.....APPELLANTS

VERSUS

UGANDA .....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Mpigi before Hellen Obura J, dated 23rd of March and 12th August 2015, in Criminal session Case No. 087 of 2014)

JUDGMENT OF THE COURT

The Background

This appeal arises from the decision of the High Court of Uganda sitting at Mpigi. Three brothers Richard Bulega and Lasto Tomusange (herein referred to as the 1st and 2nd Appellants), and Ssebugwawo Fred, were jointly indicted on one count of Murder contrary to Sections 183 and 184 of the Penal Code Act for the murder of Angello Ssebugwawo, the 1st Appellant's son, in what appeared to be a ritually-motivated killing. The 1st Appellant, Tomusange Lasto, pleaded guilty and was convicted on his own plea of guilty and sentenced to 47 years and 9 months imprisonment. The two Appellants together with one Fred Ssebugwawo, who is not party to this appeal, went

through a full trial before Obura J as she then was. The 2nd Appellant was found guilty and sentenced to 37 years and 8 months imprisonment. Ssebugwawo was acquitted. The Trial Judge found no evidence proving his participation in the crime.

The Facts

The trial court heard that Christine Achan had a relationship with Tomusange Lasto, 1st Appellant, which resulted in the birth of a boy-child, Angello Ssebugwawo, now deceased. The couple went separate ways when the deceased was only one month old. When Angello was one year, Achan handed him back to his father. It is alleged that on 23rd August, 2012 Bulega went to the 1st Appellant's residence and requested to go with Angello to town. He was granted permission to take Angello with him. From then on Angello was never to be seen alive. On the 24th August 2012, Phiona Nabakiibi, (deceased's stepmother) went to Kawala Police and filed a case of a missing child. The 2nd Appellant was arrested on the 24th of August, 2012 to help with the investigations being the last person seen with Angello. Upon interrogation, he admitted picking the child on the aforementioned date but he claimed to have brought him back and left him at the neighbour's home. These claims were found to be untrue. A search was mounted to no avail.

On the 29th of August, 2012, Hajjat Hadija Nanyanzi was tilling her garden in Nsunjjumpolwe village, Kiringente Sub-county in Mpigi District, when she came across the dead body of a child. In spite of the initial shock, Hajjat

gave the dead body a good second look and upon doing so noticed that all the infant's head, legs and arms had been dismembered and only the torso remained. She immediately reported to the Local Council 1 Chairman (the LC1) what she had seen in her garden. In turn, the LC1 rushed to the scene and indeed found a decaying beheaded body of a young child. He reported the matter to Nakirebe Police. Officers were dispatched to the scene. The body was removed by the Police and taken to Mpigi Health Centre Mortuary, pending post-mortem.

The news of the discovery of a child's decapitated torso was aired on 'Agataliko Nfunfu', a 10.00pm programme broadcast in the local language, Luganda, on Bukedde TV, **a** TV channel that is part of the Vision Group, a multimedia conglomerate in Uganda. Aida Nabatanzi, the mother of the 1st Appellant watched the news and suspected that the decaying body might be that of her lost grandson. Ms Nabatanzi together with Christine Achan, mother of the deceased infant, also reported the matter of the missing child to the Police nearest to them. Together with the Police, they proceeded to the mortuary where Achan positively identified the body as that of her missing son, Angello Ssebugwawo. The 2nd Appellant also identified him as the missing boy he had picked from his brother's home. It was at this point that the 2nd Appellant informed the police that he had participated in the murder of the deceased. A Charge and Caution Statement was recorded from him in which he explained in detail, how together with the 1st

Appellant, they had planned the mission to kill the deceased. Basing on the 2nd Appellant's confession, the 1st Appellant and Ssebugwawo Fred, were arrested and upon interrogation denied having participated in the commission of the offense. It should be noted that this murder was committed by the same appellants within the same time-frame as the murder of a farmhand and the two bodies were found in close proximity to each other in Nsujjumpolwe and therefore appear to have been part of the same transaction.

