THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Kenneth Kakuru, Muzamiru M. Kibeedi & Irene Mulyagonja, JJA)

CRIMINAL APPEAL NO. 063 OF 2016

BAKAMUYUNGA PROVIA alias BANANA :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

*[Appeal from the decision of the High Court of Uganda sitting at Mbarara (**Duncan Gaswaga, J)** delivered on 06th April 2016 in Criminal Session Case No. 010 of 2012]*

JUDGMENT OF THE COURT

Background:

The appellant was indicted with her son, Tayebwa Alex Kaboozi, for the offence of murder contrary to Sections 188 and 189 of the Penal Code Act.

The particulars of the offence were that Tayebwa Alex *alias* Kaboozi and Bakamuyunga Provia alias Banana (the appellant) on the 21st day of May, 2011 at Butanda village in Ntungamo District murdered Naijuka Elizabeth.

The prosecution's case before the trial court was that Naijuka Elizabeth (deceased) was at the material time aged three years. On 20th May 2011 at 4:00pm, the mother of the deceased, PW1 Kyasimire Loyce, left her daughter, the deceased, at their home playing in the compound with other children. On returning home after a very short period of about 5-6 Minutes, she found the deceased missing. She inquired from the neighbours, PW2 Kyomuhendo Annet and a one Kotilda. Each one of them told her that she had separately seen Tayebwa Alex taking away her

daughter and that when each one inquired as to where Tayebwa was taking the deceased he replied that he was taking her to his mother, the appellant to give her medicine for chest pain.

PW1 immediately went to the appellant's place and the appellant told her that Tayebwa had come with the deceased and that the appellant had given the child food. And that after eating, the child had gone to play with Tayebwa.

PW1 and the appellant started searching for Tayebwa and the deceased and when they reached near the swamp at the farm of one Kyamashenzya the appellant diverted PW1 and stopped her from searching near the swamp saying that the child could not have gone there.

When they failed to get Tayebwa and the deceased, PW1 reported to the LC1 Chairman of their village who organised the residents and conducted a search. On 21.05.2011 as they were searching, the body of the deceased was recovered from the swamp at Kyamashenzya's farm, the same place where the appellant diverted PW1 when they were searching for the deceased the previous day.

After the body was recovered, the police were called in and the appellant was arrested. They also carried away the dead body. The post-mortem examination was carried out and the cause of death was established to be due to suffocation by gagging.

The appellant and her son, Tayebwa Alex, were jointly charged with the offence of murder. Pursuant to a Plea-Bargaining Agreement, Tayebwa pleaded guilty to the offence of murder and was sentenced to serve 16 years' imprisonment after taking into account the pre-trial period of three years and three months.

On the other hand, the appellant denied the charges and, after undergoing a full trial, was convicted of the offence of murder. She was sentenced to 20 years' imprisonment after taking into account the period of 5 years which the appellant had spent on remand.

Dissatisfied with the decision of the trial court, the appellant appeals to this court against both the conviction and sentence.

Grounds of Appeal:

The appellant set out 5 grounds of appeal in the Memorandum of Appeal, namely:

1. ***The Learned Trial Judge erred in fact and law when he failed to properly evaluate the evidence on record and came to a wrong decision that:***
   a) ***That the deceased Naijuka Elizabeth was murdered;***
   b) ***That the Appellant participated in the murder of the deceased.***
2. ***The Learned Trial Judge erred in fact and law when he failed to properly evaluate the evidence on record and relied on circumstantial evidence which was not sufficient to sustain a conviction against the Appellant.***
3. ***The Learned Trial Judge erred in fact and law when he relied on what A1 had allegedly told witnesses (hearsay) whereas A1 did not testify against the Appellant and was also said to be of unstable mind hence his evidence was not reliable and therefore came to a wrong decision.***
4. ***The Learned Trial Judge erred in fact and law when he failed to sum up the law and evidence to the assessors.***
5. ***The Learned Trial Judge erred in fact and law when he sentenced the Appellant to 20 years which was harsh and excessive in the circumstances.***

Representation:

The appellant filed her Written Submissions on 17th March 2021 while the respondent filed her Written Reply on 22.03.2021.

When the matter came up for hearing on 22.03.2021, Mr. Max Mutabingwa represented the Appellant while no one appeared for the respondent. The appellant attended court via Video link to prison.

