

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0223 OF 2016

*(Arising out of the decision of Hon. Justice Masalu Musene in
5 Nakasongola Criminal Session Case No. 048 of 2016)*

AHIMBISIBWE AMON ::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

UGANDA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA

HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

JUDGMENT OF COURT

The appellant was indicted and convicted of the offence of Murder
contrary to sections 188 and 189 of the Penal Code Act and sentenced
15 to 25 years imprisonment. The appellant was dissatisfied with the
sentence passed by the trial court and with leave of court under S.
132(1) (b) of the Trial on Indictments Act, filed this appeal on a sole
ground that;

*The learned trial Judge erred in law and fact when he failed to
20 consider mitigation factors thereby imposing a harsh and excessive
sentence upon the appellant thus occasioning a miscarriage of justice.*

Due to the Covid-19 pandemic, the appellant attended court via video link and was in touch with his lawyer throughout the hearing.

Background

The deceased and the appellant were casual labourers at a farm in Kanyogoga village, Nakasongola District and on 1st July 2015, the appellant and the deceased left the farm heading to Katuugo Trading Centre and the two started quarrelling. The appellant was wearing *lugabire* and when one Mugisha Godfrey heard the appellant and the deceased quarreling. He moved out and found nobody but saw the deceased's *lugabire* with blood stains. The appellant returned to the farm alone and when asked where the deceased was. He said he left him at a lodge in Katuugo trading centre. Several exhibits were recovered including the appellant's clothes he had just washed and a blood stained stick locally known as "enkoni" belonging to the appellant. Later, the appellant admitted having fought with the deceased which led to recovery of the body near a well in the bush.

Representation

At the hearing of the appeal, Mr. Kumbuga Richard appeared for the appellant while Ms. Caroline Marion Aciyo, Chief State Attorney appeared for the respondent.

Both learned counsel filed written submissions in support of their respective cases which were adopted by court.

Appellant's submissions

Counsel submitted that the trial Judge did not take into account the mitigating factors and passed a harsh and excessive sentence on the appellant. The appellant was only 18 years at the time the offence
5 was committed and that the trial Judge should have considered the age of the appellant and passed a more lenient sentence. Counsel relied on the decision in **Rwabugande Moses Vs Uganda S.C.C.A No. 25 of 2014** on the proposition that the court ought to consider the mitigating and aggravating factors to arrive at an appropriate
10 sentence.

Respondent's submissions

Counsel for the respondent submitted that the learned trial Judge considered the mitigating and aggravating factors while passing
15 sentence on the appellant. That the learned trial Judge considered that the appellant was more or less a child but noted that this was not a licence to commit an offence. That the aggravating factors outweigh the mitigating factors and as such, the 25-year sentence was appropriate in the circumstances of this case and is at the lower
20 cap of the sentencing range for the offence of murder. The maximum sentence for murder is a death sentence and 25 years was lenient and appropriate in the circumstances of the case.

Consideration of the appeal

We are mindful that an appellate court should not interfere with a sentence imposed by a trial court where the trial court has exercised its discretion on sentence, unless the exercise of that discretion is such that it results in the sentence imposed to be manifestly
5 excessive or so low as to amount to a miscarriage of justice, or where the trial court ignored to consider an important matter or circumstance which ought to be considered while passing sentence or where the sentence imposed is wrong in principle (see **Kiwalabye Bernard v. Uganda Supreme Court Criminal Appeal No. 143 of**
10 **2001**). It does not matter that this Court would have given a different sentence if it had been the one trying the appellant (see **Ogalo s/o Owoura v. R (1954) 24 EACA 270**).

We have borne these principles in mind in resolving this appeal.

The learned trial Judge, while sentencing the appellant, stated that;

15 *"I have carefully considered the mitigating and aggravating factors in this case. Being young as submitted by Counsel Gloria Basaza is not a license to commit any offence at all, let alone murder. Murder is a very serious offence which involved loss of life. Life is a God given gift which as counsel for the state has*
20 *printed out, was brought to an abrupt end by the brutal and uncalled for acts of the convict. Courts in this country will not tolerate such reckless behavior and impunity in our society. In the premises, while sparing the convict the death penalty, I shall*
25 *give a longer period of confinement so that by the time he comes out, he will have sobered to live a better life. So instead of 26*

years, I subtract one year of remand, and do hereby sentence you to serve 25 years' imprisonment."

The sentence passed by the trial Judge is, in our view, within the range of sentences for murder. We must note that interfering with
5 the sentence is not a matter of emotions but rather one of law. Unless it can be proved that the trial Judge flouted any of the principles in sentencing, then it does not matter whether the members of this Court would have given a different sentence if they had been the one trying the appellant. **See Ogalo S/O Owousa v R [1954] 24 EACA**
10 **270.**

In **Godi Akbar Hussein Vs Uganda S.C.C.A No. 03 of 2013**, the appellant shot his wife to death and on conviction was sentenced to 25 years imprisonment.

In the instant case, the trial Judge considered the fact that the
15 appellant was of a young age at the time the offence was committed. He considered both the mitigating and aggravating factors before sentencing the appellant. A sentence of 25 years' imprisonment is an appropriate sentence in a murder conviction like the present one. We find no reason to interfere with the sentence passed by the trial Judge
20 because it is neither harsh nor excessive.

This appeal is accordingly dismissed.

Dated this 12th day of March 2022

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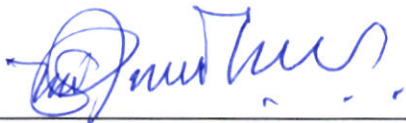


Hon. Justice Elizabeth Musoke, JA



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Hon. Justice Catherine Bamugemereire, JA



15 **Hon. Justice Stephen Musota, JA**