THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 001 OF 2011

JAGENDA JOHN::APPELLANT

VERSUS

UGANDA:::RESPONDENT

[Appeal from the decision of the High Court holden at Mpigi (The Honourable Lady Justice Faith E. Mwondha) dated the 5th day of January 2011 in Criminal Session Case *No.* 251 *of 2008).*

CORAM: HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. LADY JUSTICE ELIZABETH MUSOKE, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

JUDGMENT OF THE COURT

This appeal is from the decision of the High Court of Uganda sitting at Mpigi in High Court Criminal Session Case No. 251 of 2008, in which Faith E. Mwondha, J convicted the Appellant of the offence of murder contrary to *Section 188 and 189* of the Penal Code Act Cap 120 and sentenced him to 35 years imprisonment.

The facts as established by the prosecution before the trial court were that; on the 24th day of November 2007, the deceased Nyabijura Grace went drinking at the Appellant's home at Namulaba Village, Kabulasoke Sub-county, Mpigi District. She was last seen alive sitting on a sack of coffee. Early in the morning, the Appellant asked PW2, Asiimwe Mugisha to help him dispose of the deceased`s body which was carried for about a mile at around 6:00am and placed under a jackfruit tree. Later that afternoon, the Appellant asked PW2 to assist him to move the dead body to a place near the road and he threw some open condoms on it. The body was later discovered by people which led to the arrest of the Appellant. At trial, the Appellant chose to remain silent.

The Appellant now appeals to the Court of Appeal of Uganda on grounds couched in the Amended Memorandum of Appeal dated 2nd September 2021 as follows:

1. *THAT the learned trial Judge erred in law and fact when she convicted the Appellant on contradictory and uncorroborated circumstantial evidence thus occasioning a miscarriage of justice.*

2. *THAT the learned trial Judge erred in law and fact when she passed a sentence of 35 years imprisonment upon the Appellant, which is illegal, harsh and excessive thereby occasioning a miscarriage of justice.*

Representation

At the hearing of this appeal the Appellant was represented by *Mr. Richard Kumbuga,* learned Counsel on state brief while *Mr. Kunya Noah* Chief State Attorney represented the Respondent. The Appellant was in attendance via video link to Luzira Prison by reason of the restrictions put in place due to COVID 19 pandemic. Both parties sought, and were granted, leave to proceed, by way of written submissions.

Appellant's case

Regarding ground 1, it was submitted that the ingredient of participation of the Appellant in the commission of the alleged offence was not made out against the Appellant and it was erroneous for the learned trial Judge to decide otherwise hence occasioning a miscarriage of justice. According to Counsel for the Appellant, there was no direct evidence linking the Appellant to the death of Nyabijura Grace since no one witnessed the said murder.

Counsel referred court to the decision of the Supreme Court in **Bogere Charles v Uganda, SCCA No. 010 of 1996** for the proposition that before drawing an inference of the accused's guilt from circumstantial evidence, the court must be sure that there are no other co-existing circumstances which would weaken or destroy the inference of guilt.

Counsel submitted that the trial Judge relied on the evidence of PW1 and PW2 to ascertain what exactly transpired. PW1 testified that on that fateful night, whilst drinking with others at the Appellant's home, the Appellant had returned

at 10:00pm from coordinating cultural rituals for his family while the deceased was drinking alcohol while sitting on a coffee sack. According to PW1, by the time he left at 2:00am, the deceased was still alive. It wasn't until the following day that he was told that she had been killed, whereupon he went to the scene and saw a decomposing body.

Counsel submitted that PW2 testified that on 24th November 2004, he went to the Appellant's home at about 8:00pm and saw the deceased drinking /drunk while seated on a coffee sack and because it was late, he decided to sleep at the Appellant's home. PW2 testified that the following morning the Appellant asked him to help in disposing of the body of the deceased and threatened to kill him if he told anybody. Further that, the Appellant later returned and asked him to move the body to a place near the road. He told his father who told him to report to the authorities but he never made any such report.

According to Counsel, the accounts of both PW1 and PW2 as to what transpired immediately before the death of the deceased were contradictory in a material particular. Counsel submitted that from their evidence neither PW1 nor PW2 saw each other at the Appellant's bar and the variation in their testimony is proof that they were merely guessing as to what transpired.

Counsel further submitted that PW2 did not report the incident to police as advised by his father and proceeded to assist the Appellant to move the body of the deceased to another location. In Counsel's view, his conduct was that of an

accomplice who made no report but chose to remain silent until the body was discovered.

