

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 007 OF 2011**

NTAMBI ASUMAN:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

(Arising from the decision of the High Court by Elizabeth Ibanda Nahamya, J in High Court Criminal Case No.136 of 2009, dated the 20th day of December 2010)

**CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ
HON. JUSTICE ELIZABETH MUSOKE, JA
HON. JUSTICE CHEBORION BARISHAKI, JA**

JUDGMENT OF THE COURT

Introduction

The appellant, Ntambi Asuman was indicted with the offence of Murder contrary to **Sections 188 and 189 of the Penal Code Act**. He was convicted and sentenced to Life imprisonment by Elizabeth Ibanda Nahamya, J.

Background of the appeal

It was alleged that on the 7th day of July 2006 at Kireka “B” Kiira Division in Wakiso District, the appellant murdered Twinamatsiko Polly (herein after referred to as the deceased).

The brief facts of this case are:- On the night of 7th July 2006, the deceased was having a conversation with a one Ibra Mutwalibu, Twaha Ssengendo and Edirisa Ismail about a matter concerning the Islamic religion, while drinking alcohol. As the conversation continued, the appellant walked in with a waragi bottle and joined the conversation. The



5 deceased asked the appellant why he drinks alcohol yet his Islamic religion condemns it. The appellant responded that even his grandfather is Moslem but also drinks alcohol. The deceased, further insisted that as a Moslem, the appellant is not supposed to drink. The appellant was not happy about the deceased's remarks and wanted to fight him but he was restrained by one Zula Nakamya, who was family friend to the appellant. Zula
10 took the appellant away to his house but the appellant later returned and attacked the deceased, cut his neck and killed him. The appellant was later arrested on 19th April 2008.

He was charged, tried and convicted for the offence of Murder and was sentenced to Life imprisonment.

15 Being aggrieved by the decision of the trial Court, the appellant with leave of Court appealed against sentence only on the following ground:-

“The learned trial Judge erred in law and fact when she failed to properly evaluate the facts of the case and sentenced the appellant to a very harsh sentence of life imprisonment.”

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Legal Representation

At the hearing of the appeal, the appellant was represented by Ms. Janat Nakakande on State brief while the respondent was represented by Mr. George William Byansi, a Senior Assistant Director Public Prosecutions.

25 Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but he attended the proceedings via video link using Zoom technology from Prison.

Both counsel filed and adopted their written submissions.

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5 **Submissions of Counsel**

Counsel for the appellant submitted that the learned trial Judge erred in law and fact when she failed to properly evaluate the facts of the case and sentenced the appellant to a very harsh sentence of life imprisonment.

10 Counsel argued that the trial Judge did not give sufficient weight to the mitigating factors while sentencing. She averred that the appellant was 30 years old by the time the offence was committed, he was the bread winner of the family, had family responsibilities and he was a caretaker of his elderly brother. She added that the appellant also pleaded for leniency.

15 Counsel contended that had the trial Judge considered the above mentioned mitigating factors, she would have sentenced the appellant to a lesser sentence.

Counsel therefore prayed that the life imprisonment sentence be reduced to a sentence of 15 years imprisonment.

20 On the other hand, counsel for the respondent opposed the appeal and submitted that the trial Judge considered the law and all the mitigating factors and aggravating factors before sentencing the appellant to life imprisonment.

25 Counsel disagreed with counsel for the appellant's argument that the trial Judge did not consider the fact that the appellant was the bread winner for his family and a caretaker of his elderly brother. He argued that there is no law or practice that prohibits sentencing bread winners from life imprisonment. He stated that being a bread winner should not entitle a convict to a lesser sentence.

Counsel emphasised that a sentence is reached at after evaluating several factors as the trial Judge did. He prayed that the sentence of life imprisonment be maintained.

5 **Resolution of the Appeal**

This Court can only interfere with a sentence imposed by the trial Court if that sentence is illegal or the appellate Court is satisfied that in the exercise of its discretion, the trial Court ignored to consider an important matter or circumstances which ought to be considered when passing the sentence or the sentence was manifestly so excessive or
10 low as to amount to an injustice. See: *James vs. Republic [1950] 18 EACA 147* and *Livingstone Kakooza vs. Uganda, Supreme Court Criminal Appeal No.17 of 1993 [unreported]*.