A search was conducted at the 1st Appellant's home and the following suspicious items were recovered; a white polythene bag containing 2 pieces of white clothes with bloodstains, a knife with a blood-stained wooden handle, a small bag containing a gourd made of bark cloth, a small basket wrapped in a piece of blood-stained bark cloth and blood stained white short-sleeved shirt.

After his conviction, the 2nd Appellant testified as a state witness. During his testimony, however, he retracted his earlier statement. He was later called as a defence witness. In his oral statement, he stated that his other brothers were not involved in the murder. He claimed that he was advised by Aida Nabatanzi, the 2nd Appellant's mother, to accuse his brothers so that after sentence she could sell their land and use the money from the sale to get him out of prison.

The Trial judge disbelieved the second oral testimony and found it as an afterthought with inconsistent facts that were aimed at redeeming the 1st Appellant's brother. She accordingly found the 2nd Appellant guilty and sentenced him to 35 years imprisonment.

Dissatisfied with the sentence, the Appellants appealed against the conviction of the 1st Appellant and with leave of this court, the sentence of both Appellants.

The appeal is premised on four grounds;

1. That the learned Trial Judge erred in law and fact when she convicted the 1st Appellant basing on the 2nd Appellant's retracted charge and caution statement.
2. That the learned judge erred in law and fact when she failed to adequately evaluate all material alleged circumstantial evidence adduced against the 1st Appellant.
3. That the learned Trial Judge erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 2nd Appellant.
4. That the learned Trial Judge erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 1st Appellant.

Representation

The appellants were represented by Learned Counsel Henry Kunya, of M/S Henry Kunya & Co. Advocates and the Respondent was represented by Learned Senior State Attorney, Racheal Namazzi.

LEGAL ARGUMENTS

Learned Counsel for the Appellants prayed for leave of Court to appeal against sentence only and to argue ground 2 and 3 together.

Ground 1: Whether the learned Trial Judge erred in law and fact when she convicted the 1st Appellant basing on the 2nd Appellant's retracted charge and caution statement and also that the learned judge erred in law and fact when she failed to adequately evaluate all material alleged circumstantial evidence adduced against the 1st Appellant.

Learned Counsel for the Appellants contended that the main evidence implicating the 1st Appellant was the charge and caution statement of the 2nd Appellant which he later retracted. Counsel submitted that since the Charge-and-Caution Statement was retracted, it was incumbent upon the prosecution to corroborate it in material particulars. Counsel noted that the evidence on the record was too weak to support a conviction. He relied on the case of **Tuwamoi v Uganda [1967] E.A 86**.

He also contended that it is now settled law that a case against an Accused person cannot be based on the confession of another Accused person but rather such confession under section 27 of the Evidence Act can supplement other substantial evidence. He relied on the case of **CPL Wasswa & Anor v Uganda [2002] 2 EA 667.**

Counsel contended that in absence of any other evidence implicating the 1st Appellant, it was erroneous of the Trial Judge to convict him basing on the 2nd Appellant's charge and caution statement. He invited this court to find that the Judge erred in convicting the 1st Appellant on a retracted charge and caution statement.

Learned Counsel for the Respondent opposed Ground No.1 vehemently. Her contention was that courts can convict a person based on a retracted confession once court is satisfied that all surrounding circumstances pointing to the confession are true. She relied on the case of **Tuwamoi v Uganda [1967] EA 86.** Counsel invited this court to note the questionable behaviour of the 1st Appellant who was aloof to the news of the disappearance of his own child; he never reported the matter to the police and he was instead more concerned about establishing the whereabouts of the 2nd Appellant. His conduct coupled with the confession of the 2nd Appellant convinced court that indeed, he participated in the murder of his child. Counsel for the Respondent then invited this Court to confirm the conviction and sentences of the two Appellants.

That the learned judge erred in law and fact when she failed to adequately evaluate all the material circumstantial evidence adduced against the 1st Appellant.

