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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 74 & 159 OF 2012

**Coram: (Richard Buteera DCJ, Elizabeth Musoke & Cheborion Barishaki,
JJA)**

10 **LUSAMBA ALEX:.....APPELLANT**

VERSUS

UGANDA:.....RESPONDENT

*(Appeal from the decision of the High Court of Uganda at Entebbe before
Faith Mwendha, J dated 19th March, 2012 in High Court Criminal Case
15 No.42 of 2010)*

JUDGMENT OF THE COURT

The appellant was indicted and convicted of the offence of murder contrary to section 188 and 189 of the Penal Code Act on his own plea of guilty and was sentenced to 25 years imprisonment.

20 The facts giving rise to this appeal are that the deceased Lubowa Bob and the appellant were both musicians and residents of Entebbe Municipality. On 16/9/2010 at around 7:00pm, the deceased was in his room playing music while the appellant was in his house playing a guitar. The appellant went to the deceased's home and asked him to reduce on the loud music. He also closed the

5 deceased's door. The deceased asked the appellant why he had closed his door
and a fight ensued. A one Namagembe Shamim, a girl friend of the appellant
tried to stop the fight but she failed. The fight later seemed to have stopped,
however as the appellant was entering his room, the deceased kicked him and
he fell down. The appellant went into his house, he opened the fridge, picked a
10 sharp knife and stabbed the deceased on the throat. The deceased fell down and
started bleeding. Shamim went out to call for help and by the time people came,
the deceased was already dead. The appellant was arrested, charged, indicted
and sentenced to 25 years imprisonment on his own plea of guilty.

Being dissatisfied with the sentence of the learned trial Judge, the appellant
15 sought and was granted leave of court to appeal against sentence only under
section 132 (1) (b) of the Trial on Indictment Act. The sole ground of appeal states;

***The learned trial Judge erred in law and fact by imposing a manifestly
harsh sentence on the appellant.***

At the hearing of the appeal, Ms. Awelo Sarah appeared for the appellant while
20 the respondent was represented by Ms. Sharifah Nalwanga Chief State Attorney
holding brief for Ms. Nabisenke Vicky Senior Assistant Director of Public
Prosecutions.

It was submitted for the appellant that the learned trial Judge omitted to take
into account the period of 2 years the appellant had spent on remand and the
25 sentence meted out against him was illegal because it flouts the requirement of

5 article 23(8) of the Constitution. Counsel cited **Abaasa Johnson v Uganda Criminal Appeal No. 33 of 2010** for the position of the law that court will only interfere with a sentence imposed by a trial court where it is either illegal or founded on a wrong principle of law. Counsel cited **Rwabugande v Uganda SCCA No. 24/2014** for the proposition that a sentence passed without considering the
10 remand period is illegal.

Counsel further submitted that the appellant was a first time offender who pleaded guilty and did not waste court's time, he was repentant and remorseful. He prayed that the sentence of 25 years be reduced to 10 years so that he can go back to the community reformed.

15 Counsel further cited **Ederema Tomasi v. Uganda Criminal Appeal No. 554 of 2014** where it was held that taking the remand period into account is not a mathematical exercise but it must be considered and that consideration must be noted in the judgement.

In reply, it was submitted for the respondent that the sentence of 25 years was
20 lenient given the fact that the maximum sentence for murder is death. That the trial court considered both aggravating and mitigating factors which included the appellant's remand period. Counsel cited **Tukamuhebwa & Anor v Uganda CA 59/2016** for the proposition that to take into account is to bear in mind or consider or to be alive to the remand period before imposing a sentence.

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- 5 Counsel further submitted that the sentence of 25 years imprisonment was neither harsh nor excessive because it was consistent with the sentencing levels for offenders of similar offences and guideline No. 6 (c) of the constitution sentencing guidelines and that court properly exercised its discretion in sentencing the appellant.
- 10 As a first appellate court, it is our duty to re- evaluate the evidence as adduced and make our own inferences and conclusions on the facts and the law bearing in mind that it was the trial court which had the opportunity to observe the demeanour of the witnesses which this court was unable to do. **See Rule 30(1) of the Rules of this Court and Selle and Another versus Associated Motors Boat Company Limited and Others [1968] EA 123.**
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The learned trial Judge is faulted for not taking into account the period the appellant had spent on remand and the fact that he was a first time offender.

