THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 235 OF 2011

(Coram: Egonda-Ntende, Bamugemereire & Madrama, JJA)

HABIMANA MOSES} ..... APPELLANT

VERSUS

UGANDA} ..... RESPONDENT

(Appeal from the decision of the High Court of Uganda Holden at Rukungiri in Criminal Session Case No. 57 of 2012 before J.W. Kwesiga, J delivered on 13th December, 2012)

JUDGMENT OF COURT

The Appellant was indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act, cap 120 laws of Uganda the facts of the trial were that the Appellant on 15th of August, 2010 at Bubale village in Kanungu district killed Ntamuhanga Stanley, his father. The Appellant attacked the deceased on 15th August 2010 and assaulted him to death. He was arrested in the process of fleeing the scene of the crime. The Appellant was tried and convicted as charged and sentenced to life imprisonment. Being dissatisfied with the decision of the trial judge, the Appellant appealed to this court against conviction and sentence on the following grounds:

1. The learned trial judge erred in law and fact to convict the Appellant of the offence of murder when the ingredients of malice aforethought had not been proved.

2. The learned trial judge erred in law and fact to convict the Appellant of the offence of murder without considering the defences of accident and intoxication.

3. The learned trial judge erred in fact to sentence the Appellant to life imprisonment which was a harsh sentence.

Learned Counsel Ms Kentaro Specioza on state brief represented the Appellant while learned Counsel Mr. Kyomuhendo Joseph, Chief State Attorney represented the Respondent. The Appellant attended court via video link from Mbarara main prison. The court was addressed in written submissions and judgment was reserved on notice.

Submissions of Appellant's Counsel

Ground 1 of the appeal: **The learned trial judge erred both in law and in fact convict the Appellant of the offence of murder when the ingredient of malice aforethought had not been proved.**

The Appellant's Counsel submitted that section 191 of the Penal Code Act, defines malice aforethought to mean an intention to cause the death of any person. She relied on **Nakisenge Kyazike v Uganda; Supreme Court Criminal Appeal No 15 of 2009** where the Supreme Court made reference to section 191 (supra) for the definition of malice aforethought and stated that the standard of proof that a person intended to kill the deceased and had knowledge that his or her act would probably cause the death of some person had to be beyond reasonable doubt. Counsel further relied on **Nanyonjo Harriet & another vs Uganda SCCA No 24 of 2002** for the proposition that intention is deduced from the circumstances surrounding the killing including the weapon and the part of the body that was injured.

The Appellant's Counsel further relied on the testimony of PW3, Kemirembe Rachel who informed court that she stayed at home when the Appellant came drunk and started beating the deceased using his hands by slapping him. The evidence of PW1 does not indicate what part of the body the Appellant was slapping. Relying on the authority of **Nanyonjo Harriet & another versus Uganda** (supra), the Appellant was using his hands to slap the deceased. The question is whether the hands can be categorised as a weapon and the answer is no. Counsel contended that by slapping the deceased using his hands, the Appellant had no intention to kill the deceased.

Secondly, considering the circumstances surrounding the killing, PW3 stated that the Appellant came while drunk and started slapping the deceased and therefore the Appellant was in an intoxicated state of mind

and could not have formed an intention to kill the deceased. She concluded that the circumstances surrounding the offence does not show that the Appellant killed the deceased with malice aforethought and prayed that the ground of appeal succeeds.

Ground 2: **The learned trial judge erred both in law and in fact convict the Appellant of the offence of murder without considering the defences of accident and intoxication**.

The Appellant's Counsel submitted that according to the testimony of PW3, the Appellant was drunk when he was slapping the deceased. In his defence, the Appellant stated that the deceased was drunk, it rained on him and this caused the death of the deceased. He narrated how he was drinking with the deceased in different bars. The Appellant left the deceased in a bar and went home. When he was at home, the Appellant saw the deceased trying to enter his house with difficulty because of his state of drunkenness. The Appellant tried to help the deceased by opening the door for him but the two men kept falling down.

The Appellant's Counsel submitted that the circumstances surrounding the Appellant's death showed that both the deceased and the Appellant were intoxicated and it is hard to tell whether the death of the deceased was on account of the Appellant's action or whether it arose from his own intoxication. Further Counsel submitted without prejudice that the Appellant's actions of slapping and pushing the deceased cannot be said to be that of a person who intended the deceased to die and therefore the death occurred accidentally. She prayed that the honourable court accords the Appellant the defences of intoxication and accident and discharges him from the conviction of murder.

