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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HELD AT JINJA

(Coram: Elizabeth Musoke, Cheborion Barishaki, & Hellen Obura, JJA)

CONSOLIDATED CRIMINAL APPEALS NO. 843, 844 AND 845 OF 2014

1. OTIM MOSES

10

2. MUYOMBA ALI

3. LEMOKOL EMMANUEL ::: APPELLANTS

VERSUS

UGANDA ::: RESPONDENT

*[Appeal from the decision of the High Court of Uganda sitting at Mukono (Hon. Justice
15 Lameck Mukasa) delivered on 15th October 2014 in Criminal Session Case No. HCT-
03-CR-SC-0232/2011, CRB: 2090/2010*

JUDGMENT OF THE COURT

The appellants were jointly charged with the offence of murder contrary to Sections
188 and 189 of the Penal Code Act. They were tried, convicted and sentenced to 31
20 years for A1 and A2, and 27 years imprisonment for A3

The facts stated by the prosecution before the trial court were that on the 24th of
December 2010 at around 0300 hours, Otim Moses and Muyomba Ali came and sat
at the stall of Nakafero Esteri. As she was serving them tea and chapatti, she saw
Otim showing Muyomba Ali a man who was coming out of Kisumali club. Thereafter,

5 Otim called Lemokol Emmanuel and told him to follow the man in a blue checked shirt to wherever he was going.

It was alleged by the prosecution that on the same date Kafero Juma saw Lemokol Emmanuel a tall Karamojong man with Muyomba Ali and Otim Moses strangling the man in a blue checked shirt and blue trouser. The three were later arrested, indicted,
10 tried and convicted of the offence of murder and the 1st and 2nd appellants were each sentenced to 31 years imprisonment and the 3rd appellant to 27 years imprisonment.

With leave of court granted under Section 132 (1) (b) of the Trial on Indictments Act, the appellants now appeal to this court against sentence. The sole ground of appeal was couched as follows:

15 ***The learned trial Judge erred in law and fact when he imposed a harsh and excessive sentence against the appellant.***

Representation

At the hearing, John Isabirye learned Counsel represented the appellants on state brief while Naluze Aisha Batala Assistant DPP from the Office of the Director of Public
20 Prosecutions represented the respondent.

Due to the COVID-19 Pandemic restrictions, the appellants were not in court physically but attended the proceedings via video link to Prison. Both parties sought, and were granted, leave to proceed by way of written submissions.

5 **Appellant's written submissions:**

In his submissions, Counsel for the appellants stated that the sentences imposed on the appellants were harsh and excessive. He faulted the learned trial judge for sentencing the 1st and 2rd appellants to 31 years imprisonment and 27 years imprisonment for the 3rd appellant.

10 Counsel for the appellants submitted that the learned trial judge did not consider the fact that the appellants were first time offenders with no previous criminal record. That the 1st appellant had a wife and 2 children, the 2nd appellant had 2 wives and 3 children while the 3rd appellant had a wife and a child and they were all sole bread winners for their families.

15 It was his submission that those were mitigating factors which the learned trial judge ought to have considered and given lesser sentences. He cited **R Vs Havilland (1983) 5 Cr. App. R(s) 109** to support his argument that an appropriate sentence is a matter for discretion of the sentencing judge and each case presents its own facts upon which a sentencing judge exercises his discretion

20 He also referred to **Wassaja Steven vs Uganda Criminal Appeal 19/1975** where court held that it was manifestly excessive to sentence a first time offender to 15 years imprisonment and reduced it to 10 years.

He further contended that the appellants were remorseful, young and capable of reform and all of them had family responsibilities. That the learned trial judge
25 acknowledged the 3rd appellant's plea that he was a student and interested in going to school, an indication that he was capable of reforming and being productive to

5 society. He asked Court to take this into consideration. He cited **Aharikundira Yusitina Vs Uganda; Criminal Appeal No. 27 of 2015** for the preposition that before a convict can be sentenced, the trial court is obliged to exercise discretion by considering meticulously all the mitigating factors and other pre-sentencing requirements. He prayed that the sentences be set aside by this honorable court and
10 substituted with lenient sentences.

Respondent's Submissions in reply

The Respondent opposed the appeal and supported the sentence imposed by the learned trial judge. He submitted that there was no reason for this court to interfere with the sentences and cited **Wamutaniwe Jamiru Vs. Uganda SCCA No.74 of**
15 **2007** for the preposition that the appellate Court is not to interfere with the sentence imposed by a trial court which has exercised its discretion, unless the exercise of that discretion is such that it results in the sentence being imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where the trial court ignores to consider an important matter or circumstance which ought to be
20 considered while proving the sentence or where the sentence imposed is wrong in principle.

She submitted that the learned trial Judge in sentencing the 1st and 2nd appellants to 31 years imprisonment and the 3rd appellant to 27 years imprisonment comprehensively considered both the mitigating and aggravating factors. That since
25 the crime was committed by a gang and multiple injuries were inflicted on the head of the victim which is a vulnerable part of the body, the sentences were appropriate. That since murder carries a maximum sentence of death with the starting point of

5 35 years, the sentence meted out to the appellant was not harsh. She cited **Section 189 of the Penal Code Act** and the **Constitution (Sentencing Guidelines for Courts of Judicature)(Practice Directions 2013)**, the 3rd schedule part one which provides for the starting point of murder to be 35 years as earlier stated above and the sentencing range is 30 years to death.