Counsel for the appellant then applied for, and was granted, leave to proceed with the hearing ***exparte***. The appellant's Counsel prayed for adoption of the appellant's written submissions by this court and the application was granted by this court.

In her Written Submissions, the appellant argued ground 1(a) separately, then grounds 1(b), 2 and 3 jointly, and then grounds 4 and 5 separately. The respondent adopted the same approach. We shall refer to the detailed submissions while considering the respective ground(s) of appeal to which they relate.

Resolution of the appeal:

This being a first appeal, it is our duty to reappraise 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 Henry Vs Uganda SCCA No. 10 of 1997*, *and Pandya Vs R [1957] EA 336*.

We shall bear in mind the above principles when resolving the grounds of appeal in the order in which they were argued by the appellant's Counsel in his Written Submissions.

Ground 1 (a)

The appellant's ground 1(a) is to the effect that the learned trial judge erred in fact and law when he failed to properly evaluate the evidence on record and came to a wrong decision that the deceased, Naijuka Elizabeth, was murdered.

Counsel submitted that there was insufficient evidence on the record to prove, beyond reasonable doubt, that the deceased was killed or died through an unlawful act, or that the deceased was killed by a human being.

To buttress his submission, Counsel argued that the cause of death was stated by the Doctor who carried out the post-mortem (Exhibit PE1) as **"suffocation likely by gagging"**. That the expression means that the likely cause of death was "suffocation" but it was not conclusive. That there is a possibility that the deceased may have died of suffocation or of any other cause. And that even if it was suffocation, the Doctor did not give the likely causes of suffocation: whether it could have been caused by a human being or any other cause.

Counsel concluded this ground by submitting that the evidence on record was either not conclusive or not sufficient to prove, beyond reasonable doubt, that the deceased was killed by a human being.

The respondent disagreed and supported the trial judge's decision as having been based on the evidence on the court record.

From the submissions of the appellant's counsel, the complaint in ground 1(a) has two aspects namely:

a) Whether there was sufficient evidence on the record to prove that the deceased was killed or died through an unlawful act; and

b) Whether the deceased was killed by a human being.

We shall resolve the aspect of whether the deceased was killed by a human being while considering grounds 1(b), 2, and 3 which deal with the participation of the appellant. That leaves us with only the first aspect for resolution under ground 1(a).

A review of the trial record shows that the prosecution evidence to prove the death of the deceased consisted of the Post - Mortem Report which was tendered in evidence by consent of

both parties as exhibit **"PE1"** and the testimonies of the three prosecution witnesses who saw the lifeless body of the deceased namely, the deceased's mother (PW1), PW2, and PW3.

PW1 testified that the deceased's lifeless body was discovered on 21.05.2011 at around 9am lying beside a small fish pond. It was pale, had no scars or injuries. It had clothes on. The discovery followed a search mounted by PW1 and the local residents on 21.05.2011 from 6am. The dead body was viewed by, among others, PW1, PW2 and PW3 before the Police was invited to carry it away for Post Mortem investigations.

PW2, who was PW1's co-wife and neighbour, said that the dress in which the deceased's corpse was found at the time it was discovered on 21.05.2011 was the same dress which the deceased was wearing when she last saw her alive on the previous day in the hands of the appellant's son, Alex Kaboozi.

The Post-Mortem Report indicated the "Cause of death and reason for same" to be "*Suffocation likely by gagging*".

In his judgment, the trial judge rightly outlined the ingredients to be proved by the prosecution in the offense of murder namely:

1. Death of the deceased.
2. That she was killed through an unlawful act or omission.
3. That the person who inflicted the injuries that caused her death must have acted with malice aforethought.
4. That the accused person participated in the crime.

When dealing with the aspect of whether the death of the deceased was through an unlawful act or omission, the trial judge after evaluating the testimonies of PW1 & PW2 and the Post - Mortem Report stated:

"Every homicide is unlawful unless excused or permitted by law. But the presumption can be rebutted by evidence of accident, or that it was permitted in the circumstances. See Uganda Vs Bosco Okello alias Anyanya [1992 -1993] HCB 68...

In the instant case, the deceased was found lying in a swamp and the cause of death was suffocation. There is no evidence to show that whoever killed the deceased was executing a lawful order or had a legal justification whatsoever to do the same.

In the premises, therefore, I find that the killing of Naijuka Elizabeth was unlawful."

We have no basis to fault the reasoning and conclusion of the trial judge.