The appellate Court is not to interfere with the sentence imposed by a trial Court which has exercised its discretion unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial Court ignores to consider an important matter or circumstance which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle. **See Kiwalabye Bernard V Uganda, Criminal Appeal No.143 of 2001.**

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25 **Article 23(8) of the Constitution** provides that;

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5 *“Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.”*

In sentencing the appellant the learned trial Judge stated as follows;

10 *“The convict is a first time offender and he has been on remand since 2010. From the facts he had time not to have murdered in the heat of the moment. He walked to his house, opened his fridge and picked a knife, he stabbed the deceased in the neck, a part of the body which is very vulnerable. There was definitely intent to kill the deceased since he has pleaded guilty. The*
15 *maximum sentence for this offence is death. This is a sign of repentance and remorsefulness, taking in to account that entire he is sentenced to 25 years imprisonment.”*

In **Abelle Asuman versus Uganda, Supreme Court Criminal Appeal No.66 of 2016** the Supreme Court appears to have revisited the decision in *Rwabugande*
20 *Moses (supra)* when it held that;

25 *“Where a sentencing Court has clearly demonstrated that it has taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the appellate Court only because the sentencing Judge or justices used different words in their judgment or missed to state that they deducted the period spent on remand. These may be issues of style for*

5 *which a lower Court would not be faulted when in effect the Court has complied with the Constitutional obligation in Article 23(8) of the Constitution”.*

We note that the trial Judge was alive to the period the appellant had spent on remand though she did not expressly state it, he noted that the appellant had been on remand since 2010 and he took into account the same. We find that the
10 requirements of Article 23(8) of the Constitution were met. In addition, it’s also clear from the record that the trial Judge was alive to and took into account the fact that the appellant was a first time offender before meting out the sentence of 25 years imprisonment. We find no reason to fault her in deciding the way she did.

15 The Supreme Court has in ***Mbunya Godfrey V Uganda, Supreme Court Criminal Appeal No.4 of 2011***, emphasized the need to maintain consistency while sentencing persons convicted of similar offences. Court stated that “*We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing.*”

20 ***Guideline 6 (c) of the Constitution sentencing guide lines (Practice Directions) 2003*** 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.

5 In the instant case, the appellant was sentenced to 25 years imprisonment for killing the deceased after considering both aggravating and mitigating factors and the period of 2 years he had spent on remand since 2010. We shall proceed to ascertain whether the sentence of 25 years falls within the consistency and uniformity principle.

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

In **Uwera Nsenga vs Uganda CACA 824 of 2015** this court maintained the
15 sentence of 20 years imprisonment against the appellant who had run over her husband when he was opening the gate for her.

In **Hon. Akbar Godi V Uganda Supreme Court Criminal Appeal No.3 of 2013**, Court confirmed a 25 year imprisonment where the appellant had killed his wife.

In **Semanda Christopher and another versus Uganda CACA 77 of 2010**, the
20 court maintained the sentence of 35 years on the appellant who had been convicted of murder.

Having regards to the circumstances of the instant case we are of the strong view that the sentence of 25 years imprisonment meted out against the appellant was within the sentencing range of similar offences and squarely fell within the
25 consistency and uniformity principle. The sentence was neither harsh nor



5 excessive and we find no reason to fault the learned trial judge in deciding to sentence the appellant the way she did. We uphold the trial court's sentence of 25 years imprisonment.


This appeal is dismissed.

We so order.


10 Delivered at Kampala this 14th day of May, 2022.


Richard Buteera

DEPUTY CHIEF JUSTICE


Elizabeth Musoke

JUSTICE OF APPEAL


Cheborion Barishaki
JUSTICE OF APPEAL