THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Musoke, Gashirabake & Luswata, JJA]

CRIMINAL APPEAL NO. 0334 OF 2019

(Arising from Criminal session No. 0045 of 2016)

NTAMBI ROBERT .....APPELLANT

VERSUS

UGANDA ....RESPONDENT

[Arising from the decision of Wilson Masalu Musene, J of the High Court of Uganda sitting at Nakasogola in Criminal Case No. 0045 of 2016 dated 29th June 2016]

JUDGMENT OF COURT.

Introduction.

The Appellant was indicted of offences of murder contrary to **Sections 188 and 189 of the Penal Code Act Cap 120** in count 1 and aggravated robbery contrary to **Sections 285 and 286(2) of the Penal Code Act Cap 1**20 in count 2.

It was alleged by the prosecution that on the 9th day of May 2015 at Kamunina village in Nakasongola district, the Appellant robbed a motor cycle Reg. No. UEG 249F valued at 3,400,000/= the property of Rwamurangwa Denis and the time of or immediately before after the time of the robbery murdered Rwamurangwa Denis.

During the trial the Appellant first pleaded not guilty to both counts but later changed and pleaded guilty to both counts of murder and aggravated robbery and court convicted him upon his own changed pleas of guilty. Upon his conviction, the learned trial Judge sentenced the Appellant to 20 years of imprisonment on count 1 and 18 years of imprisonment on count 2 both to run concurrently.

The Appellant was dissatisfied with the sentences imposed by the learned Judge and appealed to this court on one ground that:

> *'The learned trial Judge erred in law and in fact when he sentenced the Appellant to 20 years' imprisonment for the offence of murder and 18 years for the offence of Aggravated Robbery both to run concurrently which are manifestly harsh and excessive in the circumstances thereby occasioning a miscarriage of justice'.*

The Respondent opposed the appeal.

Representation.

The Appellant was represented by Mr. Kenneth Ssebabi. The Respondent was represented by Ms. Angutoko Immaculate.

Duty of this Court.

Under Rule 30 (1)(a) of the **Judicature (Court of Appeal Rules) Directives S.I 13-10,** it is provided that on any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may reappraise the evidence and draw inferences of fact. This duty is re-echoed in **Kifamunte Henry V Uganda, S.C criminal Appeal No. 10 of 1997,** court held that;

> "The first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."

As this court re-evaluates the evidence on record, it has to bear in mind that the sentence handed down to the Appellant by the trial court should be one that did not lead to a miscarriage of justice. This will be done when court evaluates the evidence against the established principles of sentencing. Mindful of the fact that even when

sentencing is the tail of the criminal trial, it is as important as the whole trial. Failure for the sentencing court to follow the established principles is a failure of justice.

Furthermore, this court is mindful of the fact that it is an established principle of the law in **Kiwalabye Bernard vs. Uganda SCCA No 143 of 2001**, that the Appellate Court is not to interfere with the sentence imposed by the trial court which has exercised its discretion unless the sentence imposed is so excessive or low as to amount to a miscarriage of justice or where the sentencing judge proceeded on a wrong principle.

Submissions of counsel for the Appellant

To buttress his submissions, Counsel for the Appellant cited **Kyalimpa Edward vs. Uganda, Supreme Court Criminal Appeal No.10 of 1995**, where 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 unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice"

Counsel for the Appellant submitted that the sentences of 20 years for Count 1 and 18 years for count 2 imprisonment although they run concurrently are manifestly excessive for a first offender considering the fact that the Appellant pleaded guilty and saved both courts time and resources in the determination of this case.

Additionally, counsel further submitted that the courts tend to rely more on the punitive element of sentencing and forget the most crucial element of sentencing

which is rehabilitation. Counsel noted that the Appellant having come to self-realization and changed his plea, demonstrated that he was willing to reform and live a responsible and fulfilling life.

Counsel recommended that 15 years for the first count and 13 years on the second count both running concurrently was appropriate in the circumstances. Counsel prayed that this court should reconsider the sentence and reduce them to 15 years for the first count and 13 years for the second count respectively.

Submissions of counsel for the Respondent

Counsel for the Respondent submitted that the sentences of 20 years imprisonment for murder and 18 years imprisonment for aggravated Robbery are way below the maximum sentence of death and moreover they run concurrently. Counsel argued that the trial Judge properly exercised his discretion in handing down the said sentence, considering the fact that the change of plea was after the prosecution adduced cogent evidence through 3 witnesses.