Counsel also submitted that the post mortem report on record was inconclusive in as far as no body organ was examined to ascertain the cause of death. Moreover, whereas strangulation was referred to, the said report concluded that there were no injuries on the body of the deceased or at least around the neck to support that inference. Further, whereas the tongue of the deceased was cut out, the post mortem report stated that there were no blood stains anywhere.

According to Counsel, it was possible that the deceased died of natural causes and/or as a result of excessive consumption of alcohol following the testimonies of PW1 and PW2 who stated that she was very drunk that night and was leaning against a sack of coffee.

Counsel referred court to **Candiga Swadick v Uganda, Court of Appeal Criminal Appeal No. 023 of 2012** for the dicta that major contradictions and inconsistences in evidence will usually result in the witness' evidence being rejected unless they can be explained away while minor inconsistences will lead to the evidence being rejected if they point to deliberate untruthfulness on part of the witness.

Counsel submitted that the learned trial judge chose to believe the testimony of PW1 with regard to the first three ingredients and discarded it on the fourth ingredient which in effect meant that she chose to believe the witness when it

suited the circumstances and disbelieve him when it did not. According to Counsel, had the trial court addressed its mind to all these contradictory facts, the Judge would have reached a conclusion that the circumstantial evidence was lacking materially and such corroborative evidence could not support it.

On ground 2, it was submitted for the Appellant that the sentence of 35 years imprisonment passed by the learned trial Judge was harsh and excessive in the circumstances since the trial court did not take into account the mitigating factors thereby departing from the conventional rule of uniformity in passing sentences. Counsel referred court to the decision of the Supreme Court in **Aharikundira Yustina v Uganda SCCA No. 027 of 2005** for the dicta that consistency is a vital principle of the sentencing regime.

Counsel also referred us to **Epuat Richard v Uganda, Criminal Appeal No. 199 of 2011,** a case similar to the present one in which the Appellant in that case had been convicted and sentenced to 30 years and on appeal, this court set aside the sentence and substituted it with 15 years.

Counsel submitted that in this case, the Appellant was a first-time offender aged 37 years at the time of commission of the office. He was a young man capable of reforming and being useful to society. Further that, had the learned trial Judge addressed her mind to these mitigating factors and the principle of uniformity, she would have arrived at a more lenient sentence.

Counsel prayed that the appeal be allowed and court be pleased to set aside the sentence and substitute it with 15 years imprisonment considering the time that the Appellant has spent in lawful custody.

Respondent's reply

Mr. Kunya for the Respondent opposed the appeal. He submitted that the learned trial Judge was alive to the law on circumstantial evidence when she found that the Appellant participated in the commission of the murder.

Counsel referred court to the evidence of PW2 who testified that he knew the Appellant as their neighbour and that having returned late, he feared to knock on his father's house and decided to stay at the Appellant's house. Further that, when he woke up to go home at about 6:30am, the Appellant requested for his assistance in carrying and disposing of the deceased's body whom he had last seen alive while drinking the previous night.

Counsel further submitted that the trial Judge observed the demeanor of PW2 and found no contradictions in his evidence. According to the trial Judge, PW2's evidence was explicit and remained unchallenged during cross examination and there was no inference that the deceased died of natural causes. Counsel submitted that the trial Court was legally justified to believe PW2 and not PW1 whose evidence seemed hanging and showed that he was testifying on an issue he did not witness.

Counsel referred Court to Supreme Court decision of **Kifamunte Henry v Uganda, Criminal Appeal No. 010 of 1997**, for the proposition that on the first appeal from a conviction by a Judge, when a question arises as to which witness is to be believed rather than another, that question turns on manner and demeanor and the appellate court must be guided by the impressions made by the judge who saw the witness.

It was contended for the Respondent that the differences in the date of the death of deceased could be explained by the time frame of three years which had passed before the trial in 2010 following the death in November 2007. Counsel contended that the fact that PW1 did not mention PW2 could not weaken the strong evidence against the Appellant. Moreover, the deceased was murdered on 24th November, 2007 and her body was found on the morning of 26th November, 2007 when it had started to decompose.

Counsel also contended that the deceased was last seen alive with the Appellant. He referred court to **Teddy Sseezi Cheye v Uganda, Criminal Appeal No. 32 of 2010**, for the dicta that where the accused was the only one who knew where the money was and a sole signatory, it was up to him to explain its where abouts. Similarly, according to Counsel, since the deceased was last seen alive at the Appellant's home, he took a risk by failing to explain when he exercised the right to remain silent.

