

5 THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CRIMINAL APPEAL NO. 0145 OF 2011

10 SAMBWA ISSA:.....APPELLANT  
VERSUS  
UGANDA:.....RESPONDENT

(Arising from the decision of the High Court by Faith Mwendha, J in High Court Criminal case No.128 of 2009, dated the 7<sup>th</sup> day of June 2011)

15 CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ  
HON. JUSTICE ELIZABETH MUSOKE, JA  
HON. JUSTICE CHEBORION BARISHAKI, JA

20 JUDGMENT OF THE COURT

**Introduction**

The appellant Sambwa Issa was indicted with the offence of Murder contrary to Sections 188 and 189 of the Penal Code Act. He was convicted and sentenced to 25 years imprisonment by Faith Mwendha, J, as she then was.

**Background**

It was alleged that on the 18<sup>th</sup> day of May 2006 at Kiryamuli village in Mityana District, the appellant murdered Ssekatawa Muhamudu.

30 The case for the prosecution was that the appellant and the deceased had a misunderstanding over land in Kiryamuli Bulera Sub-county, Mityana District. The appellant was a step brother to the deceased.

Upon the death of the deceased's father, the deceased who was residing in Kampala returned to Mityana District as the heir to his father and settled



5 together with his wife Nabukeera Aisha on his late father's land. The appellant was not happy with the deceased's settlement on the late father's land which caused a grudge between the two brothers. The matter was taken to the Chairman Local Council I, Muwonge Joseph, to resolve the misunderstanding between the appellant and the deceased. The matter was resolved, however, the  
10 appellant was not satisfied and he was said to have made several attempts to take the deceased's life.

On the fateful day, the deceased went to the shop to buy milk, sugar and bread. On his way back home at around 9pm, the deceased was attacked. The deceased was found lying in a pool of blood, he was still alive but he could not talk. He  
15 was taken to the hospital, where he died upon arrival. His body was examined and found with multiple deep cuts on the head and neck, which caused severe bleeding that led to his death.

The appellant was arrested, tried and convicted for the offence of Murder. He was sentenced to 25 years imprisonment.

20 Being aggrieved by the decision of the trial Court, the appellant with leave of Court appealed against sentence only on the following ground:

**"The learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh, manifestly excessive and inconsistent with previous judicial precedents."**

25

### **Legal Representation**

At the hearing of the appeal, the appellant was represented by Mr. Mutange Ian, on State brief while the respondent was represented by Ms. Lilian Alum Omara, a Chief State Attorney.



5 Due to the COVID-19 pandemic restrictions, the appellant was not physically present in Court but he attended the proceedings via video link using Zoom technology from Prison.

Both counsel filed and adopted their written submissions.

### **Submissions of Counsel**

10 Counsel for the appellant submitted that the learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh, manifestly excessive and inconsistent with previous judicial precedents.

Counsel argued that there is need for consistency/parity in sentencing of cases with similar circumstances. He referred Court to the case of *Abaasa Johnson and Muhwezi Siriri vs. Uganda, Court of Appeal Criminal Appeal No.33 of*  
15 *2010*, where Court cited the Supreme Court case of *Livingstone Kakooza vs. Uganda, Criminal Appeal No. 17 of 1993*, which stated that sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration.

20 He further cited **Rule 6 (c) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013**, which provides:-

**“(c) the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances.”**

25 Counsel contended that, in the instant case, the learned trial Judge made no reference to previous cases in which a similar offence was committed and the accused people sentenced.



5 He submitted that in the recent case of *Adiga Johnson vs. Uganda, Court of Appeal Criminal Appeal No.157 of 2010*, Court cited a number of authorities in which the sentence imposed for a similar offence of murder were in the range of 19 to 20 years. According to counsel, this Court in *Adiga Johnson (Supra)* cited the cases of *Tumwesigye Anthony vs. Uganda, Court of Appeal Criminal*  
10 *Appeal No.46 of 2012* and *Anywar Patrick and anor vs. Uganda, Court of Appeal Criminal Appeal No.166 of 2009*, where the appellants were convicted for the offence of murder and were sentenced to 20 years and 19 years imprisonment, respectively.