In his submissions, the appellant's counsel, while analysing the cause of death as set out in the Post Mortem Report, argued that the expression **"suffocation likely by gagging"** as used in the Report meant that the cause of death was not conclusive. That the expression meant that there is a possibility that the deceased may have died of suffocation or of any other cause.

To appreciate the true meaning of the words under contest, they need to be placed in their proper context. The relevant part of the Post – Mortem Report is reproduced below:

> **"Cause of death and reason for the same**: *Suffocation likely by gagging. With feature of sub capillary h'ge"*

The words in italics are the answers given by the Doctor to the questions in bold.

From the above, it is clear that the answer "*Suffocation*" relates to the question "**Cause of death**" while the expression "*likely by gagging" is* in answer to the 2nd part of the question namely, the "**reason for the same [suffocation]**.

Said differently, the Report is conclusive that the cause of death was suffocation. But it is not conclusive as to how the suffocation arose. It simply gives *"gagging"* as one of the likely possibilities that could have led to the suffocation.

Accordingly, the appellant's argument that that the cause of death of the deceased was not conclusively proved by the prosecution to the required standard is without basis. Ground 1(a) fails.

Grounds 1(b), 2 & 3:

Appellant's submissions on Grounds 1(b), 2 & 3.

The appellant's Counsel submitted that the combined effect of grounds 1(b), 2 and 3 is that the Learned Trial Judge erred in fact and law in convicting the Appellant of the offence of murder without sufficient evidence to prove that if at all the deceased was indeed killed by a human being, the Appellant participated in the crime.

Counsel submitted that from the testimonies of the prosecution witnesses, none of them saw the appellant's son, Alex Kaboozi, deliver the deceased child to the appellant. That none of the witnesses saw the Appellant with the child. That none of the witnesses saw the deceased child at the Appellant's home. That the Appellant was only charged with the offence of murder basing on the unproved claims made by Kaboozi, when he was seen carrying the child by PW2 and PW3, to the effect that that he was taking her to the appellant to give her medicine for chest pain.

Counsel further submitted that the evidence which the trial Judge relied upon as "circumstantial evidence" was mere suspicion, imagination, and speculation and not evidence in law. That the trial Judge made an error to convict the Appellant of the offence of murder basing on insufficient and unreliable evidence.

Respondent's Reply to Grounds 1(b), 2 & 3.

In reply, Counsel for the Respondent stated that the claims by the appellant to the effect that there was no circumstantial evidence but only suspicion and imaginations are without any basis. That the learned trial judge relied on evidence of PW2 & PW3 who testified that they saw the Appellant's son, Kaboozi, with the deceased. That PW1 testified that when she found her child missing, she was informed by PW2 & PW3 that the child had been taken to the Appellant by Alex Kaboozi. That when PW1 went to the appellant's home, she admitted having indeed

received and fed the deceased. Thereafter, the child was found dead. Counsel submitted that this constituted sufficient circumstantial evidence to sustain the conviction of the Appellant.

Further, Counsel submitted that the learned trial Judge also had consideration of the conduct of the Appellant during and after the disappearance of the deceased which was inconsistent with innocence.

Counsel concluded that the trial judge convicted the appellant rightly and prayed that the conviction of the Appellant be upheld.

Resolution of Grounds 1(B), 2 & 3.

We have reviewed the evidence on record about the participation of the appellant in the murder of the deceased. PW2 & PW3 separately saw the appellant's son, Alex Tayebwa "Kaboozi", carrying the deceased/child in the direction of the appellant's home around 4PM on 20.05.2011. When each one of them separately inquired from him where he was taking the child and why, he said he was taking the child to the appellant for treatment of chest pain, *"ekibeere"*. Up to this point, there is no contest about the prosecution evidence. The contest starts from whether Kaboozi indeed delivered the child to the appellant and the response of the appellant thereafter.

PW1, the mother of the deceased/child, testified that on 20.05.2011, she left her home briefly at around 4PM. When she returned shortly after about 5 -6 Minutes, she found the child missing. She inquired from her neighbours, PW1 & Kotilda. She was told that they had seen Alex Tayebwa "Kaboozi" with the child and that he had told them that he was taking it to the appellant at her home for treatment. Prior to that, PW1 did not know the appellant.