Regarding the second part of Ground No. 1 Counsel representing the Appellant submitted that the learned Trial Judge relied on mere assumptions and suspicion. He invited court to note that the 2nd Appellant could not have proceeded to the 1st Appellant's house and pick his child without the permission of the 1st Appellant. Counsel appeared to toe the line that Appellant No.2 was not guilty but for the acts of Appellant No.1.

At the same time he invited this court to find that the learned Trial Judge erred in law and fact when she convicted the 1st Appellant for the offense of murder basing on scanty suspicion evidence and caused a miscarriage of justice. If this argument stands validly as it should, then it should lead to the conclusion that if there is no other evidence against the 1st appellant, then there could not have been evidence to convict the 2nd Appellant. Counsel prayed that ground 1 be allowed.

In reply however, Counsel for the Respondent submitted that there was ample circumstantial evidence against Appellant No.1 to warrant his conviction. She contended that the conduct of the 1st Appellant was not that of an innocent man. Firstly, he failed to inform Ms. Achan when their child, Angello, went missing. Secondly, he was not bothered when he saw and

heard the news reports which broadcast the discovery of his son's body. She submitted that his conduct collaborated by the 2nd Appellant's confession was sufficient to convict him.

Counsel relied on **Simon Musoke v Uganda [1958] EA 718** which stands for a proposition that in a case depending entirely on circumstantial evidence, the Judge must find, before deciding upon a conviction, that the exculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

She further argued that the blood-stained curved knife wrapped in a backcloth, the proximity of the appellant to the events and his stone-walled indifference to all the requests regarding the whereabouts of his son, were evidence that he was involved and decided to conceal the murder of his own son. The knife which was recovered in A1's home was subjected to forensic examination and it was established to be the blood of the deceased.

Learned respondent's Counsel prayed Court to disallow ground 1 of the appeal.

Grounds No. 2 and 3

2.That the learned Trial Judge erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 2nd Appellant.
3.That the learned Trial Judge erred in law and fact when she meted out a manifestly harsh and excessive sentence against the 1st Appellant.

With leave of court, Counsel argued Ground 2 and 3 together. He submitted that the Appellants were first-time offenders, had family responsibilities,

and were youthful at the time of sentencing. They were also capable of reforming and being integrated with the society.

For the 2nd Appellant, Counsel argued that he pleaded guilty so readily to the charge and thus he never wasted court time.

He contended therefore that the sentences were not only manifestly harsh or excessive, they were also out of the sentencing range for similar offences. He prayed for the same to be vacated, and where appropriate, for this Court to impose a lenient sentence.

In reply, Counsel for the Respondent argued that the Appellants committed a crime whose maximum sentence is death. The respective sentences of 47 years and 9 months and 37 years and 8 months imprisonment respectively for the 1st and 2nd appellants was, therefore, neither harsh nor excessive.

Consideration by this Court

It is the duty of this court, as a first appellate court, to subject the evidence on record to fresh and exhaustive scrutiny, weighing conflicting evidence and drawing its conclusions from it.

In doing this, this Court is cognizant of the fact that we did not have the benefit of observing the demeanour of the witnesses first hand as they testified. We do take that limitation into account. See the cases of **Pandya v R 1957 EA 336; and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No.10 of 1997**.

The main thrust of Ground No.1 is ***whether the learned Trial Judge erred in law and fact when she relied on the 1st Appellant's retracted charge and caution statement and on circumstantial evidence to convict the 2nd Appellant.***

In his charge and caution statement, the 2nd Appellant confessed that he and his brothers conjured spirits. They claimed that the spirits asked for the sacrifice of two human beings; a man of about 20 years with no wife and a child. It ought to be remembered that the circumstances leading to the confession made by the 2nd Appellant are that once the body of the child was discovered and he was arrested he spontaneously offered to say how their victims were murdered. The Charge and Caution statement came as a formal and professional way of recording his confession but he had already blurted out what they did. In his confession he stated that he was the one who requested for the 1st Appellant's son Angello, picked him up and met the 1st Appellant in Busega. He stated further that it was at Busega where the two met before they took a boda-boda to Nsujjumpolwe. The Appellants looked around until they were able to find a deserted place. At Nsujjumpolwe, they surveyed a bush and hid behind it with the child. While behind the bush, the 1st Appellant then put his son on a white cloth, killed him, and removed the body parts that were to be used in ritual sacrifice. He folded the body parts in the white cloth which he placed in a waterproof polythene bag.

