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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA
CRIMINAL APPEAL NO. 0233 OF 2015

(Coram: Bamugemereire, Madrama & Luswata, JJA)

PANDE FRED aka KATO ISA} APPELLANT

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VERSUS

UGANDA} RESPONDENT

(Appeal from the decision of the High Court of Uganda at Nakawa, Kampala in Criminal Session Case No 147 of 2014 before Nahamya J delivered on 24th June, 2015)

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JUDGMENT OF COURT

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The Appellant was indicted for the offences of Murder and Aggravated Robbery contrary to sections 188 and 189 and section 285 and 286 of the Penal Code Act respectively. The facts are that on 29th July 2013 at Buto Zone Bweyogerere Parish, Kira Town Council Wakiso district, the appellant robbed Halima Musana and thereafter murdered her. The appellant pleaded guilty pursuant to a plea bargain agreement with the prosecution to plead guilty to the charges and be sentenced to 15 years imprisonment on both counts. Upon his conviction, the learned trial judge sentenced the appellant to 20 years imprisonment on both counts.

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The appellant was dissatisfied with the sentences imposed by the learned trial judge and appealed to this court on one ground of appeal that:

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The trial judge erred in law and fact when she imposed the sentences of 20 years imprisonment on the appellant who had pleaded guilty to the offences, which is deemed to be harsh taking into account the circumstances of this case and considering the mitigating factors before sentencing.

The appellant prayed that the court be pleased to allow the appeal and set aside both sentences and impose an appropriate sentence.

5 When the appeal came for hearing, Mr. Oola Sam the learned Senior Assistant DPP appeared for the respondent while learned counsel Ms Shamim Nalule appeared for the appellant on state brief. The appellant attended court via video link from Luzira prison.

10 With the leave of court, the appellant's counsel addressed the court in an appeal against sentence only.

15 In the written submissions, the gist of the appellant submissions is that there was a plea bargain agreement in which the appellant accepted to plead guilty and be sentenced to 15 years imprisonment. She relied on **The Judicature (Plea Bargain) Rules 2016** for the definition of a plea bargain under rule 4 thereof to mean the process between an accused person and a prosecution in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence or recommend a particular sentence subject to approval by court. She submitted that
20 the plea bargain process is intended to benefit the accused, the victim and the state. Further rule 13 of the Plea Bargain Rules (supra) allows the court to reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice. Where the court rejects the plea bargain agreement, it shall record the reasons for
25 rejection and inform the parties and the agreement shall become void and be inadmissible. Thirdly the case shall be referred for trial. Counsel relied on **Wangwe v Uganda; (Criminal Appeal Number 572 of 2014)** where this court held that the learned trial Judge erred when she sentenced the appellant outside the plea bargain agreement to his prejudice.

30 In reply, the learned Senior Asst DPP conceded to the appeal and agreed that the court ought to sentence the appellant to 15 years as agreed and further that the period of 1 year and 10 months ought to be deducted from the appropriate sentence under article 23 (8) of the Constitution of the Republic of Uganda leaving the appellant to serve 13 years and two
35 months from the date of conviction.

Judgment of court

We have carefully considered the appellant's appeal, the submissions of counsel and the law.

5 The matter before the court is fairly straightforward in that the appellant executed a plea bargain agreement in which he agreed inter alia to plead guilty and part of the agreement reads as follows:

I hereby freely and voluntarily plead guilty to the charges above and agree to be sentenced to 15 years....

10 The agreement cannot be read in isolation but together in that the appellant agreed to plead guilty in exchange for the sentence among other things. Where the sentence is disregarded, then there is no plea bargain. In other words, the appellant was induced among other things to plead guilty on condition that he would be sentenced to 15 years
15 imprisonment. The definition of a “plea bargain” under the rule 4 of the **Judicature (Plea Bargain) Rules, 2016** clearly demonstrates that it is an agreement between the accused person and the prosecution as it provides that a “plea bargain” means:

the process between an accused person and the prosecution, in which the
20 accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by court; and

“plea bargain agreement” means an agreement entered into between the
25 prosecution and an accused person regarding a charge or sentence against an accused person.

Clearly, the parties to the agreement agreed on the sentence to be imposed as we have demonstrated above.