Counsel prayed that this court finds that there was sufficient circumstantial evidence implicating the Appellant in the murder and he prayed that the conviction be upheld.

Regarding the sentence, Counsel contended that under *Section 189 of the Penal Code Act Cap 120*, the maximum sentence for murder upon conviction is death. Counsel submitted that the trial court considered the three years which the accused had spent on remand and the fact that the Appellant was a first-time offender before passing its sentence. The said sentence of 35 years was as such lawful in the circumstances.

Counsel further contended that sentencing is a matter of discretion by the sentencing judge. He referred court to the decision of this Court in **Kyalimpa Edward v Uganda, Criminal Appeal No. 010 of 1995** for the proposition that the appellate court will not interfere with the sentence imposed by the trial court unless the sentence imposed was illegal, based on wrong principles and manifestly harsh and/or excessive.

Counsel also relied on **Aharikundira Yustina (supra)** for the proposition that consistency is a vital principal of a sentencing regime which is deeply rooted in the rule of law and requires that laws be applied with equality and without unjustifiable differentiation.

Counsel further cited the Supreme Court decision of **Bakubye Muzamiru and another v Uganda, Criminal Appeal No. 056 of 2015**, where court held that

40+ or 30+years' imprisonment terms were neither premised on wrong principles of the law nor excessive since the offence of murder attracts a death sentence as the maximum penalty.

Counsel invoked *Section 11 of the Judicature Act Cap 13* and prayed that the Appellant's sentence be enhanced to life imprisonment in view of the aggravating factors of this case that is to say, the deceased was a defenseless woman, a mother, customer and neighbour to the Appellant who suffered a brutal death where her tongue was cut out, and in the end whose body was thrown in the bushes. Moreover, the Appellant did not appear remorseful and he was indifferent in court.

Counsel concluded that the sentence of 35 years' imprisonment be maintained and/or a life imprisonment term be imposed considering the aggravating factors in this case.

Resolution

This is a first appeal and as such this Court is required under *Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions* to re-appraise the evidence and make its inferences on issues of law and fact while making allowance for the fact that we neither saw nor heard the witnesses. See: **Pandya v R [1957] E.A 336, Bogere Moses and another v Uganda, Supreme Court Criminal Appeal No. 1 of 1997 and Kifamunte v Uganda, Supreme Court Criminal Appeal No. 10 cf 1997.**

It is trite law that an accused person is convicted on the strength of the prosecution case and not on the weakness of the defence. **See: Israel Epuku s/o Achouseu v R [1934] EACA 166 and Akol Patrick & Others v Uganda, Court of Appeal Criminal Appeal No. 060 of 2002.**

The first ground of appeal is the alleged error by the learned trial Judge to convict the appellant basing on contradictory and un-corroborated circumstantial evidence.

The law on contradictions is settled. In **Twinomugisha Alex and two others v. Uganda, Supreme Court Criminal Appeal No. 35 of 2002**, it was stated thus:

> *"It is settled law that grave inconsistencies and contradictions unless satisfactorily explained, will usually but not necessarily result in the evidence of a witness being rejected. Minor ones unless they point to deliberate untruthfulness will be ignored.*
>
> *The gravity of the contradiction will depend on the centrality of the matter it relates to in the determination of the key issues in the case. What constitutes a major contradiction will vary from case to case.*
>
> *The question always is whether or not the contradictory elements are material, i.e. "essential" to the determination of the case. Material aspects of evidence vary from crime to crime but, generally in a criminal trial, materiality is determined on basis of the relative importance between the point being offered by the contradictory*

evidence and its consequence to the determination of any of the elements necessary to be proved.

It will be considered minor where it relates only on a factual issue that is not central, or that is only collateral to the outcome of the case."

See also **Alfred Tajar v. Uganda, EACA Cr. Appeal No.167 of 1969, and Sarapio Tinkamalirwe v. Uganda, S.C. Criminal Appeal No. 27 of 1989.**

According to the submissions of the Appellant, the prominent contradictions and inconsistencies in the prosecution case included the fact that whilst PW1 stated that he was at the Appellant's home with the deceased and left at around 2:00am when the deceased was still alive, PW2 testified that PW1 was not there and there were other people who left before 10:00pm; PW2 did not report to police but willingly assisted the Appellant in moving the deceased's body from the bush to a place near the road; the post mortem report stated that the tongue had been cut whereas no reference to blood stains was made thereunder and there was also no indication of injuries around the neck and yet there was strangulation.