PW1 immediately went to the appellant's home which was a 10 Minutes' walk away. She found the appellant but not Tayebwa Kaboozi. The appellant told PW1 that the child had been brought to her and that she had given her food. PW1 demanded for her child. The appellant told PW1 that after eating, the child had gone playing with Tayebwa Kaboozi. The appellant then told PW1

"let's go and look for the child". The appellant led PW1 in the search for the child. When they reached the direction where the dead body was eventually found lying the following day, the appellant diverted PW1 from that direction. The consequence was that the search for the child on day one was futile.

PW1 further testified that on day two (21.05.2011) she was joined by the residents in the search for the child which resumed at around 6AM. They searched in the direction in which the appellant had on the previous day diverted PW1 from taking. And that is where the dead body of the child was eventually found at around 9AM, lying beside a small fishpond.

PW1 stated that the appellant was part of the team which searched for the child on day two. But she kept searching in the direction opposite to that where the child's corpse was found. When the corpse of the child was found, the other residents brought the Appellant to where the Child's corpse was lying. They asked her about the whereabouts of her son, Tayebwa. At first, she did not answer. Then after a few minutes she stated "Tayebwa is at Kyondo", a nearby village. The police and some residents went to Kyondo and brought Tayebwa. On questioning him, he said it was his mother who had sent him for the child. When further pressed, Tayebwa said, "Even if you beat me and kill me, it is my mother who had sent me for the child".

The police then calmed down the residents and took away both the appellant and the child's corpse.

In her defence, the appellant testified under oath that on 20.05.2011 PW1 went to her home at around 3PM and told her that Tayebwa had taken the child to her (the appellant) for medication. That in reply, she denied having seen Tayebwa and the child. That PW1 then requested her to look for the child. That she and PW1 began searching for the child. That it was PW1 who was directing her where to search for the child because she did not know where the child was. That they searched in the bush but by the end of the day they had failed to see the child.

On the following day, she woke up in the early morning and took her goats to the bush for grazing. As she was returning, she was arrested.

In cross examination, the appellant confirmed that prior to this incident, she had never seen PW1 and had no grudge against her. She denied having sent her son, Tayebwa, to go and bring the child to her. She confirmed that before his arrest, Tayebwa Kaboozi was staying with her in the same home. That on 20.05.2011 when the child went missing, Tayebwa Kaboozi was at home. That from 4PM on 20.05.2011 when she searched for the child with her mother, PW1, up to the next day, she did not ask or talk to Tayebwa Kaboozi about the incident of the missing child. She acknowledged that it was important as a parent to ask her son about the missing child but that she did not. That Tayebwa Kaboozi spent the night of 20.05.2011 at home. In the morning of 21.05.2011 the appellant left Tayebwa Kaboozi home to take the goats to graze. By that time, the body of the child had not yet been recovered but the appellant did not bother to ask her son, Tayebwa Kaboozi, where he had put the child and whether she had been found. The appellant acknowledged that as a mature person, mother, parent, the right thing to do was to ask about the missing child before even taking goats to graze. But that she did not do it.

The appellant stated that she did not know where her son was arrested from. She denied having directed the police to the place where her son was arrested.

When dealing with the issue of participation of the appellant in the killing of the deceased, the trial judge rightly observed that the prosecution evidence was circumstantial and hinged on the conduct of the appellant during and after the disappearance of the deceased/child. He then set out the law on circumstantial evidence, reminded himself about the caution required while handling circumstantial evidence, and then went ahead to evaluate the evidence before him.

The trial judge found PW1 truthful in her testimony that upon learning that her child had been taken to the appellant by the appellant's son, Kaboozi, she went to the appellant's home. The trial judge also believed the testimony of PW1 that while at the appellant's home with PW1, the

appellant admitted to PW1 that her son came with the child, and she gave them food and they left. The trial judge found that the appellant did lead the search for the child on 20.05.2011 and knew where the body of the deceased was but declined to take the mother (PW1) in that direction and instead led her to a different direction, diverting her from where the body of the deceased was later found. The trial judge believed the testimony of PW1 and all the prosecution witnesses to the effect that when the appellant's son, Kaboozi, was arrested he kept saying, *"it is my mother who has brought me problems."*

When evaluating the appellant's evidence as to her conduct after the commission of the offence, the trial judge stated thus:

> *"...what is interesting is that the accused did admit that she saw her son's bedroom door open in the morning but did not bother to ask him about the incident because she was going to tie her goats first. This is quite strange and this particular conduct is not that of an innocent person. A reasonable person, who in this case was a mother like herself, would have first asked her son about the missing child and then gone out to the village to inquire about the search. The goats are the last thing on any mother's mind when her son has been implicated in the disappearance of a child. The accused's excuse that she was first going to the village to inquire if the child had been found before consulting her son, who she had left at home sleeping was quite absurd. Clearly, she knew what had transpired and was hiding under the disguise of tying the goats. Moreover, the accused did not run away from the village to hide because she knew that would be very suspicious and pretended to help PW1 in conducting the search.*

