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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 150 OF 2011

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

10 **PASKALI MASSAKE KAZOOYA:::APPELLANT**

VERSUS

UGANDA::RESPONDENT

(Appeal from the sentence of the High Court of Uganda at Mubende before Faith Mwondha, J dated 1st July, 2011 in High Court Criminal Case No.227
15 ***of 2009)***

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 and was sentenced to 25 years imprisonment.

20 The facts giving rise to this appeal are that;

The deceased Nanyonjo Jessica while on her way to work together with her friends, Nakkungu Prossy and Kimigabo Betty, met the appellant who stopped them and ordered the deceased and one Prossy Nakkungu to go and work at his

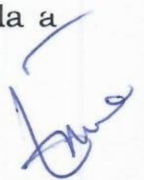
5 place. That immediately the appellant who was armed with a hoe moved closer to the deceased, hit her with the hoe on her head and cut her several times on the head. She fell in a trench as her friends took off while making an alarm. That the appellant started chasing the deceased`s friends with the same hoe but when he realised it was attracting people he ran towards the bush and went into 10 hiding. Prossy Nakkungu together with one Kanyike and others carried the deceased to the neaeby Kalyango clinic and she was later transferred to Mulago Hospital where she died.

A search was mounted and on the 24/12/2007, the appellant was arrested and charged. He was indicted, pleaded not guilty, tried, convicted and sentenced to 15 25 years imprisonment.

Being dissatisfied with the sentence by the learned trial Judge, the appellant sought leave of court to appeal against sentence only under section 132 (1) (b) of the Trial on Indictments Act which was granted. The sole ground of appeal is that;

20 ***The learned trial Judge erred in law and fact when she subjected the appellant to a sentence that was harsh, manifestly excessive and not in line with previous judicial precedents.***

At the hearing of the appeal, Mr. Mutange Ian Derick appeared for the appellant while the respondent was represented by Ms. Emily Mutuuzo Ssendawula a 25 State Attorney with the Directorate of Public Prosecution.



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It was submitted for the appellant that the learned trial Judge omitted to consider previous cases and precedents intended to ensure consistency in imposing sentences. Counsel cited **Abaasa Johnson v Uganda, Court of Appeal Criminal Appeal No. 33 of 2010** for the position of the law that court will only
10 interfere with a sentence imposed by a trial court where it is either illegal or founded on a wrong principle of law. Counsel also cited **Livingstone Kakooza versus Uganda SCCA NO.17 of 1993** for the proposition that sentences imposed in previous cases of similar nature while not being precedents, do afford material for consideration. He referred court to Guidelines 6 (c) of the Constitution
15 (sentencing guidelines for Courts of Judicature) (Practice) Directions 2013 to support the said proposition.

Counsel further submitted that the learned trial Judge made no reference to previous cases in which a similar offence was committed and accused persons sentenced. That in **Tumwesigye Anthony vs Uganda CACA 46 of 2012**, the
20 appellant was convicted of the offence of murder and sentenced to 32 years imprisonment, on appeal, this court set aside the sentence of 32 years and substituted it with 20 years imprisonment. In **Anywar Patrick and another vs Uganda CACA No.166 of 2009** court set aside the sentence of life imprisonment imposed on the appellants for murder and substituted it with a sentence of 19
25 years and 3 months imprisonment. That in **Uwera Nsenga vs Uganda, CACA**

5 **824 of 2015** in which the appellant run the husband over with a car, this court upheld a sentence of 20 years imprisonment for the offence of murder.

Counsel contended that the sentence of 25 years meted out on the appellant was inconsistent with the previous decisions of the court. He prayed that the sentence be reduced to 20 years imprisonment and upon deduction of 3 years
10 and 7 months he had spent on remand, he be sentenced to 17 years and 5 months imprisonment from the date of conviction.

In reply, it was submitted for the respondent that the sentence of 25 years was lenient given the fact that the maximum sentence for murder is death. That the trial court considered both aggravating and mitigating factors, and the
15 appellant`s remand period. That the learned trial Judge exercised her discretion judiciously within the precincts of the law.

Counsel further submitted that the appellate court can only interfere with the trial court`s sentence if it is evident that it acted on a wrong principle or overlooked some material fact or if the sentence is manifestly harsh and
20 excessive in view of the circumstances of the case. He referred court to **Kiwalabye Bernard v Uganda CACA No. 143 of 2001** to support the said principle and contended that none of the rules in Kiwalabye had been offended in the instant case to warrant interference.