While evaluating this evidence on page 7 of her Judgment, the learned trial Judge had this to say:

"I am unable to find contradictions in PW2's testimony. He never suggested at all that the deceased died of natural causes. His evidence was so explicit and it was not shaken or challenged in

cross examination. PW1's evidence that he saw the deceased on 25th November 2007 was hanging and showed that he was testifying on an issue he did not witness and could not have been correct to say that he saw the deceased at the Appellant's home on 25th November 2007 in the evening because at that time the body had already been moved away from the accused's home at 6:30am as per PW2's evidence.

The fact that PW2 didn't mention PW1 cannot weaken the strong evidence against the accused person. PW2 testified to the events of 24th and 25th November 2007 after the act. This makes it apparent that the deceased was murdered on the 24th November 2007 and by the time the body was found on 26th November, 2007, it was starting to decompose, a fact alluded to by PW1 and the post mortem report..."

From the onset, the contention of Counsel for the Appellant was that the deceased died of natural causes because the postmortem report did not make any refence to injuries on the body. We have reviewed Police Form 48C, the Post Mortem Report issued by Dr. Mulika on 26th November 2007 which stated that there was an external mark seen of violence being the tongue which was cut off. PW1 testified that when he went to the bar, he saw the deceased drinking, the subsequent loss of her tongue is not consistent with death by natural causes.

We have also reviewed the evidence of both PW1 Sebaleke Lasto, and PW2, Asiimwe Mugisha who both testified that they had seen the deceased sleeping/lying on a sack of coffee at the Appellant's bar. The contradiction in their evidence arose with respect to dates where by PW1 stated that it was on 25th November, 2007 while PW2 stated that it was on 24th November 2007. We note that they both did not mention whether or not they saw each other at the Appellant's bar. What is of importance is that they both testified that they had seen the deceased alive at the Appellant's house. Moreover, the trial Judge chose to believe PW2 and found the evidence of PW1 to be hanging.

We have considered the range and character of the contradictions and inconsistencies so highlighted. We have not found them to be grave in so far as they relate to matters which are peripheral to the central issues in the case. They do not relate to matters which are central to the decision but collateral ones only.

Indeed, as submitted by Counsel for the Respondent, we find the contradictions to be the inevitable result of the passage of time and fallibility of human memory. The retention span of details of events varies from one individual to another and the mere fact that two witnesses contradict one another when relating from their memory what they recall of an event does not necessarily imply that they are untruthful. We agree with the learned trial Judge that there was indeed no evidence to suggest that the contradictions were the result of deliberate untruthfulness on the part of PW2.

Additionally, the evidence adduced by the prosecution witnesses in this case was all circumstantial since no one witnessed the commission of the offence.

The law on circumstantial evidence is well settled. In **Amisi Dhatemwa alias Waibi v Uganda, Supreme Court Criminal Appeal No. 023 of 1977** Ssekandi J (as he then was) stated that:

> *"It is true to say that circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by undersigned coincidence is capable of proving facts in issue quite accurately; it is no derogation of evidence to say that it is circumstantial, See: R v Tailor, Wever and Donovan. 21 Cr, App. R. 20. However, it is trite law that circumstantial evidence must always be narrowly examined, only because evidence of this kind may be fabricated to cast suspicion on another. It is, therefore necessary before drawing the inference of the accused guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. See: Teper v P. (1952) A.C. 480 at p 489 See also: Simon Musoke v R (1958) E.A. 715, cited with approval in Yowana Serwadda v Uganda Cr. Appl. No. 11 of 1977 (U.C.A).*

The burden of proof in criminal cases is always upon the prosecution and a case based on a chain of circumstantial evidence is only as strong as its weakest link.

In **Bogere Charles v Uganda, Supreme Court Criminal Appeal NO. 010 of 1998**, the Supreme Court referred to a passage in **Taylor on Evidence 11th Edition, Page 74** to the effect that:

"The circumstances must be such as to produce moral certainty to the exclusion of every reasonable doubt."

In **Lulu Festo v Uganda, Court of Appeal Criminal Appeal No. 214 of 2009**, this court held that circumstantial evidence is the best evidence where there are no other co-existing circumstances which would weaken or destroy the inference of the accused's guilt.