During the arraignment, the summary of case, the facts together with the charge and cautioned statement were read to the 2nd Appellant. He agreed to the truthfulness of the stated facts, pleaded guilty, and was convicted on his own plea of guilty. He was later in the trial compelled by the Prosecution to testify against the 1st Appellant. During his testimony, he retracted his earlier confession and prosecution rendered him hostile.

The defence team then called him as a defence witness. In his oral testimony in support of the defence he testified that while at the mortuary, Aida, the 1st Appellant's mother, told him to cast blame on the 1st Appellant and Ssebugwawo. That with the 2 in prison, she would be in a position to sell their land and rescue the 1st Appellant from prison.

In her Judgment, the Trial Judge disbelieved the 2nd Appellant's oral testimony and found it as an afterthought, tainted with lies. She did not believe that a lengthy conversation could ensue between the 2nd Appellant and Aida at the mortuary, in the company of disinterested police officers.

In the case of **Tuwamoi v Uganda [1967] EA 84**, the Court of Appeal for Eastern Africa stated that a retracted statement occurs when the accused person admits that he made the statement recorded but now seeks to retract, to take back what he said, generally on the ground that he had been forced or induced to make the statement, in other words, that statement was not a voluntary one.

The fact that the confession was later retracted made no difference in this case since the Appellant had admitted the same in court at plea-taking. Unless the admissions made in the confessions are satisfactorily withdrawn, or, the making of it explained as having proceeded from fear, duress, promise, or the like, of someone in authority. A confession may be retracted or repudiated. In **Tuwamoi** (supra) the distinction between a repudiated and retracted confession was made. 'A Confession is retracted when the accused person admits that he made the statement recorded but now he seeks to recant what he said generally on the ground that it was obtained by force or that the appellant was induced to make the statement. On the other hand a repudiated statement is one which the accused person avers that he never made the same.'

In this case the 2nd Appellant attempted to retract his confession claiming that he was coerced. For an appellant to make claims of coercion, force, or inducement, a confession ought to have been taken by a person in authority over him/her. In this case, the alleged promise to the 2nd Appellant came from a relative of the female gender who was a widowed stepmother. There is nothing on the record to prove that this widowed stepmother had the sort of economic or social authority over her step son to make him obey her to the point of defeating the course of justice. On the contrary, there was sufficient proof that the son betrayed elements of strong distrust and even a hint of suspicion of his stepmother. Since the confession was made before a

competent officer, in absence of any evidence of coercion, force, or promise from anyone in authority, we find that the confession was lawful and the later attempts to retract it were of no legal effect.

We note that this family had just watched the news which depicted the decaying body of a child found by a farmer. The family was suspicious of one another, terrified and traumatised. This was the state of affairs they were in when they went to the police station the night the child's body was discovered. There was a mix of emotions for anyone to coherently think of a plan least of all Aida. She seemed to have been distraught after the news that she had lost her grandchild in such a heinous manner. Aida was also the mother of the 1st Appellant who was allegedly the brain behind the confession. The Trial Judge in her judgment noted that Aida broke down when the 2nd Appellant's charge and caution statement was read. She was as much a victim as the mother of the deceased child.

In the premises, therefore, we agree with the Trial Judge that the oral testimony of the 1st appellant was an afterthought as it materially contradicted what he had confessed to when he pleaded guilty. We find that the trial Judge did not err in declining to rely on it.

The general rule is that a confession retracted or not must be accepted with the greatest caution. Prudence begs for independent corroborating evidence in order to base a conviction on such a confession. A retracted confession should carry practically no weight as against a person other than the maker;

it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker himself, who had thus previously lied on one or more occasions. The very fullest corroboration would be necessary in such a case, far more than would demanded for the sworn testimony of an accomplice on oath. See **Yasin And Others vs King-Emperor (1901) ILR 28 Cal 689.**

In cases where a confession is retracted, the Trial Judge is under a duty to caution herself before founding a conviction on such a confession and should be fully satisfied in all the circumstances of the case that the confession is true.