Submissions of the Respondent's Counsel.

In reply Mr Kyomuhendo Joseph, Chief State Attorney submitted on ground one of the appeal also relied on section 191 (a) of the Penal Code Act for the definition of malice aforethought. This is an intention to cause the death of any person, whether such person is the person actually killed or not; or knowledge that the act or omission causing death will probably cause the death of some person, whether such person is the person actually killed or not, although such knowledge is accompanied

by indifference whether death is caused or not, or by a wish that it may not be caused. In the **Tubere S/O Ochen versus R [1945] EACA 63** it was held that in arriving at a conclusion as to whether malice aforethought has been established, the court must consider the weapon used, the manner in which it was used and the part of the body injured. Further the court held that there was no hard and fast rule in determining malice aforethought and every case has to be judged on its own facts. This principle was amplified by the Court of Appeal in **Chesakati Matiya v Uganda; CACA Number 95 of 2004** for the holding that malice aforethought can among other things be established from the conduct of the accused.

The Respondent's Counsel submitted that the Appellant unlawfully and with malice aforethought caused the death of the deceased. He also relied on the testimony of PW 3 Kemirembe Rachael, whom the learned trial judge believed to be a credible witness and told court that on the fateful day she was at home together with her deceased grandfather and the Appellant. The Appellant started beating the deceased. He was using his hands and slapping him. When he got up, he pushed him and he hit the back of his head on the ground. After some time, he got up and called her and a young child to go into the house and locked the door. They entered the house and closed the door. Thereafter the Appellant hit the door with stones and the door broke. The Appellant came and slapped and killed the deceased. The deceased told her to go and call her uncle one Bahirwa who came. They found when the deceased was already dead. She had left the accused beating the deceased from the sitting-room and she saw blood in the deceased's mouth. In cross examination she testified that on that day, the deceased and the accused did not quarrel although they used to quarrel.

PW4 Bahirwa Jackson testified that she was called by PW 3 and his house was about a mile away. They met the Appellant and arrested him. When he went to the home, he found that his father was dead and the body was in the sitting-room. In cross examination he testified that the Appellant was always harassing the deceased. The deceased was about 70 years old.

The Respondent's Counsel further referred court to the defence of the Appellant that his father was sleeping in the veranda of his house and PW3 was cooking. When he went to see his father (the deceased), he found when he had fallen down while holding the key to the house. He was also falling down and got the key from him and kept opening and falling. He called PW3 who found the deceased covered in mud whereupon she ran away. He submitted that the learned trial judge correctly arrived at the finding that the killing of the deceased had been was with malice aforethought. He admitted that there was no evidence that the Appellant used a deadly weapon. He invited the court to take into account the considerable age difference between the accused who was 38 years, was youthful and energetic and the deceased who was 70 years old and was frail. The Appellant pounced on the deceased whom he boxed, pushed and fell down and kicked him. The deceased locked himself in the house but the Appellant broke the door and continued assaulting the deceased. Further the post-mortem reveals that the deceased died as a result of a closed head injury and deduced that the head was one of the body parts that the Appellant targeted. Even if the injury was caused by the push of the deceased as elaborated by PW3, the Appellant exerted a lot of energy into the push and caused it.

Submissions of the Respondent's Counsel on ground 2:

With reference to the decision of the Supreme Court in **Nanyonjo Harriet and another v Uganda** (supra) the Respondent's Counsel invited the court to infer malice aforethought from the circumstances. He submitted that that was the most probable and natural consequence of the prolonged and continuous assault of a 70-year-old frail man by a 38-year-old young youthful and energetic Appellant. The Appellant used his hands and legs in a savage manner to assault the deceased. Further the Appellant had a history of violence and harassing of the deceased and on the fateful day formed the intention to finish him. He further contended that a hand and a leg of a 30-year-old youthful person is a lethal weapon as against a 70-year-old person. Further, he stated that the assault on the deceased was a prolonged and unprovoked assault where the Appellant slapped, kicked and pushed the deceased to fell and hit his head on the ground.

Upon realising that the deceased had died, the Appellant attempted to run away but was intercepted by PW4.

He contended that the conduct of running away is not that of a person who did not intend to cause death.