The accused was not a truthful person, and her conduct was quite suspicious." Then the trial judge concluded thus:

> *"... The evidence above shows that the accused was no doubt aware of what her son was doing or had just done to the deceased, and she did not only participate in enabling him to murder this child but also in diverting PW1 from taking the right direction during the search where the body was eventually found. She had just given Kaboozi and the deceased food and therefore from her conduct she must have known where they had gone immediately after. For PW1 was coming after them. The accused did everything to protect her son. Her hands are not clean at all in this whole episode.*
>
> *In conclusion, I find the prosecution to have proved this ingredient beyond reasonable doubt"*

Whereas we agree with the observations of the trial judge about the absurdity of the appellant's conduct in the face of the allegations that his son was involved in the disappearance of the deceased child, we are not satisfied that there is evidence to prove to the prescribed standard that it was indeed the appellant who killed the child. The evidence before the trial court only proved that the child was last seen alive with the appellant's son, Kaboozi. The son admitted that he killed the child and was convicted of the offence of murder for which he bargained for a lower sentence than the maximum. The declarations of the son to the effect that *"it is my mother who has brought me problems" and "it is my mother who had sent me for the child" do not prove beyond reasonable doubt that indeed the appellant participated in the murder of the deceased child as claimed.*

The evidence before the trial court proved the appellant knew that her son went away with the child and it was later on found dead. The son fled and she remained to cover up for him. This, in our view, brought the appellant within the ambit of an accessory after the fact to murder contrary to Section 206 of the Penal Code which provides as follows:

> *"Any person who becomes an accessory after the fact to murder commits a felony and is liable to imprisonment for seven years."*

In the premises, we acquit the appellant of the offence of murder. Instead, we convict her of the offence of accessory after the fact of murder contrary to Section 206 of the Penal Code, which is a minor and cognate offence to the murder charge. This is in accordance with Section 87 of the TIA which provides as follows:

> *"When a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he or she was not charged with it."*

. Ground 3 accordingly succeeds.

Ground 4:

The appellant's ground 4 is to the effect that the trial Judge erred in law and fact when he failed to sum up the law and evidence to the assessors.

Counsel for the appellant submitted that there is no evidence on record to prove that the trial Judge summed up the law and evidence to the assessors and took note of this summing up as required by Section 81 of the Trial on Indictments Act (TIA).

Further, that the joint opinion of the assessors is too sketchy to help Court ascertain whether summing up to them was properly done. And that since the Judge did not take note of the summing up, it becomes impossible to see what he told the assessors in summing up and whether he complied with the law. For this submission, Counsel relied on the cases of *Yunus Wanaba Vs Uganda. CACA No. 156 of 2001*, and *Mohamed Byamugisha Vs Uganda. CACA No. 4 of 1983*.

Counsel ended this ground by inviting this court to quash the conviction of the appellant on account of the failure of the trial Judge to comply with a clear provision of the law.

In reply, Counsel for the respondent submitted that the record of proceedings shows that the trial judge summed up to the assessors. That this met the requirements of the law. Counsel argued that Section 81(1) of the TIA does not prescribe the formula of words to be used in summing up. That it does not require the Judge to write out a detailed essay of his/her summing up. It only requires brief notes as the assessors would have already heard all the evidence and an explanation of the law. For this submission, counsel relied on the case of Yunus Wanaba (op cit)

Counsel concluded by submitting that the trial judge did not fall short of the requirements of Section 81(1) of the TIA and invited this court to reject this ground.

Summing up to the assessors by the trial judge is provided for in Section 82(1) of the TIA, Cap. 23 in the following terms:

"When the case of both sides is closed, the judge shall sum up the law and the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. The judge shall take a note of his or her, summing up to the assessors."