In the case before us there are three distinctions that need to be made. The first is that the at different stages the 2nd Appellant attempted to retract his confession. He retracted his confession after he had pleaded guilty and had been convicted. This was when he was put on the stand to testify as a prosecution witness. He finally retracted after he was called as a defence statement. The second is that this confession was corroborated by physical pieces of bloodstained articles found in the home of the 1st Appellant. The third is that the DNA samples taken of the articles found in Appellant No.1's house proved that the blood samples were identical with the samples taken from the deceased. It should be noted that a DNA stands alone as another form of physical evidence. DNA data is considered to be more reliable than many other kinds of crime scene evidence. The unique profile of each DNA sample is analyzed for comparison to a crime scene evidence. We therefore

agree that the when all this evidence was pieced together, it created the perfect profile of what a the trial Judge would be looking for in order to rely on circumstantial evidence. Consequently given the totality of the evidence before her, we do not fault the trial Judge when she found the confession to be true. The learned Judge also correctly addressed her mind to the principles set out in **Tuwamoi v Uganda (Supra)**. She, by prudence and practice sought for corroborating evidence besides the testimony of the 2nd Appellant.

This part of ground 1 therefore fails.

Whether the Trial Judge failed to adequately evaluate all material circumstantial evidence adduced against the 1st Appellant.

Circumstantial evidence as defined in the case of **Simon Musoke v R (1958) EA 715** is evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics.

In a persuasive decision of **Abuja in Tajudeen Iliyasu v The State SC 241/2013** circumstantial evidence was defined by the Supreme Court of Nigeria as 'Circumstances which are accepted so as to make a complete and unbroken chain of evidence.' The general principles upheld by the law in relying on circumstantial evidence are laid down in several other decided cases. In **Byaruhanga Fodori v Uganda, S.C. Crim. Appeal No. 18 of 2002**, the Supreme Court of Uganda held that:-

It is trite law that where the prosecution case depends solely on circumstantial evidence, the Court must, before deciding on a conviction, find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. Such circumstantial evidence must point to only one conclusion, namely that the offence had been committed and that it was the accused person who committed it. For the purpose of drawing an inference of an accused's person's guilt from circumstantial evidence, there must not be other co-existing circumstances which would weaken or destroy that inference. Thus, all other factors and surrounding circumstances must be carefully considered for they may be enough to adversely affect the inference of guilt. Each case depends on its own facts. However, one test which such evidence must satisfy, is that it should lead to the guilt of the accused person and leave no degree to possibility or chance that other persons could have been responsible for the commission of the offence.

Learned counsel for the Appellant thus faulted the Trial Judge for pointing out that the 1st Appellant's attitude was inconsistent with that of an innocent man. He particularly called it speculative.

In her judgment, the trial judge noted:

> *'In the result, based on the evidence on record especially the finding on the DNA profile in exhibit P6 which corroborates the content of exhibit P1 and the conduct of A1, I am satisfied that the Prosecution has proved the case*

beyond a reasonable doubt that A1 masterminded and participated in the killing of Angelo Ssebugwawo. '

From the foregoing, it is apparent that the Trial Judge did not solely rely on the circumstantial evidence to convict the 1st Appellant. The prosecution evidence was not entirely circumstantial. PW4 testified that upon searching A1's home, a blood-stained local knife wrapped in bark cloth, a white blood-stained short, and a short-sleeved shirt with bloodstains on the sleeves were recovered. PW5 testified that he carried out comparisons between the DNA profiles of the bloodstain on the white cloth and the knife recovered at the scene of the crime and the bloodstain on both knives and the same matched that of the deceased. PW5'S findings are contained in the DNA analysis report which was admitted in evidence and marked P6.