The Respondent's Counsel further submitted that the Appellant lied in his testimony. He told court that he saw his father sleeping in the veranda of his house calling on Kemirembe who was cooking. He reached when his father had fallen down while holding the keys of the house and he also kept on falling down when he got the key from him. Observed that this testimony contradicts the evidence of PW3 and PW4 in that PW3 ran from the scene of crime to call PW4 whom she informed that the Appellant was beating the deceased. This was confirmed by PW4 who arrested the Appellant. Counsel submitted that lies are inconsistent with innocence (see **Chesaki Matiya v Uganda** (supra) and the question was if the Appellant had not committed the offence, why did he have to lie on oath?

The above was considered by the learned trial judge. Counsel concluded that at the time of assaulting the deceased, the Appellant's intention was clear and it was to cause the death of the deceased whom he hated and harassed. In the circumstances he prayed that the court finds that the ingredient of malice aforethought was proved beyond reasonable doubt.

With regard to the 2nd ground of whether the learned trial judge erred both in law and fact to convict the Appellant of the offence of murder without considering the defences of accident and intoxication, the Respondent's Counsel submitted the Appellant wants the court to believe that he was under the influence of alcohol at the time he murdered the deceased. He relied on section 12 (1) of the Penal Code Act which provides *inter alia* that intoxication shall not constitute a defence to any criminal charge. Secondly, intoxication shall be a defence to any criminal charge if by reason of the intoxication, the person charged at the time of the act or omission complained off did not know that the act or omission was wrong or did not know what he or she was doing. Thirdly, the person charged was by reason of intoxication insane temporarily or otherwise at the time of such act or omission. Finally, it is stated that intoxication

shall be taken to account for purposes of determining whether the person charged had formed any intention.

The Respondent's Counsel submitted that the defence of intoxication is not applicable in the circumstances. Firstly, it does not pass the tests laid down in the Penal Code Act. As a question of fact the Respondent's Counsel maintains that the Appellant was not drunk at the time when he assaulted the deceased. He was in full control of his mental faculties and knew what he was doing and the consequences of his actions. The Appellant described chronologically the events of the day as they transpired save for the assault which he knew would incriminate him. He told a convenient lie. He narrated they drunk from certain bars for two hours and after that they went to another bar and started drinking and both he and the deceased got drunk. Counsel referred the court to the testimony of the Appellant. He concluded from the testimony that the Appellant was not drunk and was well oriented in both time and place. He managed to identify the people who arrested him. The lies of the Appellant confirmed that he knew what was happening.

The Respondent's Counsel further submitted that the court considered the defence of intoxication and correctly pointed out that the circumstantial evidence and other circumstances negate the Appellant's purported defence of intoxication. This included the fact that the Appellant broke the door after PW3 and the deceased attempted to avoid the assault.

Ground 3 of the appeal

The learned trial judge erred in fact to sentence the Appellant to life imprisonment which was a harsh sentence.

Ground 3:

The learned trial judge erred in fact to sentence the Appellants to life imprisonment which was a harsh sentence.

Submission of the Appellant's Counsel:

The Appellants Counsel submitted that by imposing a sentence of life imprisonment, the trial judge imposed a very harsh sentence. She

contended that the trial judge did not put into consideration the mitigating factors. These included the fact that according to the defence evidence, both the Appellant and the deceased were intoxicated. The Appellant is aged 48 years and can still be a useful citizen if he serves a term of sentence and goes back to society. He is a first offender and for the period he has already been in custody, he has already reformed and can be useful to society. Counsel relied on **Atiku Lino v Uganda; Court of Appeal Criminal Appeal Number 0041 of 2009** where the Appellant had been convicted of murder and sentenced to life imprisonment. On appeal, the Court of Appeal set aside the sentence and imposed a term of 20 years' imprisonment as appropriate. She prayed that the Appellant be sentenced to 20 years' imprisonment excluding the period spent on remand which period ought to start running from the date of conviction.

Respondents reply to ground 3

In reply, the Respondent's Counsel submitted that the sentence of life imprisonment imposed on the Appellant is lawful and actually lenient given the circumstances under which the Appellant murdered his father. He further relied on **Kiwalabya Bernard v Uganda; Criminal Appeal number 143 of 2001** also cited with approval **Kajubi Godfrey versus Uganda; Supreme Court Criminal Appeal number 20 of 2014** for the proposition that an appellate court is not interfere with a 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 being manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores an important matter or the circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle.

