

**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 7<sup>th</sup> August, 2019 (conviction) and 15<sup>th</sup> 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 7<sup>th</sup> 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 15<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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

*Lydia Namuli*  
N. L.  
CRA