Counsel for the respondent further submitted that the sentence of 20 years imprisonment for murder and 18 years imprisonment for aggravated Robbery are within the sentencing range accorded by this court in the recent years. Counsel cited **Muligande Zyedi vs. Uganda Court of Appeal No 39 of 2013**, where this court found a sentence of 30 years and 1 month appropriate for murder. In **Guloba Rogers vs. Uganda Court of Appeal No.57 of 2013**, where court deemed a sentence of 33 years and 7 months appropriate for an Appellant who was convicted for both aggravated robbery and murder.

Consideration of this Court

This is an appeal against the sentence only. The principles for interference with any sentence by this appellate court are laid down in the case of **Kiwalabye Bernard vs, Uganda** *(Supra)* as cited above. It is well established that the exercise of the sentencing Judge is purely discretional and because of this the appellate court is always hesitant to interfere with this discretion. See **Kyalimpa Edward vs. Uganda** *(Supra)*. This is so because the trial Judge had the opportunity of evaluating the evidence on record, while observing the demeanor of the Appellant and his or her witness which opportunity the appellate court does not have.

While sentencing, the sentencing court is guided by the Constitution of the Republic of Uganda, statute law, the sentencing guidelines and case law respectively. Specifically, guideline 6 of the **sentencing guidelines**, lays down the factors to be considered by court before passing the sentence. The allegation of the Appellant was that 20 years of imprisonment for the first count of murder and 18 years for the second count of aggravated robbery were manifestly harsh and excessive.

In order for court to establish whether the impugned sentence is manifestly harsh or excessive, it is not a matter of emotions but rather a matter of law. In the current legal regime of sentencing the courts are guided by the principle of consistency provided for under Guideline **No.6 (c) of the Sentencing Guidelines,** which provides that;

> "Every court shall when sentencing an offender take into account the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances"

Additionally, **Guideline 19(1)** thereof provides for sentencing range for capital offences. It provides that:

> "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."

The sentencing range for a person convicted of murder or aggravated robbery under the third schedule of the **Guidelines** starts from 35 years to death sentence. This can be reduced or increased depending on the mitigating and aggravating factors.

For mitigating factors, the appellant changed his plea after the case was part heard and both offences carry a maximum sentence of death. The deceased was only 19 years of age yet he was brutally murdered. The parents lost both the son and the motorcycle they had just acquired for the deceased. The other factor is that the offences of motor cycle robbery and murder are very rampant. The investigating officer averred that the Appellant had another case pending in Wobulenzi.

In mitigation, it was submitted at the trial that despite the fact that the murder was heinous in nature, the convict should be considered as a first offender. He is presumed innocent save for the current conviction. The convict had been a charcoal business man with 6 children to feed. His wife left home. He had spent one year on remand. He was 41 years and had come to self-realisation as such he was capable of reforming.

Considering the precedents set by the Supreme court in similar offences, in **Aharikundira vs. Uganda, SCCA No.27 of 2015**, the Supreme Court reduced a sentence from a death sentence to 30 years imprisonment. In **Mbunya Godfrey vs. Uganda, SCCA No.004 of 2011**, the Supreme Court set aside the death sentence imposed on the Appellant for the murder of his wife and substituted it with a sentence of 25 years imprisonment.

Considering also the mitigating, aggravating factors and the precedents set by this court and the Supreme court, it is our finding that the sentences of 20 years

imprisonment for the first count of murder and 18 years imprisonment for the second count of aggravated robbery were not manifestly harsh and excessive. Additionally, according to the sentencing range laid down in the third schedule of the Sentencing guidelines, both offences range from 35 years to death sentence after considering the mitigating and aggravating factors. This court therefore finds no reason to fault the trial Judge for exercising his discretion judiciously in the circumstances of this case.

The sentence of the trial court is therefore upheld and the appeal dismissed.

We so order.

Dated at Kampala this 25th **Of** July **2022**

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ELIZABETH MUSOKE

JUSTICE OF APPEAL

.....

CHRISTOPHER GASHIRABAKE

JUSTICE OF APPEAL

.....

EVA K. LUSWATA

JUSTICE OF APPEAL