Counsel further relied on the case of *Uwera Jackline Nsenga vs. Uganda, Court*  
15 *of Appeal Criminal Appeal No.824 of 2015*, where the appellant run the husband over with car, causing his death and this Court upheld a sentence of 20 years imprisonment for the offence of murder.

Counsel prayed that the sentence of 25 years imposed on the appellant by the trial Judge, be found to be excessive, harsh and inconsistent with the previous  
20 decisions of this Court. He prayed that the said sentence be reduced to a sentence of 20 years from which the period of 4years spent on remand be deducted there by reducing the sentence to 16 years imprisonment.

On the other hand, counsel for the respondent submitted that the trial Judge considered both the mitigating and aggravating factors before sentencing the  
25 appellant to 25 years imprisonment.

Counsel noted that although the date of sentencing is not indicated on page 18 of the record of appeal, the warrant of commitment at page 28 of the record shows that the appellant was convicted and sentenced on 7<sup>th</sup> June 2011. She argued that this was before the decision in *Rwabugande Moses vs. Uganda,*

5 *Supreme Court Criminal Appeal No.25 of 2014*, which requires an arithmetic deduction of the period spent on remand. Counsel contended that the appellant was convicted and sentenced during the regime of *Kizito Senkula vs. Uganda, Supreme Court Criminal Appeal No.24 of 2001* and others, which did not require a trial Court to apply a mathematical formula in consideration of the  
10 period spent on remand.

Counsel submitted that this Court in its recent decision of *Biryomushi Alex vs. Uganda, Criminal Appeal No. 464 of 2016* restated the position in *Katureebe Boaz and another vs. Uganda, Supreme Court Criminal Appeal No.066 of 2011*, in which it was held: “*Consistency in sentencing is neither a mitigating nor an*  
15 *aggravating factor, the sentence imposed lies in the discretion of the court which in exercise thereof may consider sentences imposed in other cases of a similar nature.*”

She further argued that the sentence of 25 years imprisonment is consistent with sentences issued by this Court. Counsel cited the cases of *Kidega Joseph and*  
20 *anor vs. Uganda, Supreme Court Criminal Appeal No.07 of 2019* and *Nsabimana Richard vs. Uganda, Supreme Court Criminal Appeal No.12 of 2017*, in which the appellants were convicted for murder and sentenced to suffer death and their sentences were varied to sentences ranging from 30 to 39 years imprisonment.

25 Considering the authorities above, counsel contended that a sentence of 25 years imprisonment is appropriate in the circumstances of this case. She prayed that Court upholds the sentence and dismisses the appeal.



### Resolution of the appeal

This is an appeal on sentence only. We are alive to the duty of this Court as the first appellate Court to re-appraise the evidence before the trial Court subjecting it to fresh scrutiny and make its own inferences of law and fact.

We have carefully studied the Court record, the submissions of counsel for each side as well as the law and the authorities cited.

The appellant faults the trial Judge for imposing a 25 years imprisonment sentence which he considers harsh and excessive and not in line with previous judicial precedents.

In *Ogalo s/o Owuora v. Republic*, [1954] 24 E.A.C.A 270 and *James vs. Republic* [1950] 18 EACA 147, Court emphasised that the appellate Court is not to interfere with a sentence imposed by the trial Court which has exercised its discretion on sentence unless the sentence is illegal or the appellate Court is satisfied that in the exercise of the discretion the trial Court ignored to consider an important matter or circumstances which ought to be considered when passing the sentence or the sentence was manifestly so excessive or low as to amount to an injustice.