Based on the evidence on the record especially the finding of a DNA profile in exhibit P6, which matched with the DNA of the deceased, the trial Judge was right in drawing the inference that the Appellants were the ones who murdered Angello.

This evidence, compounded by the conduct of the Appellant No. 1. A1's conduct left a lot to be desired. He appeared unmoved by the news of his son's disappearance especially after the 2nd Appellant A2 had claimed that he had returned the child and left him at the veranda. There was reason to believe that something had gone wrong but his conduct proved that he had chosen to ignore news of the murder of his son.

Contrary to what Learned Counsel for the Appellants submitted, this court finds that the Trial Judge was correct when she relied on the various pieces of separate evidence to corroborate the confession of the 2nd Appellant. The blood-stained knife recovered in the residence of the 1st Appellant stood out. More importantly, DNA profile on the white cloth together with the DNA profile of the blood on the knife found at the scene of the crime matched that of the deceased infant. We agree that that this could not be an accident. These separate pieces of evidence are a corroboration that the confession of the 2nd Appellant was indeed true.

The trial Judge, correctly in our view, treated the conduct of the accused as corroborating evidence. The way he was nonchalant, did not report to any authority the missing child. He was utterly indifferent to the disappearance of his son. From these, we find that the confession of the 2nd Appellant was sufficiently corroborated. She also observed that the conduct of the accused was not that of an innocent person. For a father, he was rather unconcerned about the disappearance of his boy child. He did not report the matter to the police. He did not ask the 2nd Appellant about the whereabouts of the boy. He was so collected after the news bulletin that rattled everyone else.

His conduct was not solely what the Trial Judge based on to convict the 1st Appellant. As earlier noted, this further corroborated the extra-judicial statement and the finding of a local knife with the deceased's blood on it in his home.

The Trial Judge relied on the case of **Tuwamoi v Uganda (Supra)** and cautioned herself on the need to corroborate the confession. It is our considered view that the Trial Judge went to great length to evaluate the circumstantial evidence. She observed that it could not be a mistake that a blood-stained knife was found in the house of the 1st Appellant.

We, therefore, find no merit in the whole ground 1 of the appeal.

Accordingly, the Appeal against the conviction of both appellants fails.

Grounds No. 3 and No. 4

The issue here is whether the sentence of 47 years and 9 months imprisonment for the 1st Appellant and 37 years and 8 months imprisonment for the 2nd Appellants was harsh and excessive.

The Trial Judge gave the following reasons before sentencing the 1st Appellant.

"This is the second case where the convict is convicted of a gruesome murder of defenceless, innocent persons who were murdered around the same time in the same place in the name of looking for riches. In this case the convict was duty bound to protect his child but it was him who heartlessly cut him like slaughtering an animal and carried off his blood in white pieces of cloth for the rituals. I did not observe any remorsefulness, on the contrary throughout the trial, he stood with a stone face without showing any emotions even when the deceased's mother broke down as the gruesome act

in the summary of evidence and A2's charge and caution statement was read. while I appreciate that the convict has a family, he demonstrated that he can be a danger to his very own that he is supposed to care for and love. For that reason, his family would be safer without him."

Paragraph 18 (e) of the **Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** characterizes killing a person in an act of human sacrifice to be an offense that falls in the rare of the rarest of cases that attract the sentence of death.

We have considered the case of **Rwalinda John v Uganda: Supreme Court Criminal Appeal No. 3 of 2015**, where the appellant was convicted of murdering a minor in a murder ritual. The trial judge sentenced him to life imprisonment, which the court of appeal upheld. On his second appeal, the Supreme Court as well upheld the sentence stating that it was neither harsh nor excessive to warrant their interfering with it.

The Trial Judge heard the case, watched the witnesses' demeanour, she noticed how un sorry he was: as if he would still go back and do the same thing all over again. And in her discretion found a sentence of 47 years and 9 months to be fit in the circumstances.