In line with guideline 6 (c) of the sentencing guidelines cited by the respondent,
25 counsel submitted that there is a string of authorities where the Supreme Court

5 and Court of appeal have found sentences of murder ranging from 25 years to 35 years as well as life to be neither harsh nor excessive and accordingly upheld the same. That in **Muhwezi Bayon v Uganda, CACA 198 of 2013** court upheld the sentence of 25 years imprisonment for murder. In **Semanda Christopher and Another versus Uganda, CACA 77 of 2010** court declined to reduce the 10 sentence of 35 years on the appellant who had been convicted of murder. In **Kyatereka George William v Uganda, CACA 713/ 2010** and **Kisitu Mujaidin v Uganda CACA 128 of 2010** court upheld the sentence of 30 years imprisonment for murder. In **Nkonge Robert v Uganda, CACA** 148/2009 court upheld the sentence imposed upon the appellant who murdered the deceased 15 with a hoe without provocation.

That in **Bakubye Muzamiru and Another versus Uganda, SCCA No. 56 of 2015** cited with **Okello Goeffrey vs Uganda, SCCA No 34 2014** Court stated that the sentences of more than 20 years imprisonment for capital offences cannot be said to be illegal because they are less than the maximum sentence which is 20 death. Counsel further submitted that Courts have powers to pass appropriate sentences a long as they do not exceed the maximum sentences provided by law and that the sentence of 25 years imprisonment was lenient considering the fact that the maximum sentence for murder is death.

As a first appellate court, it is our duty to re- evaluate the evidence as adduced 25 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

5 demeanour of the witness which this court was unable to do. **See Rule 30(1) of the Rules of this Court *Fr. Narsensio Begumisa and 3 Others Vs Eric Tibebaga, Supreme Court Civil Appeal No. 17 Of 2002, Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997 and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.***

10 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 15 the sentence or where the sentence imposed is wrong in principle. ***See Kiwalabye Bernard V Uganda, Criminal Appeal No.143 of 2001.***

The gist of the appellant`s sole ground of appeal was hinged on the submission that the learned trial Judge never considered the consistency and uniformity principle when she sentenced the appellant to 25 years imprisonment for 20 murder. That she made no reference to previous cases in which a similar offence was committed and accused person sentenced. That sentences for similar offences of murder were much lower than the 25 years imposed on the appellant.

The Supreme Court has in ***Mbunya Godfrey V Uganda, Supreme Court Criminal Appeal No.4 of 2011,*** emphasized the need to maintain consistency 25 while sentencing persons convicted of similar offences. Court stated that *"We are*

5 *alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."*

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 10 and other means of dealing with offenders in respect of similar offences committed in similar circumstances.

The appellant was convicted of murder on 1/07/2011. Suffice to note that the requirement for a trial court to consider precedents when sentencing was endorsed in ***Livingstone Kakooza vs Uganda, SCCA No. 17 of 1993*** which 15 was decided on 8th November 1994 where court held that sentences imposed in previous cases of similar nature while not being precedents, do afford material for consideration.

In the instant case the appellant was sentenced to 25 years imprisonment for killing the deceased after considering both aggravating and mitigating factors 20 and the period of 4 years he had spent on remand. We shall proceed to ascertain whether the sentence of 25 years falls within the consistency and uniformity principle while bearing in mind that the principle cannot be arrived at mathematically because each case has its own peculiar circumstances.

5 In ***Adupa Dickens Vs Uganda, C.A.C.A. No. 267 of 2017***, 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 ***Hon. Akbar Godi V Uganda, Supreme Court Criminal Appeal No.3 of 2013,*** Court confirmed a 25 year imprisonment where the appellant had killed
10 his wife.

In ***Semanda Christopher and another versus Uganda*** *(Supra)*, the court maintained the sentence of 35 years on the appellant who had been convicted of murder.

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

Having regard 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
20 consistency and uniformity principle. The sentence was neither harsh nor 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.

25 We so order.

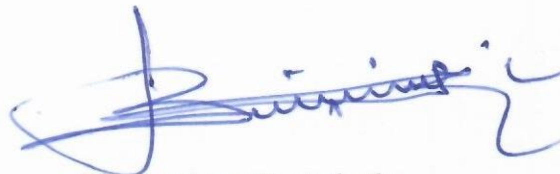
5 Delivered at Kampala this ...15th........... day of ......March........... 2022.

Richard Buteera

DEPUTY CHIEF JUSTICE

Elizabeth Musoke

JUSTICE OF APPEAL



Cheborion Barishaki

JUSTICE OF APPEAL