In the instant case, the trial Judge while sentencing stated:-

*"The convict is a first offender who has been in pre-trial/remand for almost 4 years. The maximum sentence of the offence he is convicted of is death. This offence is very transparent in this area. Taking all the above into account, he is sentenced to 25 years imprisonment."* [Sic]

From the above, it is clear that the trial Judge considered both the aggravating factors and the mitigating factors while sentencing the appellant.



5 The trial Judge took into account the 4 years that the appellant spent on remand  
as required by the law then in *Kizito Senkula vs. Uganda, S.C.C.A No.24 of*  
*2001; Kabuye Senvawo vs. Uganda, S.C.C.A No.2 of 2002; Katende Ahamed vs.*  
*Uganda S.C.C.A No.6 of 2004 and Bukenya Joseph vs. Uganda, S.C.C.A No.17*  
10 *of 2010* where Court held that “*taking into consideration of the time spent on*  
*remand does not necessitate a sentencing Court to apply a mathematical*  
*formula.*”

The trial Judge was not bound to follow the arithmetic principle in *Rwabugande*  
*Moses versus Uganda, Supreme Court Criminal Appeal No.25 of 2014*, made on  
03<sup>rd</sup> March 2017, 6 years after her decision was made. See: *Abelle Asuman vs.*  
15 *Uganda, Supreme Court Criminal Appeal No.066 of 2016.*

Counsel for the appellant argued that the sentencing range for murder is  
between 19 to 20 years, we disagree. In *Kyalimpa Edward vs. Uganda, Criminal*  
*Appeal No. 10 of 1995*, Court held:- “*An appropriate sentence is a matter for the*  
*discretion of the sentencing Judge. Each case presents its own facts upon which*  
20 *a Judge exercises his discretion.*”

The Supreme Court in *Criminal Appeal No.03 of 2013, Akbar Hussein Godi vs.*  
*Uganda*, upheld the concurrent decision of the trial Court and the Court of  
Appeal and confirmed a sentence of 25 years imprisonment for the offence of  
Murder.

25 This Court in the case of *Ssemanda Christopher and Muyingo Denis vs. Uganda,*  
*Criminal Appeal No.77 of 2010*, upheld a sentence of 35 years imprisonment for  
the offence of murder.



5 In the instant case, the trial Judge rightly used her discretion to sentence the appellant to 25 years imprisonment upon consideration of both the aggravating factors and the mitigating factors as well as the period spent on remand.

For the reasons above stated, we find that the sentence of 25 years imprisonment was not illegal nor based on wrong principles and neither was it manifestly  
10 harsh nor excessive given the circumstances of this case.

We find no reason to interfere with it. The sentence was given in accordance with the law and due consideration of the circumstances of the case.

From the record, the High Court Judgment is dated 7<sup>th</sup> July 2011, however, the record of proceedings at the High Court indicate that the Judgment was  
15 delivered in open Court on 7<sup>th</sup> June 2011, the Warrant of Commitment dated 7<sup>th</sup> June 2011 also shows that the appellant was convicted and sentenced on 7<sup>th</sup> June 2011.

The date on the High Court Judgment was written in error. The correct date of conviction and sentence as seen from the record of proceedings and the Warrant  
20 of Commitment, is therefore the 7<sup>th</sup> of June 2011.

We accordingly uphold the decision of the trial Court and dismiss this appeal. The appellant should continue serving the sentence of 25 years imprisonment from 7<sup>th</sup> June 2011, the date of conviction.

25 Dated at Kampala this 24<sup>th</sup> day of February.....2022





5



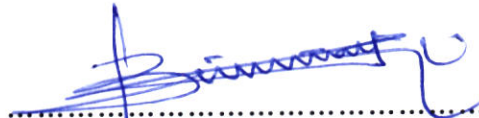
**RICHARD BUTEERA**  
DEPUTY CHIEF JUSTICE

10



**ELIZABETH MUSOKE**  
JUSTICE OF APPEAL

15



**CHEBORION BARISHAKI**  
JUSTICE OF APPEAL

20

25