THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0414 OF 2019

BAYO SUNDAY::APPELLANT

VERSUS

UGANDA::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Abodo, J. delivered on 7th August, 2019 (conviction) and 15th August, 2019 (sentencing) in Criminal Session Case No. 0212 of 2019)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA
HON. MR. JUSTICE CHRISTOPHER GASHIRABAKE, JA
HON. LADY JUSTICE EVA K. LUSWATA, JA

JUDGMENT OF THE COURT

Background

On 7th August, 2019, the High Court (Abodo, J.) convicted the appellant of the offence of Murder contrary to **Sections 188 and 189** of the **Penal Code Act, Cap. 120**. On 15th August, 2019, the High Court sentenced the appellant to 27 years, 2 months and 8 days imprisonment.

The decision of the High Court followed the trial of the appellant on an indictment that alleged that he, and others still at large, had on the 13th day of September, 2016 along Kinawataka Road, Nakawa Division, Kampala District, with malice aforethought, caused the death of Sentamu Ali (the deceased).

The facts of the case, according to the findings of the trial Court, can be summarized as follows. The deceased and the appellant were both residents of Kinawataka Village in Kampala District. The appellant was known as a boda boda rider in the said village. On 13th September, 2016, the deceased, and some close friends, attended Idd day celebrations at a mosque in the Village. The deceased's group left the mosque, to head home, in the night. As they headed home, they were confronted by the appellant, armed with a

panga. The deceased's group did not run from the appellant as he was known to them. The appellant swung his panga and it caught the deceased on the cheek and the ear. Thereafter, the appellant dragged the deceased to the nearby police station and reported that he had rescued the deceased from a mob action. The deceased was taken to Mulago Hospital for medical attention but he died from the injuries he had sustained. The police subsequently conducted investigations and arrested the appellant for the murder of the deceased. He was thereafter charged accordingly. On the basis of these facts, the learned trial Judge convicted the appellant and sentenced him as earlier stated. The appellant does not wish to contest his conviction by the learned trial Judge, and appeals, with leave of this Court, against sentence only on a sole ground, framed as follows:

> **"That the learned Justice of the High Court of Uganda erred in law and fact when she passed a harsh and excessive sentence against the appellant thereby occasioning a miscarriage of justice."**

The respondent opposed the appeal.

Representation

At the hearing, Mr. Henry Kunya, assisted by Ms. Lydia Namuli, both learned counsel, jointly represented the appellant on State Brief. Mr. Simon Peter Ssemalemba, learned Assistant Director Public Prosecutions, represented the respondent. The appellant followed the hearing via Zoom Video Technology, while he remained at the prison facility where he was incarcerated.

The Court, at the hearing, adopted written submissions filed in support of the respective cases for either side, and the same have been considered in this judgment.

Appellant's submissions

Counsel for the appellant began by referring to the authority of **Kiwalabye vs. Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported)**, for the principle that an appellate Court is not to interfere with a sentence imposed by the trial Court which has exercised its discretion unless the exercise of discretion is such that it results in the sentence

imposed to be manifestly harsh and excessive or so low as to amount to a miscarriage of justice. It was further submitted that in imposing a discretionary custodial sentence, there is need to consider that the sentence should be for the shortest time commensurate with the seriousness of the offence. Counsel contended that the seriousness of the offence committed by the appellant was mitigated by a number of factors submitted before the trial Court; that the appellant was a first offender; that he was a young man responsible for a family of a wife and three children; and that he had been on remand for 3 years. Counsel submitted that had the learned trial Judge considered the highlighted mitigating factors, she would have imposed a shorter sentence, as sentencing the appellant, then aged 33 years to imprisonment for 30 years meant that he would leave prison at an old age. Counsel urged this Court to find that the trial Court ignored the mitigating factors presented for the appellant, which resulted in passing a sentence, which, although a legal one, was manifestly harsh and excessive.

Furthermore, counsel referred to previously decided murder cases where sentences similar to the one imposed by the trial Court were set aside, for being manifestly harsh and excessive, and shorter sentences imposed. In **Tumwesigye vs. Uganda, Court of Appeal Criminal Appeal No. 46 of 2012 (unreported)**, this Court set aside a sentence of 32 years imprisonment imposed by the trial Court for murder and substituted a sentence of 20 years imprisonment. In **Anywar and Another vs. Uganda, Court of Appeal Criminal Appeal No. 169 of 2009 (unreported)**, this Court set aside a sentence of life imprisonment and imposed a sentence of 19 years and 3 months. For the above submissions, counsel prayed that this Court sets aside the sentence imposed by the trial Court and substitutes a shorter sentence.

Respondent's submissions

Counsel for the respondent agreed with the proposition advanced for the appellant, that an appellate Court may interfere where the sentence imposed by the trial Court is manifestly harsh and excessive. Counsel, however, refuted the appellant's contention that the trial Court either passed a harsh

and manifestly excessive sentence or that it failed to consider the mitigating factors presented for the appellant. He contended that the trial Court considered both the aggravating and mitigating factors of the case and arrived at an appropriate sentence of 30 years imprisonment. Counsel referred to the case of **Aharikundira vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015 (unreported)**, where the appellant was convicted of brutally murdering her husband and was sentenced to 30 years imprisonment. He submitted that there was no reason justifying this Court to interfere with the sentence imposed on the appellant and prayed that the Court upholds it.

