

5 **THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**[Coram: Musoke, Gashirabake & Luswata, JJA]**

**CRIMINAL APPEAL NO. 0504 OF 2017**

*(Arising from Criminal Case No. 367 of 2012)*

10 **MULOLO MOSES.....APPELLANT**

**VERSUS**

**UGANDA .....RESPONDENT**

*[Arising from the decision of Wilson Masalu Musene, J of the High Court of Uganda sitting at Nakawa in Criminal Case No. 367 of 2012 dated 24<sup>th</sup> July 2015]*

15 **JUDGMENT OF COURT.**

**Introduction.**

The Appellant was indicted for offences of murder contrary to Sections 188 and 189 of the Penal Code Act Cap 120 in count 1 and aggravated robbery contrary to Section 286 (2) of the Penal Code Act Cap 120 in count 2.

20 The facts are that the deceased and the Appellant were in a relationship and they stayed together. They were last seen together in the night of 29/1/2012. In the morning of 30/1/2012, the deceased's door was found open and she was found dead with injuries on her head. The police was alerted. The body was taken for post-mortem. The post-mortem report revealed that the cause of death was haemorrhagic  
25 shock following severe bleedings from the neck stab wound inflicted by a sharp penetrating or piercing object. The Appellant was arrested from hiding and identified as the assailant at an identification parade. He was examined on PF24 and found to be of sound mind. Further investigations revealed that the properties of the deceased were recovered from the Appellant. He was taken for trial and pleaded not guilty to  
30 the counts he was charged with.

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5 The Appellant later changed his plea on the Count of murder but denied the aggravated robbery claiming that the properties he took were for both him and the deceased. The State Attorney opted to tender no evidence in court for the charge of aggravated Robbery and count 11 was accordingly withdrawn. The Appellant was then convicted on count 1 and was sentenced to 15 years imprisonment after  
10 discounting the period of three years which he had spent on remand from a sentence of 18 years imprisonment. He was dissatisfied with the sentence hence this appeal on ground that:

15 The learned trial judge erred in law and in fact when he passed a sentence of 15 years' imprisonment upon the Appellant which is manifestly harsh and excessive in the circumstances thereby occasioning a miscarriage of justice.

### **Representation**

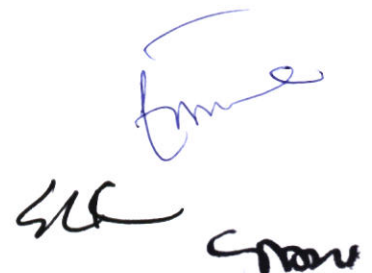
The Appellant was represented by Mr. Kenneth Ssebabi. The Respondent was jointly represented by Ms. Nabaasa Carolyn Hope , Principal Assistant DPP and Ms. Emily Mutuuzo State Attorney.

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

### **Submissions by counsel for the Appellant.**

25 Counsel cited **Kyalimpa Edward vs. Uganda Supreme Court Criminal Appeal No. 10 of 1995**, wherein the Supreme Court 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

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5 unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice”

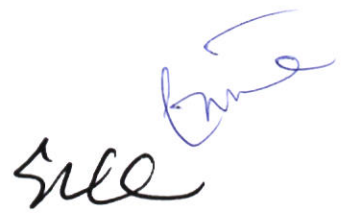
Counsel submitted that the main aggravating factor in the instant case was that the appellant killed his lover in a cruel manner. Counsel agreed that life is a God given gift which should not be taken away by any person in such a cruel and unlawful  
10 manner. However counsel argued that 15years imprisonment on top of the 3 years he had spent on remand was manifestly excessive sentence.

Counsel further submitted that the courts tend to lean more on the punitive element of sentencing and lose sight of the most crucial element of sentencing which is rehabilitation of the offenders. The fact that the Appellant is now a reformed and  
15 born again Christian, has a certificate in peace making and conflict resolution, a certificate in HIV/AIDS prevention care and support, a certificate in life nurturing by Action international ministries, illustrate this point and if given chance the Appellant is capable of reforming and living a useful life in society by virtue of the knowledge acquired in the training.

20 Counsel further argued that taking into account this crucial element of sentencing, which is rehabilitation of the offenders, as well as the period of 3 years that the Appellant had spent on remand, it was the prayer of the Appellant that the sentence of 10 years was appropriate in the circumstances.

**Submissions by counsel for the Respondent.**

25 Counsel for the Respondent submitted that the sentence of 15 years imprisonment is not harsh or excessive. It is also not inconsistent with sentences imposed in cases of similar nature. The appellant was convicted on his own plea of guilty of the offence of Murder which under sections 188 and 189 of the Penal Code Act Cap 120 attracts a maximum sentence of death.



5 Counsel further submitted that the trial judge arrived at this sentence of 15years imprisonment after considering the aggravating and mitigating factors and the period on remand. Counsel submitted that the trial judge judicially exercised his discretion within the precincts of the law. No illegality was occasioned and all material factors were duly considered in imposing the sentence.

10 Counsel relied on the case of **Kyalimpa Edward vs. Uganda** (*Supra*) which set the rules when a court can interfere with the sentence of the trial court. Counsel submitted that looking at the Record of Appeal, none of the rules in the above case have been offended to warrant an inference by this court.

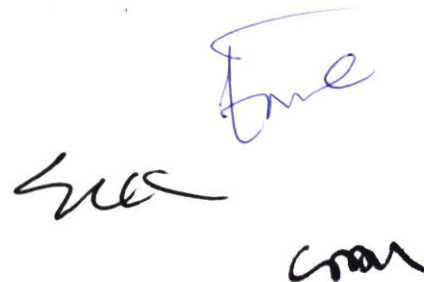
15 Additionally, counsel argued that **Paragraph 6(c) of the Constitutional (Sentencing Guidelines for Courts of Judicature) Practice Directions, Legal Notice No.8 of 2013**, requires courts to ensure consistency with appropriate sentencing levels. The sentencing ranges for murder under the third schedule to these guidelines is 30 to 35 years, the maximum being death. Counsel argued that the sentence of 15 years meted on the Appellant is way below the minimum.