The Respondent's Counsel submitted that the learned trial judge considered the mitigating and aggravating factors and came to a conclusion. Further that the deceased was a 70-year-old person who needed love and respect from the Appellant but instead got a raw deal of being beaten to death by his son. The sentence was compelled by the fact that the Appellant murdered his own father. Counsel further relied on **Busiku Thomas v Uganda; SCCA Number 33 of 2011** for the proposition that in sentencing, the court should also consider the rights of the victim

of the crime as well as the public interest. He concluded that the Appellant was a danger to the community and ought to be put out of circulation.

With regard to the submission that the period the Appellant had spent on remand had not been deducted, the Respondent's Counsel submitted that this was lawful because a sentence of life imprisonment is for the remainder of a person's life and that position was settled in **Kato Kajubi v Uganda** (supra). Further Counsel submitted that the maximum penalty for murder is death and the Appellant was only sentenced to life imprisonment which is more lenient given the fact that he murdered his own father. He prayed that this court upholds the sentence of imprisonment for life.

Consideration of appeal

We have carefully considered the Appellant's appeal, the submissions of Counsel and the law.

This is a first appeal against the decision of the High Court in the exercise of its original jurisdiction and we have discretion whether to reappraise the printed evidence on the record of appeal by subjecting it to fresh scrutiny and coming to our own conclusions on matters of fact and law. In reappraisal of evidence we are required to be cautious of our shortcoming as compared to the trial judge who had the advantage of hearing witnesses, is that we have neither seen nor heard the witnesses testify and should defer to the conclusions of the judge on matters of credibility and demeanour of witnesses whenever it is in issue (See the holding of the East African Court of Appeal on the duty of a first appellate court in **Pandya v R [1957] EA 336, Selle and Another v Associated Motor Boat Company [1968] EA 123,** and the decision of the Supreme Court of Uganda in **Kifamunte Henry v Uganda; SCCA No. 10 of 1997**). The duty of this court is enabled by rule 30(1)(a) of the **Judicature (Court of Appeal Rules) Directions, S.I No. 13-10**, which provides that on appeal from the decision of the High Court in the exercise of its original jurisdiction, the court may reappraise the evidence and draw inferences of fact.

We have accordingly subjected the evidence on record to fresh scrutiny. Grounds 1 and 2 of the appeal are intertwined in that they deal firstly with the conviction of the Appellant for the offence of murder on the ground

that the necessary ingredient of malice aforethought had not been proved and secondly for not considering the defences of accident and intoxication. The two defences in our view are intertwined in that accident and intoxication may prove or show that there was no malice aforethought and therefore the two grounds will be considered together.

1. The learned trial judge erred both in law and in fact to convict the Appellant of the offence of murder when the ingredients of malice aforethought had not been proved.
2. The learned trial judge erred both in law and in fact convict the Appellant of the offence of murder without considering the defences of accident and intoxication.

In considering whether the death was caused by an unlawful act, the learned trial judge relied on the testimony of PW3, one Kemirembe Rachael, the granddaughter of the deceased who witnessed the Appellant beating the deceased and pushing him to the ground. Secondly, when the deceased was in the house and the door had been locked, the Appellant broke into the house, entered it and continued assaulting the deceased whereupon PW3, the only eyewitness went and fetched PW4 Mr. Bahirwa Jackson who upon arrival found that the deceased had already died. Secondly, the learned trial judge considered the medical report showing that the deceased died from a blow or a 'blunt trauma' from which he suffered a closed head injury. The learned trial judge considered other evidence showing that the deceased was a weak old man with poor nutrition and a wasted body. The learned trial judge considered both the kind of injury which had been caused and the evidence of the assault. Most importantly this is what he stated:

> It is most probable that the closed head injury was a result of a fall. Kemirembe told court that before she left the scene, the accused had pushed the deceased who fell down. The accused person would still be responsible for the injuries that resulted from the fall caused by his assault of the deceased.

Further the learned trial judge considered the defence of intoxication and whether the accused had to take the benefit of intoxication because he became incapable of forming an intention to kill or cause grievous bodily harm. He found that because the Appellant could remember the events of the day, it is not possible that he was intoxicated to the extent of having diminished responsibility.

The post-mortem report adduced in evidence by PW1 Dr Mantumaine dated 16th of August 2010 is not in dispute. The post-mortem report exhibit PE1 indicates that no autopsy was done. In paragraph 9 the cause of death and the reasons therefore is indicated as follows:

> Close head injury secondary to grant trauma as evidenced by nasal bleeding and bruise on the right orbital region.

He further stated that no weapons were seen and the most likely reason for the injury was a blow causing blunt trauma. Among other findings or general observation was that the body had poor nutrition as "the body was wasted and pale".