In the instant case, the trial Judge while sentencing stated as follows:-

15 *“This Court has noted the aggravating factors as submitted by Learned Principal State Attorney, Mr. Semalemba to wit; that the convict brutally took away the life of Pole Twinamasiko, he does not deserve any mercy, he called for the death penalty. I have also considered Learned Defence Counsel’s submissions in mitigation to wit; that the convict has been on remand for 2 years and 7 months which is almost three years, his right to speedy trial has
20 been violated and he is a first offender capable of reforming. Counsel’s pleas have been taken into account; this Court has considered the gravity of the offence in which the deceased met his death. The convict cut him like a chicken using his skills as a butcher man.*

25 *The offence of murder is very serious and grave. The law stipulates that one convicted of murder is liable to suffer death. Indeed, the Principal State Attorney as called for the maximum sentence. I will not impose the death sentence. I have heard the convict’s pleas of leniency that he is a married man with family responsibilities.*

30 *The learned Defence Counsel, Mr. Gumisiriza, has on his behalf implied that Court be lenient since the convict is capable of reforming. This Court is of the considered opinion that given his conduct of drinking alcohol and becoming a nuisance, the convict must be restrained long enough so that the process of reformation can continue and be completed.*

35 *I have therefore considered that this is not a case in respect of which I should totally consider the reformatory purposes of sentencing. It should be a case of*



5 *deterrence so that people who profess to belong to a certain religion should always adhere to the behavioural practices expected of them and be God fearing. The Convict is a dangerous man and should be put away. I therefore sentence you to life imprisonment.” [sic.]*

From the above portion of the trial Court’s decision on sentencing, the learned trial
10 Judge considered both the aggravating factors and the mitigating factors. The trial Judge considered the fact that the appellant was a first offender, prayed for leniency, a married man with family responsibilities and excused the appellant from a death sentence. The trial Judge also considered the 2 years and 7 months that the appellant spent on remand and used her discretion to sentence him to Life imprisonment. The Supreme Court held
15 in *Magezi Gad vs. Uganda, Criminal Appeal No.17 of 2014*, that a period spent on remand cannot be reduced from a life imprisonment sentence. The trial Judge could therefore not deduct the period.

The trial Judge, however, did not consider the appellant’s age at the time the offence was committed.

20 During allocutus on 20th December 2010, counsel for the accused/appellant, Mr. Gumisiriza Francis submitted among other mitigating factors that “*He is a young man of 38 years and is therefore capable of reforming and is a reformed man.*” The appellant’s medical examination report on Police Form 24 (P.EXH2), however, indicates that the appellant was 30 years old by 1st May 2008, a week and a half after
25 his arrest on 19th April 2008. Since the appellant was 30 years old at the time the medical examination was done on 1st May 2008 and the offence was committed on 7th July 2006, the appellant was therefore around 27 – 28 years old at the time the offence was committed.

The appellant’s youthful age at the time the offence was committed ought to have been
30 considered along with the other mitigating factors and aggravating factors by the learned trial Judge. We find that the learned trial Judge erred by not doing so.



5 For that reason, we set aside the sentence of Life imprisonment and invoke **section 11 of the Judicature Act (CAP 13)** which vests this Court with powers of original jurisdiction to determine an appropriate sentence in the circumstances of this case.

The appellant ferociously murdered the deceased when he slit his neck. He deprived the deceased his right to life. We take into consideration of the fact that the appellant was a first offender, was at a youthful age by the time the offence was committed, he prayed for leniency and he spent 2 years and 7 months on remand.

As we assess the appropriate sentence for the appellant, we shall consider sentences in similar cases:-

This Court in *Kapere Juma vs Uganda, Court of Appeal Criminal Appeal No.280 of 2016*, set aside a sentence of life imprisonment for the offence of murder as the trial Judge did not give sufficient weight to the fact that the appellant was a first offender and at a youthful age at the time the offence was committed. Court substituted the life imprisonment sentence with a sentence of 28 years imprisonment.

In *Criminal Appeal No.92 of 2015, Lutalo James vs. Uganda*, the appellant, while drunk, cut the deceased head which led to his death. He was sentenced to life imprisonment. On appeal, this Court set aside the sentence of life imprisonment and substituted it with a sentence of 25 years imprisonment, from which the 4 years spent on remand were deducted, which left the appellant with 21 years to serve.

In the instant case, considering the authorities above cited and taking into account all the mitigating and aggravating factors, we sentence the appellant to 30 years imprisonment. Taking into account the 2 years and 7 months the appellant spent on remand, the appellant will therefore serve a sentence of 28 years and 5 months. The sentence shall run from 20th December, 2010 the date of conviction.

30 Dated at Kampala this10th..... day of.....February.....2022

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Tome
J

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RICHARD BUTEERA
DEPUTY CHIEF JUSTICE

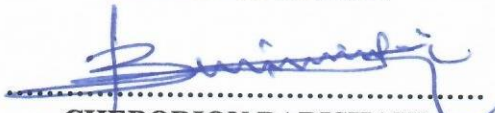
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ELIZABETH MUSOKE
JUSTICE OF APPEAL

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CHEBORION BARISHAKI
JUSTICE OF APPEAL

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