Secondly, we have considered the power of the court to reject a plea bargain agreement under rule 13 of the **Judicature (Plea Bargain) Rules, 2016** which provides that:
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13.Rejection of plea bargain agreement by court.

(1) The court may reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.

(2) where the court rejects the plea bargain agreement –

35 (a) it shall record the reasons for the rejection and inform the parties;

(b) the agreement shall become void and shall be inadmissible in subsequent trial proceedings or in any trial relating to the same facts; and

5 (c) the matter shall be referred for trial, subject to sub rule 8 (3).

10 Rule 8 (3) provides that a judicial officer who has participated in a failed plea bargain negotiation may not preside over a trial in relation to the same case. Read in context, rule 13 is very clear on the powers of the court to reject a plea bargain agreement where it may occasion a miscarriage of justice. We do not need to define what a miscarriage of justice entails as this is at the discretion of the court to consider. What is material is that rule 13 (2) clearly envisages that where a plea bargain agreement is rejected by the court, the matter shall proceed for trial. In other words, the plea of guilty would not be valid because the entire agreement is revoked. Particularly rule 13 (2) (c) provides in mandatory language that the matter shall be referred for trial subject to rule 8 (3) that a judge who presides over a failed plea bargain agreement shall not preside in the trial of the same case.

20 This sentence of 20 years imprisonment amounted to a rejection of the plea bargain agreement executed between the prosecution and the accused person and therefore it rendered the plea bargain agreement null and void and of no effect. Where a plea bargain is rejected, the judge shall give reasons for the rejection. The judge cannot use any part of the agreement and reject others. Further, there was no trial before imposing the sentence of 20 years imprisonment. For the sentence to be valid, the plea of the appellant had to be taken afresh and the usual procedure followed. There could be no plea of guilty in the circumstances based on a dishonoured agreement. The agreement ought to have been rejected and the matter referred for trial wherein the appellant would be asked to plead afresh as if there was no plea bargain agreement.

30 We agree with the decision of this court in **Wangwe Robert v Uganda; Court of Appeal Criminal Appeal No. 0572 of 2014** where this court considered rule 13 of the Plea Bargain Rules (supra) and stated that:

35 We note that the Judge's sentence in this case was imposed on 4th June, 2014, long before the Plea Bargain Rules became effected. However, even before the rules came into force, the same principles applied, to wit, that where a judge rejects the plea bargain agreement, she/he will record the reasons and refer back the file for full trial. There were guidelines to that effect.

5 With due respect, we find that the learned trial judge erred when she sentenced the
appellant outside the plea bargain agreement, to his prejudice. According to the court
record, the parties had participated in plea bargain agreement where they agreed
upon a sentence of 15 years imprisonment but the learned trial judge enhanced
10 sentence to 18 years and 10 months. Having done so, we find the learned trial judge
imposed an illegal sentence on the appellant. The sentence is, therefore, hereby set
aside.

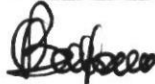
We agree that the above holding reflects the law perfectly.

The sentence of the appellant was in the circumstances illegal and we allow the
appeal and hereby set aside the sentence.

15 Because the learned trial judge did not purport to set aside the plea bargain
agreement, we do not deem it necessary to set aside the plea bargain agreement.
Having set aside the sentence of 20 years imprisonment; we find that the agreed
sentence is 15 years imprisonment. This is a definite term of imprisonment to which
article 23 (8) of the Constitution of the Republic of Uganda applies. We accordingly
20 accept the submission of the learned Senior Assistant DPP that the period of 1 year
and 10 months the appellant had spent in pre-trial detention should be deducted from
the 15 years term of imprisonment.

In the premises, and exercising the powers of this court under section 11 of the
Judicature Act, we sentence the appellant to 13 years and two months imprisonment
25 for each of the counts of aggravated robbery and murder, which sentences shall run
concurrently and shall commence from the date of his conviction on 24th of June 2015.

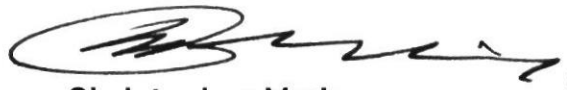
Dated at Kampala the 28th day of July 2022



Catherine Bamugemereire

Justice of Appeal

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Christopher Madrama

Justice of Appeal

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Eva K. Luswata

Justice of Appeal