The 1st appellant was a young man with a family. Nevertheless, he was not a first offender. He murdered 2 people all in ritual murders. In the instant case, he had murdered his son in the quest for wealth. All these are strong aggravating factors that the Trial Judge considered. She rightly noted that he

was a danger to his family. We note on our part that the aggravating factors far outweighed the mitigating factors. Under the circumstances, we find that the Trial Judge exercised her discretion in sentencing the 1st appellant with due consideration. The sentence is legal, we don't find it harsh or excessive.

As far as the 2nd Appellant is concerned, the trial Judge considered the mitigating factors: He pleaded guilty, he was sorry, and had a family. She sentenced him to 37 years and 8months imprisonment and noted;

'Even though the convict is a first offender, the offence for which he was indicted carries a maximum sentence of death. Even though the convict pleaded guilty to the indictment, regretted his actions, appeared remorseful, and is a young man with a family who may be useful to this country after serving his sentence, this court should send a strong message to deter would-be perpetrators of an inhuman act of child sacrifice which has become rampant in the county.'

We agree that the 2nd Appellant committed a serious offence. But the seriousness of the offence was mitigated by the fact that he pleaded guilty and saved the court's time.

Courts have long considered a plea of guilty as a mitigating factor. This consideration has also been guided by Regulation 21 (k) of **The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.**

We have considered the fact that the 2nd Appellant readily pleaded guilty on the first day of the hearing. Unlike the 1st Appellant, the 2nd Appellant was very remorseful. He has a family.

In the case of **Tuhumwire Mary V Uganda Court of Appeal Criminal Appeal No. 352 Of 2015,** the Appellant murdered her husband and pleaded guilty. On her appeal against the sentence, the court of Appeal held that;

'In his sentencing ruling, the trial judge took note of the fact that she was a first offender who had pleaded guilty and thereby saving the Court's scarce resources. He also noted that she had 'fairly rehabilitated'. Against these mitigating factors, the learned trial judge took note of the fact that the Appellant had murdered her husband in cold blood. He took into account the one year the Appellant had spent on remand before conviction and then sentenced her to 25 years imprisonment. Ordinarily, we would not have interfered with this sentence since, on the authorities cited above, it falls within the range of sentences imposed for similar murders.

However, we find that the learned trial judge failed to take into consideration the fact that the Appellant has six very young children of her marriage with the deceased husband; a very important factor she brought out in mitigation during the allocutus. Had the trial judge considered these factors, they would have had a further mitigating influence on his discretion in sentencing the Appellant. There is need to weigh the aggravating factors against the special mitigating factor of the fate of the children of this marriage, who are of tender years; and are unfortunate victims of a deed, which they had no hand in.'

Since the Appellant had readily pleaded guilty, was remorseful, and had a family, we are of the view that the sentence of 37 years and 8 months was rather harsh and excessive. In the premises, we vacate the same. We sentence the 2nd appellant to 35 years imprisonment.

Further, following the mandatory requirement of Article 23 (8) of the Constitution of the Republic of Uganda, 1995 as applied in Regulation 15 (2) of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, which makes it mandatory for us to consider in 2nd appellant's favour the period spent on remand from the sentence considered appropriate. We note that the 2nd Appellant was in custody for 2 years and 4 months. We accordingly take into account the 2 years 4 months and set it off the sentence of 35 years imprisonment..

We, therefore, sentence the 2nd Appellant to a term of imprisonment of32 years and 8 months imprisonment, the said sentence to be served starting from the date of the 2nd Appellant's conviction that is 17th March, 2015.

In conclusion the appeal is dismissed as against conviction and sentence of the 1st Appellant Tomusange Lasto. It is allowed as to sentence in respect of the 2nd Appellant, Bulega Richard. The sentence of 37 years and 8 months is vacated. The 2nd Appellant is to serve a sentence of 32 years and 8 months as from 17th March, 2015

We so order.

Signed this ..... 22nd ..... day of ..... July 2020

Hon. Mr. Justice Richard Buteera,
Deputy Chief Justice

Hon. Lady Justice Catherine Bamugemereire,
Justice of Appeal

Hon. Mr. Justice Remmy Kasule,
(Ag Justice)