We have carefully considered the evidence of the only eyewitness Ms Kemirembe Rachael who testified when she was 13 years old. She testified after *voire dire* (a trial within a trial) was held to establish whether the witness was possessed of sufficient intelligence to justify the reception of her evidence whereupon and after satisfying the court, as a fit and proper witness, she was allowed to testify on oath. She testified on 26th November 2012 and stated that she was 12 years old. The offence took place on 15th August 2010 roughly 2 years previous so that and by deduction she was 10 years old at the time of the commission of the offence. The record has her brief testimony as follows:

> Ntamuhanga Stanley is my grandfather he died on 15th of August 2010. I know what killed him. I was present when he died. He had come from church on Sunday, I stayed at home with another child. Habyarimana Moses (my uncle) came while drunk. He started beating the deceased. He was using his hands. He was slapping him, when he got up he pushed him. He hit his back head on the ground. After some time, he got up, called me and the younger child that we go into the house and lock up the house. We entered and closed the door. The accused hit the door with stones, the door broke inside, the accused came and slapped and killed the deceased, grandfather told me to go and call my uncle Bahirwa.
>
> Bahirwa came with other Bataka. We found grandfather already dead. I had left the accused beating him from sitting room, but we found the body on the bed. I saw blood in the deceased's mouth.
>
> I started crying, I do not know what followed, the accused was arrested by a Bataka.

In cross examination, she stated that he was not drunk that day although used to drink waragi.

> He was the person preaching that day. I did not go to church that the I do not know whether the accused went to church. On that day they did not quarrel, although they used to quarrel. He used to send me to buy for him, he would drink from home. I saw him slapping and kicking the deceased. When I returned the accused had already been arrested. I had been with Collines, who was 4 years old. I only my other uncle, Kenneth. He was in Kasese when it happened. He appeared drunk, he was falling down and zigzagging.

The record of the testimony has some problems because of the way it was recorded without indicating which person the witness was talking about. Presumably the person who was falling down and zigzagging was the Appellant. Secondly, PW3 went away and did not see the deceased being killed. She only stated that she left the Appellant assaulting the deceased. Her statement that she was present when he died is a contradiction. Secondly, it is not clear whether the deceased was at home when the Appellant came and started beating him. However, the testimony shows that the witness was at home with another child. She does not mention that she was at home with the deceased.

PW4 Mr. Bahirwa Jackson stated that the deceased was his father and the Appellant is his younger brother. On 15th August 2010 at around 7 PM he was called by Kemirembe (PW3) on the ground and that the accused was beating his father and that he should come. His home was about 1 mile away. He called another person whom he did not know that the accused was beating his father. They met the accused on the way and arrested him. When they went home, they found that his father was dead. The body was in the sitting-room and he had fallen over a chair and his head was hanging. He put the body down on the mat and there was a little blood on his shirt. In cross examination he confirmed that he found when the deceased was already dead. Particularly this is what he said:

> He used to drink waragi. He was smelling alcohol. Accused had been arrested three times. I had no grudge with the accused. He was always harassing the deceased.

From the printed evidence, the person who was smelling of alcohol was the deceased.

In his defence, the Appellant gave evidence on oath. His testimony is that on 15th August 2010, he had spent the night at home and the next morning he went to greet his father who told him that he was going to church where there was a function. They had a visiting Reverent. They went to church together. After church, they drank at Kwizera's bar for 2 hours. After 2 hours they went to Kamali's bar. They started drinking and both of them got drunk. He told his father to go home. He went home between 7 PM and 7:30 PM. Most importantly he stated that he went to the home of the deceased and tried to help him go inside. He got the key from the deceased and they kept falling down and the deceased also kept on falling down. In other words, they were both drunk. He does not recall assaulting the deceased.

The learned trial judge disbelieved this testimony. We have tried to pick what is consistent with the prosecution testimony. This includes the fact that the deceased had also taken alcohol and it is likely that the deceased and the Appellant had been out drinking together. Secondly, the Appellant placed himself at the scene of the crime and the testimony of PW3 indicated that he assaulted the deceased. The injury which caused the death was a blunt trauma injury which the learned trial judge also found that the likely cause was the falling of the deceased after being pushed by the Appellant.