The incriminating circumstances in this case arise from PW1's testimony where he stated that he saw the deceased drinking alcohol at the Appellant's home on the night of 24th November, 2007. Further, upon waking up on the morning of 25th November 2007, the Appellant told PW2 to help him carry the body of the deceased to the bush and when he refused, the Appellant threatened to kill him. PW2 then assisted the Appellant to carry the deceased who was still on the sack of coffee to a garden under a jackfruit tree, about a mile away from the Appellant's home. The Appellant later on went over to PW1's home and asked

him to move the body closer to the road where her body was discovered on 26th November 2007.

Regarding participation of the Appellant, the evidence upon which he was convicted was circumstantial. While evaluating this evidence the learned trial Judge at page 16 of his Judgment stated that:

> *"... There was undisputed and/or unchallenged evidence that on the 24th November 2007, PW2 saw the deceased in the residence of the accused and she was alive. PW2 narrated how the accused requested him to carry the deceased from his house to a garden under a jackfruit tree, a mile away from the Appellant's home. The accused caution him not to tell anyone about it. That earlier, PW2 had asked the Appellant how the deceased had died but he had answered that he found her dead.*
>
> *There was unchallenged evidence that later on 25th November 2007, the accused again went to PW2s home and asked him to come help him lift the body of the deceased from where they had rested it to a place near the road and PW2 complied."*

We have also reviewed the evidence of PW2 Asiimwe Mugisha, which was found to be truthful by the learned trial Judge and consistent. PW1 testified that when they moved the body near the road, the accused placed some open condoms near her private area. These were also alluded

to in the Postmortem Report whose findings were that the deceased was murdered elsewhere and her body deposited in another place where she was found with some condoms on her body.

We noted that the learned trial Judge was alive to the law on circumstantial evidence when she evaluated the evidence on record. She relied on the case of **Simon Musoke v R [1958] E.A 715** and **Teper v R 1952 A.C 489** at pages 6 and 7 of her judgment and found that there were no other co-existing circumstances which would weaken the inference of guilt of the Appellant in this case.

Applying "*the last seen doctrine*" which has global application to homicides, our view is that, this doctrine creates a rebuttable presumption to the effect that the person last seen with a deceased person bears full responsibility for his or her death. **See: Abuja in Tajudeen Iliyasu v The State SC 241/2013 and Uganda v Nakanwagi Fauza and 5 Others, Criminal session Case No. 243 of 2015.**

In the present appeal, the deceased was last seen alive at the Appellant's bar and the Appellant was present in the premises. He therefore had a duty to give an explanation relating as to how the latter met her death.

As testified by PW1 when he questioned him, the Appellant merely stated that he had found her dead. He then elected to solicit PW1's help to dispose of the body. We agree with the learned trial judge that this was indeed not the conduct of an innocent man. Further at the trial, the Appellant elected to remain quiet

and he offered no explanation as to the cause of death and/or his alleged conduct. In the absence of such an explanation, we find that the trial court was justified in drawing the inference that the Appellant killed the deceased person.

Accordingly, we find no reason to fault the learned trial Judge's findings and conclusion that the Appellant murdered the deceased. In the result, we uphold the conviction and find that there was sufficient evidence to sustain a conviction against the Appellant.

In respect of the alternate ground of sentence, it is now settled that for the Court of Appeal, as a first appellate court, to interfere with the sentence imposed by the trial court which exercised its discretion, it must be shown that the sentence is illegal, or founded upon a wrong principle of the law; or where the trial court failed to take into account an important matter or circumstance, or made an error in principle; or imposed a sentence which is harsh and manifestly excessive in the circumstances. **See: Kamya Johnson Wavamuno v Uganda, Supreme Court Criminal Appeal No. 016 of 2000 (unreported); Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported) and Kalyango Achileo and Another v Uganda, Court of Appeal Criminal Appeal No. 637 of 2015.**

It was submitted for the Appellant that the sentence of 35 years passed by the learned trial Judge was harsh and excessive in the circumstances since the trial court did not take into account the mitigating factors thereby departing from the

conventional rule of uniformity in passing sentences. The Respondent disagreed and contended that this sentence was lenient considering that the maximum sentence for the offence of murder is death.