Resolution of the Appeal

We have carefully studied the record, considered the submissions of counsel for either side and the law and authorities cited in support thereof. Other applicable law and authorities have also been considered. This is a first appeal from a decision of the High Court in exercise of its original jurisdiction, and on such appeals, this Court is expected to reappraise the evidence and draw inferences of fact **(See: Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions S.I 13-10)**. In **Kifamunte vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1998 (unreported),** it was stated:

> **"We agree that on first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."**

The duty to reappraise the materials and evidence on record extends to appeals against sentence only, such as the present appeal. We must reiterate the guiding principles regarding when an appellate Court may interfere with the sentence imposed by a trial Court, which were laid out in the authority of **Rwabugande vs. Uganda, Supreme Court Criminal Appeal No. 25 of 2014 (unreported)**, where the Court stated:

"In Kyalimpa Edward vs. Uganda; Supreme Court Criminal Appeal No.10 of 1995, the principles upon which an appellate court should interfere with a sentence were considered. The Supreme Court referred to R vs. Haviland (1983) 5 Cr. App. R(s) 109 and held that:

An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice: Ogalo s/o Owoura vs. R (1954) 21 E.A.C.A 126 and R vs. Mohamedali Jamal (1948) 15 E.A.C.A 126. (Emphasis ours)

We are also guided by another decision of this court, Kamya Johnson Wavamuno vs. Uganda Criminal Appeal No.16 of 2000 in which it was stated:

It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle was made. It is not sufficient that the members of the Court would have exercised their discretion differently. (Emphasis Ours)

In Kiwalabye vs. Uganda, Supreme Court Criminal Appeal N0.143 of 2001 it was held:

The appellate court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentences unless the exercise of the discretion is such that the trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence."

An appellate Court may interfere, interalia, 1) where the trial Court has imposed a sentence which is harsh and manifestly excessive or 2) where the trial Court fails to take into account a material consideration. Counsel for the appellant contended that the learned trial Judge did not give due weight to the mitigating factors for the appellant and that that resulted in her imposing a harsh and manifestly excessive sentence, incommensurate with the gravity of the offence committed by the appellant.

The learned trial Judge gave very comprehensive reasons for the sentence she imposed on the appellant. It is evident from the learned trial Judge's sentencing reasons that she considered both the aggravating factors and the mitigating factors, for part of her reasons, read, as follows:

> **"I have nevertheless considered the aggravating factors in this case being; the deceased was a young boy who was repeatedly assaulted by the convict. He was being assaulted because of an allegation of theft of a phone. Accordingly, in light of those aggravating factors, I have adopted a starting point of thirty five years' imprisonment.**
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> **However, the above sentence is mitigated by a number of factors; the convict is a first offender, and relatively young hence there are high chances he will reform and come and be a useful member of society. He has family responsibility being a sole bread winner for his family of three children and old parents who are solely dependent on him. I for that reason deem a period of thirty (30) years' imprisonment to be an appropriate reformative sentence in light of the mitigating factors in his favour.**
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> **In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict has been in custody for two years, nine months and twenty-two days. I hereby take into account and set off a period of two years and nine months and twenty-two days as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of twenty-seven (27) years, two (2) months and eight (8) days, to be served starting today."**

We find no merit in counsel for the appellant's submission that the learned trial Judge did not consider the mitigating factors submitted for the appellant. Neither do we think that the sentence imposed on the appellant was harsh and manifestly excessive in the circumstances of the case. It is worth bearing in mind that the offence of murder of which the appellant was convicted is a serious offence, not only because it attracts the death sentence, as the maximum sentence, but also because the offence leads to

death of its victim in usually brutal circumstances. In the present case, the appellant struck the deceased with a panga causing the deceased to suffer a fractured skull, and other injuries to the brain. The deceased endured a painful death.

Further still, the sentence imposed on the appellant fell within the sentencing range discernable from previously decided murder cases. **In Aharikundira vs. Uganda, Supreme Court Criminal Appeal No. 27 of 2015 (unreported)**, the Supreme Court imposed a sentence of 30 years imprisonment after setting aside the death sentence imposed by the trial Court and upheld by the Court of Appeal. The appellant had attacked and maimed her deceased husband with a panga.

In **Buulo vs. Uganda, Supreme Court Criminal Appeal No. 31 of 2017 (unreported)**, the Supreme Court upheld a sentence of 25 years imprisonment imposed by the Court of Appeal for murder. The appellant had been found to have gone to the deceased's home and cut him to death with a panga.

In another similar case of **Muhoozi and Another vs. Uganda, Supreme Court Criminal Appeal No. 29 of 2014 (unreported)**, the appellants were part of a group of assailants that had broken into the deceased's home and cut him to death with a panga. The appellants were, upon conviction, sentenced to 30 years imprisonment, and the sentence was upheld on appeal to the Court of Appeal. On further appeal, the Supreme Court also upheld the sentence and noted that the sentence was appropriate and not harsh nor manifestly excessive.

It is clear that a sentence of 30 years imprisonment, like the one considered appropriate by the trial Court before deducting the remand period, falls within the sentencing range for murder. It is true as submitted, by counsel for the appellant, that shorter sentences may be imposed for murder, but that may be justified by the peculiar facts of certain cases. In the present case, we find that the sentence of 30 years imprisonment was justified and was reached after the trial Court carefully weighed all the circumstances of the case, including the mitigating factors presented for the appellant. We

also find that the sentence was neither harsh nor manifestly excessive. The sole ground of the appeal must, therefore, fail.

For the above reasons, we dismiss the appeal and uphold the sentence that the trial Court imposed on the appellant.

We so order.

Dated at Kampala this 16th day of Sept 2022.

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Elizabeth Musoke

Justice of Appeal

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Christopher Gashirabake

Justice of Appeal

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Eva K. Luswata

Justice of Appeal