20 Counsel cited **Muhwezi Bayon vs. Uganda Criminal Appeal No. 198 of 2013**

Counsel in addition , submitted that they do not agree with the submissions of counsel for the Appellant that the main aggravating factor in this case is that the appellant killed his lover in a cruel manner. Counsel cited **paragraph 19 of the Constitutional (Sentencing Guidelines for Courts of Judicature) Practice**  
25 **Directions, Legal Notice No.8 of 2013** which provides guidance to the courts in as far as determining a sentence for an offence where the maximum penalty is death.

Paragraph 20 of the guidelines clearly outlines the factors that must be considered in imposing a sentence of death which include:

1. The degree of injury



- 5           2. The part of the victim's body where harm or injury was occasioned  
              3. Use and nature of the weapon.

Counsel also objected to the submissions of counsel for Appellant that the most crucial element of sentencing is rehabilitation of the offenders. On the contrary paragraph 5 of the Constitutional (Sentencing Guidelines for Courts of Judicature) Practice Directions, Legal Notice No.8 of 2013, states that;  
10

“that the purpose of sentencing is to promote respect for the law in order to maintain a just, peaceful and safe society and to promote initiatives to prevent crime”

Additionally, under the same paragraph 5, courts are urged to pass sentences aimed at deterring a prisoner from committing an offence, and to separate the offender from society where necessary, providing reparation for harm done to a victim or to the community and promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community.  
15

In light of the above submissions, counsel submitted that the sentence of 15 years is too lenient considering the fact that the maximum sentence in murder cases is death.  
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### **Consideration of Court**

Under Rule 30 (1)(a) of the Judicature (Court of Appeal Rules) Directives S.I 13-10, this court as first appellate court is to reappraise the evidence and draw inferences of fact. It therefore as a first appellate court has jurisdiction to reverse or affirm the findings of the trial court. A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law.  
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A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or

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5 not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in case of **Selle & another v Associated Motor Boat Co. Ltd.& others, 1968 E.A 123** and in **Peters v Sunday Post Limited**  
10 **1958 E.A 424.**

This appeal is grounded on the fact that the sentence of 15 years meted down by the trial Court was allegedly manifestly harsh considering the circumstances of this case. The legal regime of sentencing in this nation is guided by the Constitution, statute law, case law and the guiding principles.

15 In the exercise of its discretion the sentencing Court is guided by established principles in order to achieve the ends of justice. Sentence is the tail end of the trial process yet it is as important as beginning of the trial. This calls for diligence by the sentencing court and also commitment to the constitution with regard to principles of fair trial.

20 The law is that an appellate Court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignored to consider an important matter or circumstances which ought to be considered when  
25 passing the sentence or where the sentence imposed is wrong in principle (**See Kiwalabye Bernard v. Uganda, S. C. Criminal Appeal No. 143 of 2011**)

The claim by the Appellant is that the sentence was harsh. In order for this court to assess whether the sentence was harsh it is guided by the principles laid down in the sentencing guidelines.



5 Under 19 (1) of the sentencing guidelines the court shall be guided by the sentencing range specified in Part I of the Third Schedule in determining the appropriate custodial sentence in a capital offence.

10 Furthermore, under subparagraph (2) of paragraph 19, in a case where a sentence of death is prescribed as the maximum sentence for an offence, the court shall, considering the factors in paragraphs 20 and 21 determine the sentence in accordance with the sentencing range.

15 According to the third schedule the sentencing range for murder after considering both the aggravating and mitigating factors is 35 five years. In addition to the above guidelines this court is subject to paragraph 6 (c) of these guidelines, which provides that court should be guided by the principle of consistency while passing sentence to a convict.

20 In the case of **Ssemanda Christopher and Muyingo Denis vs. Uganda, Court of Appeal Criminal Appeal No. 77 of 2010**, this Court confirmed a sentence of 35 years imprisonment for the offence of murder as it did not find the sentence to be harsh and excessive.

25 This Court in **Abaasa Johnson & another vs. Uganda, Criminal Appeal No.33 of 2010**, set aside a sentence of life imprisonment imposed on the appellants for the offence of murder and substituted it with a sentence of 40 years' imprisonment, out of which a period of 5 years spent on remand was deducted. A sentence of 35 years imprisonment was thus left for the appellant to serve.

In assessing all the above principles laid down in case law and the sentencing guidelines, we find that the trial judge did not in any way contravene them. After considering the circumstances of this case, more so the mitigating factor that the

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5 Appellant was a first time offender, and young in age. He has family responsibilities and has taken reformatory efforts at the prison and has been remorseful by pleading at an early stage of the proceeding without wasting courts time. On the other hand, the Appellant cruelly murdered the deceased and even attempted to hide the evidence. We therefore find that the sentence of 15 years after deducting the 3 years  
10 spent on remand was not harsh. The sentence is within the prescribed ambit of the law.

The sentence of the lower court is hereby upheld.

**We so hold.**

15 Dated at Kampala this 28<sup>th</sup> Of sept 2022

  
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20 **ELIZABETH MUSOKE**  
**JUSTICE OF APPEAL**

  
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25 **CHRISTOPHER GASHIRABAKE**  
**JUSTICE OF APPEAL**

  
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**EVA K. LUSWATA**  
**JUSTICE OF APPEAL**