While sentencing the appellant, at page 12 of the Record of Appeal, the trial court stated thus:

> *"The convict is a first offender. He has been on remand for three (3) years. However, I take very seriously the rampancy of this offence especially the death by cultural practice. The deceased had genuinely gone to have a good time and she brutally met her death. Taking all the above into account, he is sentenced to 35 years imprisonment."*

From the above, it is clear that the trial court considered the the mitigating and aggravating factors before sentencing the Appellant to 35 years' imprisonment. In the instant case, as was the practice at that time, the trial judge simply acknowledged that she had considered the period of three (3) years spent on remand.

According to **Article 23 (8) of the 1995 Constitution of Uganda (as amended)**, it provides:

> *"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her*

trial shall be taken into account in imposing the term of imprisonment."

The principle enunciated by the Supreme Court in **Kizito Senkula v. Uganda SCCA NO. 24 of 2001; Kabuye Senvewo v. Uganda SCCA NO. 2 of 2002; Katende Ahamad v. Uganda SCCA NO.6 of 2004 and Bukenya Joseph vs. Uganda SCCA No. 17 of 2010** was to the effect that, the words "*to take into account*" at the time did not require a trial court to apply a mathematical formula by deducting the exact number of years spent by an accused person on remand from the sentence to be awarded by the trial court. However, this was departed from in the case of **Rwabugande Moses v Uganda, Supreme Court Criminal Appeal No. 024 of 2015** where it was held that that a sentence couched in general terms that court has taken into account the time the accused has spent on remand is ambiguous. In such circumstances, it cannot be unequivocally ascertained that the court accounted for the remand period in arriving at the final sentence.

By merely stating that any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account does not with certainty show that she took the period into account. We find that the learned trial Judge's sentence fell short of complying with Art. 23(8) of the Constitution as it is unclear therefore whether the remand period was deducted from the sentence imposed or not.

This court is bound to follow the principle of "parity" and "consistency" while sentencing, while bearing in mind that the circumstances under which the offences are committed are not necessarily identical. **See Sentencing Principle No. 6(c) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013- Legal Notice No. 8 of 2013** and **Aharikundira Yustina v Uganda, Supreme Court Criminal Appeal No. 027 of 2015.**

In **Muhwezi Bayon v Uganda, Court of Appeal Criminal Appeal No. 198 of 2013**, this court after reviewing numerous decisions of the Supreme Court and the Court of Appeal stated thus:

> *"Although the circumstances of each case may certainly differ, this court has now established a range within which these sentences fall. The term of imprisonment for murder of a single person ranges between 20 to 35 years imprisonment. In exceptional circumstances the sentence may be higher or lower."*

In **Aharikundira Yustina v Uganda (supra)** where the Appellant brutally murdered her husband and cut off his body parts in cold blood, the Supreme Court set aside the death sentence imposed by the trial Court and substituted it with a sentence of 30 years imprisonment.

In Kisitu **Majaidin alias Mpata v Uganda, Court of Appeal Criminal Appeal No. 028 Of 2007**, this Court upheld a sentence of 30 years imprisonment for murder. The Appellant had killed his mother.

In **Rwabugande Moses v Uganda, Supreme Court Criminal Appeal No. 024 of 2015,** the Supreme Court set aside the sentence of 35 years' imprisonment imposed by the trial Court and substituted it with a sentence of 22 years imprisonment.

We take the above into account and accordingly set aside the sentence of 35 years' imprisonment passed by the High Court. We now invoke *section 11 of the Judicature Act Cap 13* which gives this court power to impose a sentence of its own.

To arrive at the appropriate sentence, we have considered both the aggravating and mitigating factors on record and taken into account the period of 3 years spent on remand. In light of the fact that human life had been lost, the Respondent prayed for a life imprisonment term as a deterrent. We agree that the offence committed was grave and that the sentence to be given must reflect the enormity of the Appellant's unlawful conduct. On the other hand, it was pleaded in mitigation that the appellant was a first-time offender and was aged 37 years at the time of conviction. Considering that the Appellant committed the offence at a young age, we are convinced that it is necessary to give him a prison sentence which will enable him to reform and be re-integrated back into society.

We come to the conclusion that in the circumstances of the case, a sentence of 30 years is appropriate. However, in line with Article 23 (8) of the Constitution,

the Appellant will serve a sentence of 27years which will run from 5th January 2011, the time of conviction.

Decision

1. The conviction of murder is upheld.
2. The sentence of 35 years imprisonment is set aside and substituted with a sentence of 30 years from which 3 years is reduced leaving 27 years to be served from 5th January 2011, the date of conviction.

We so order.

Dated at **Kampala** this.....11th.....day of .....February..... 2022.

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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