The learned trial judge established that no weapon was seen by anybody. This is what he stated:

> However, there is evidence that the accused inflicted several laws. He slapped and kicked the deceased who was both weak and a man of advanced age. There was a great deal of force used. This is inferred from the medical report that the deceased suffered closed head injury that led to bleeding from the nose. It is most probable that the closed head injury was a result of a fall.

We have not found any evidence that the Appellant used a great deal of force on the deceased. What is clear from the testimony is that the Appellant slapped the deceased and pushed him. The post-mortem report shows that the deceased was weak and emaciated. The most likely reason is that he had fallen from the assault and hit his head and this was the only death causing injury he suffered. Coupled with the fact that the prosecution witness PW3 stated that the Appellant was a zigzagging,

it is likely that he was very drunk. The fact that he could remember what happened on that day is countered by the fact that the witness saw him zigzagging which is a clear indication that the Appellant was drunk at the very material time. As to when during the day, he had a clear memory is in issue. At what point in time did the Appellant reach the point of walking in zig zags?

In the circumstances of this appeal, we are of the considered view that the Appellant is entitled to the benefit of doubt and find that there was no sufficient evidence to establish malice aforethought. Ground 1 of the appeal succeeds and the conviction of the Appellant for the offence of murder is hereby set aside. We find that the Appellant was guilty of assaulting his father and that the fatal injury on the deceased was caused by his father falling down. The deceased had also been drinking but there is no evidence to suggest whether he was drunk other than in the testimony of the Appellant. PW4 stated that he smelt of alcohol.

Having allowed ground 1 of the appeal, we do not have to consider ground 2 of the appeal because the sentence followed a finding that the Appellant was guilty of murder. We set aside the sentence and would substitute it with a sentence for the offence of manslaughter. We find that the Appellant is guilty of manslaughter contrary to section 187 of the Penal Code Act. Under section 190, a person who commits the felony of manslaughter is liable to imprisonment for life. The offence is also triable by a Magistrates Court.

We have carefully considered the circumstances. The Respondent's Counsel submitted in the trial court that the Appellant had no previous criminal record. He submitted that the Appellant who was then a convict behaved in a cruel manner when he killed his own father. That the acts were not provoked and he just assaulted an old man which led to his death. He prayed for a deterrent sentence. On the other hand, the defence indicated that he had been on remand for 2 years. He was remorseful and prayed for a lenient sentence. The record shows that the Appellant was 34 years old at the time he was charged. He is a married man and a son of the deceased. Having killed his own father when he was in a state of drunkenness is a terrible punishment in itself. He is a first offender as he has no previous record. The testimony of PW4 that the Appellant used

to assault the deceased and that he was arrested 3 times was not proved by the prosecution through police records. We are satisfied that the Appellant has no previous record of conviction.

In **Ainobushobozi Venancio v Uganda; Court of Appeal Criminal Appeal No. 242 of 2014**, the Appellant was convicted by the High Court of the offence of manslaughter contrary to sections 187 and 190 of the Penal Code Act and was sentenced to 18 years' imprisonment. His appeal against sentence to the Court of Appeal was allowed. The facts were that the Appellant got annoyed and assaulted the deceased. He pushed the deceased down and the deceased fell on a tree stump whereupon he became unconscious and was rushed to a nearby clinic from where he died soon thereafter. The Court of Appeal considered the fact that the Appellant was a first offender, he had spent 3 years on remand prior to his trial and conviction and was 21 years old at the time of commission of the offence. He was remorseful. The court also considered the fact that he had committed a very serious offence whose maximum penalty was life imprisonment. This Court set aside the High Court sentence and imposed a sentence over 12 years' imprisonment from the date of conviction in the circumstances.

The facts of this appeal are that the Appellant committed a grave offence of killing a human being. We have taken into account the fact that he was 34 years old at the time of commission of the offence. He has no previous record of conviction.

In the circumstances, we find that a sentence of 12 years' imprisonment would be sufficient to punish the Appellant for the offence he has committed. Secondly, from this period we take into account the period of about 2 years the Appellant spent on pre-trial detention.

The Appellant was arrested on 15th August 2010 from which time he remained in lawful custody until his conviction on 10th December 2012. This is a period of 2 years, 3 month and 25 days.

In the premises, we sentence the Appellants to serve 9 years 8 months and 5 days from the date of his conviction and sentence by the High Court on 10th December 2012.

Dated at Mbarara the 24th day of March 2022

Fredrick Egonda – Ntende

Justice of Appeal

Catherine Bamugemereire

Justice of Appeal

Christopher Madrama

Justice of Appeal