The above section has been the subject of consideration in various decisions of this Court and the Supreme Court of Uganda. In *Byamugisha Vs Uganda [1987] HCB 4* which has been relied upon by the appellant's Counsel, the appellant was indicted with the offence of robbery. He put up the defence of alibi. The Supreme Court while discussing the duty of the trial court in summing up to the assessors held:

"When summing up to the assessors the trial judge should not be too sketchy. He should have, when doing so, explained to the assessors the ingredients of the offence of robbery, the duty of the prosecution to prove their case against the accused persons beyond reasonable doubt, and that the benefit of any doubt had to be given to the accused persons. The trial judge should have referred to the accused's defence of alibi and pointed out the duty of the prosecution to prove it. Then he should have analysed the prosecution evidence in regard to the defence of alibi and the evidence as a whole."

In Yunus Wanaba Vs Uganda, (Op cit) this Court stated thus:

"As this section indicates, the law does not require the judge to write out a detailed essay of her summing up. It only requires brief notes as the assessors would have heard all the evidence already. They however need the law explained...that is, all the ingredients of the offence and the burden of proof...

It must be pointed out that there is no set formula of words to use -They must however be directed that the onus of proof is on the prosecution throughout and secondly that before they convict they must feel sure of the accused's guilt."

The record of proceedings in relation to the summing up to the assessors by the trial court in the instant matter is short. We reproduce it below:

"4/4/ 2016.

Accused present.

Ms Munyereza for State

Mr. Twinamatsiko for Accused

Both assessors present.

Court

Summing up done in open court.

Assessors

We shall give our opinion in 20 Minutes.

Court

Adjourned to 3.30pm

Duncan Gaswaga

Judge

4/4/2016

Later on.

Court as before

Mr. Mutembuka Charles

We have a joint opinion. All four ingredients have been proved beyond reasonable doubt. PW1, PW2, PW3, and PW4 witnessed the murder. Let accused person be found guilty and convicted accordingly.

Court

Judgment on 6/4/2016

Duncan Gaswaga

Judge

4/4/2016"

The above record of proceedings captures only the fact of the summing up having been done by the trial judge in open court. What exactly was said by the trial judge, otherwise better known as the substance/content of the summing up, is not part of the record of proceedings. This *prima facie* is an irregularity. The court record should speak for itself as to what actually transpired. As observed by this court in *Simbwa Paul vs. Uganda Criminal Appeal No. 023 of 2012*:

"...It is a good and desirable practice that the substance of the summing up notes to assessors appears in the record of proceedings. It is the only way an appeal court can tell whether the summing up was properly done...We also consider it good practice that the opinion of each of the assessors should appear on record."

However, in view of the resolution of ground 3 in favour of the appellant, this ground was rendered redundant. Needless to add, Section 34 (1) of the Criminal Procedure Code Act, Cap. 116 (CPC) and Section 139 of the Trial on Indictments Act mandate this Court to set aside a conviction on account of the error of law or fact complained about only where the appellant has shown that the said error or complaint caused a miscarriage of justice. No miscarriage of justice was either pleaded in the Memorandum of Appeal or raised by the appellant in his submissions in the appeal. And neither have we seen any injustice as having been occasioned by the complaint raised by the appellant in respect of the summing up to the assessors by the trial judge. Ground 4 therefore fails.

Ground 5:

The appellant's ground 5 was to the effect that the trial Judge erred in fact and law when he sentenced the Appellant to 20 years which was harsh and excessive in the circumstances has already been overtaken by the acquittal of the appellant of the offence of murder. That left us with only consideration of what appropriate sentence to impose for the minor cognate offence for which the appellant has been convicted by this court.

The maximum sentence for the offence of accessory after the fact to murder under Section 206 of the Penal Code Act is imprisonment for seven years. The record of appeal indicates that at the time of conviction of the appellant on 06th April 2016 she had already spent 5 years on remand. When you add the five years the appellant has been in prison after conviction, it becomes clear that she has already exceeded the maximum period prescribed for the offence for which she has been convicted. So she is entitled to regain her liberty immediately.

Orders

1. The conviction of the appellant for the offence of murder by the High Court is quashed, and the sentence set aside. Instead, the appellant is convicted of the offence of being an accessory after the fact to the murder of Naijuka Elizabeth contrary to Section 206 of the Penal Code Act, Cap. 120
2. Since the appellant has already served the prescribed maximum sentence for the offence for which she has been convicted by this court, it is hereby ordered that the appellant be immediately released from custody unless she has any other lawful charges pending against her.

Signed, dated and delivered this 21st day of February 2022

KENNETH KAKURU
Justice of Appeal

MUZAMIRU MUTANGULA KIBEEDI
Justice of Appeal

IRENE MULYAGONJA
Justice of Appeal