10 She further argued that the sentence of 27 years for the 3rd appellant was not harsh because court properly directed it's self on the law and applied it to the facts. She prayed that this Honorable Court upholds the sentence and dismisses the appeal.

Analysis

We have read the submissions of both Counsel and the authorities cited. We have
15 also perused the record of appeal. As the 1st appellate court, it is our duty to reconsider all evidence that was adduced before the trial court and come to our own conclusions of fact and law while making allowance for the fact that we neither saw nor heard the witnesses. See **Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions, Baguma Fred Vs Uganda SCCA No. 7 of 2004, Kifumante
20 Henry Vs Uganda SCCA No. 10 of 1997, and D.R Pandya Vs R [1957] EA 336.**

The complaint of the appellants is that the trial court's sentence of 31 years imprisonment for the 1st and 2nd appellants and 27 years for the 3rd appellant for the offence of murder was manifestly harsh and excessive. Counsel accordingly prayed that the same be set aside and substituted with more lenient sentences.

25 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

5 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. In **Kamya Johnson Wavamuno Vs Uganda, SCCA No.16 of 2000 (Unreported); Kiwalabye Bernard Vs Uganda, SCCA No. 143 of 2001 (unreported); Wamutabanewe Jamiru Vs Uganda, SCCA**
10 **No. 74 of 2007 and Rwabugande Moses Vs Uganda, SCCA No. 25 of 2014.**

While sentencing the appellants, the trial court stated thus:

“Otim Moses A1, Muyomba Ali A2, and Lemokol Emmanuel A3 were convicted of murder C/S 188 and 189 of the penal Code Act. The offence
15 carries a maximum sentence of death with a sentencing range from 30 years with a starting point of 35 years imprisonment....”

In mitigation it was submitted that the convicts were first offenders with no previous criminal record. They are young capable of reform. A1 has a wife and two children, A2 has two wives and 3 children and A3 has a wife and
20 a child. Their families respectively depended on and needed their care and support.

In allocutus A3 started that by his arrest he was in senior 5 at progressive Citizen High School. He prayed for a lenient sentence which he can secure and go back to school.

25 Considering all the above I find a sentence of 35 years appropriate. I deduct therefrom the nearly four years spent on remand. I accordingly sentence A1

5 *Otim Moses and A2 Muyomba Ali each 31 years of imprisonment. However,*
in addition taking into account A3 Lemokol Emmanuel’s plea that he was a
student and interested to go back to school, an indication that he is capable
to reform and be productive to society, he is sentenced to 27 years of
imprisonment. The respective terms from the date of conviction i.e 13th
10 *October 2014.”*

From the above, it is clear that the trial court took into account both the mitigating and aggravating factors before sentencing A1 and A2 to 31 years and A3 to 27 years. We find no reason to fault him.

This Court is alive to the principle of “parity” and “consistency” while sentencing,
15 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 **Muhwezi Bayon Vs Uganda, Court of Appeal Criminal Appeal No. 198 of 2013**, where this court after reviewing numerous decisions of the
20 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
25 *lower.”*

5 In **Mbuya Godfrey vs Uganda, Criminal Appeal No. 4 of 2011** the Supreme Court held that court should try as much as possible to have consistency in sentencing.

In the **Mbunya** supra the appellant had been convicted of murder of his wife. The Supreme Court set aside the death sentence and imposed a sentence of 25 years imprisonment.

10 In **Adupa Dickens Vs Uganda, C.A.C.A. No. 267 of 2017**, this court upheld the sentence of 35 years imprisonment for murder and held that it was neither harsh, nor manifestly excessive to warrant the intervention of the Appellate Court.

In **Kyaterekera George William V Uganda, Court of Appeal Criminal Appeal No.0113 of 2010**, the appellant was convicted of murder by stabbing the deceased
15 on the chest with a knife. This Court confirmed a sentence of 30 years imprisonment imposed by the trial Judge.

In **Semanda Christopher & another versus Uganda CACA NO.77 OF 2010**, the deceased was assaulted by the appellant and he later died in hospital. They were sentenced to 35 years imprisonment for murder and on appeal, this Court upheld
20 the sentence.

Having regard to the circumstances of the instant case we are of the strong view that the sentences of 31 years imprisonment meted out against the 1st and 2nd appellants and the sentence of 27 years imprisonment for the 3rd appellant were within the sentencing range of similar offences and squarely fell within the consistency and
25 uniformity principle. The sentences were neither harsh nor excessive and we find no reason to fault the learned trial judge in deciding to sentence the appellants the way

5 he did. We uphold the trial court's sentences of the 1st appellant Otim Moses and the 2nd appellant Muyomba Ali of 31 years imprisonment each and the 3rd appellant Lemokoli Emmanuel of 27 years imprisonment..

This appeal is dismissed.

We so order.

10 Delivered at Jinja this day of 2022.

11th

February



Elizabeth Musoke

JUSTICE OF APPEAL



Cheborion Barishaki

JUSTICE OF APPEAL



Hellen Obura

JUSTICE OF APPEAL