

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

[Coram: Egonda-Ntende, Bamugemereire & Mulyagonja, JJA]

CRIMINAL APPEAL NO. 56 OF 2021

(Arising from High Court of Uganda Criminal Session Case No. 176 of 2019 at Arua)

BETWEEN

Acia Martin=====Appellant

AND

Uganda=====Respondent

(Appeal from a Judgment of the High Court of Uganda (Byaruhanga, J.) delivered on the 8th October 2020.)

REASONS FOR JUDGMENT OF THE COURT

Introduction

- [1] When this appeal came up for hearing we allowed it and promised to provide our reasons for doing so later. We now do so.
- [2] The appellant was initially charged with 6 other persons of 2 counts of murder and robbery before the Chief Magistrates' Court at Arua on 29th March 2018. The particulars of the charges were that the appellant and 6 others on 17th February 2018, at Ombavu village, Arua District, robbed Asara Morfat of a motor cycle and at the time of the robbery used or threatened to use a deadly weapon in the form of a gun. The second count was that the appellant and 6 others, on 17th February 2018, at Ombavu village, Arua District, murdered Afeku Festo.

- [3] Subsequently only 4 people were committed for trial to the High Court which included the appellant on the count of robbery. However, at the trial the indictment that was read to the accused persons was for both counts of murder and robbery. It is to this indictment, a copy of which we have not seen, that they pleaded. At the trial the count of aggravated robbery was dropped and they were tried only on the murder charges. The three other persons charged with the appellant were acquitted of the offence of murder. It is only the appellant that was convicted of the offence of murder and sentenced to life imprisonment. He appealed against both conviction and sentence.
- [4] The other persons that were acquitted, we were informed from the bar, were subsequently charged with robbery, convicted and sentenced to a term of imprisonment. Records of that trial were not availed to us.
- [5] The appellant was represented on appeal by Mr Joseph Sabiti Omara while the respondent was represented by Ms Immaculate Angutuko, Chief State Attorney, in the Office of the Director, Public Prosecutions, for the respondent. Both counsel filed written submissions in this matter. Ms Angutuko opposed the appeal, supported conviction and sentence imposed on the appellant.

Facts of the Case

- [6] The facts of this case are that on the evening of 17th February 2018 PW1, Asara Morfat, was riding a motor cycle to Kuluva Hospital to pick a friend. It was after 10.00pm. When he reached Ala Bridge, he met 4 people, 2 of whom were armed with guns, that stopped him. He was able to recognise only the appellant, as one of the persons with a gun, who he knew previously. He dropped the motor cycle and run to his village, where he alerted several persons of the incident. A search party for the robbers was formed and they headed back to Ala Bridge. As they approached they heard gun shots and they moved towards where the gun shots were coming from. They found Afeku Festo who had been shot. Afeku Festo was the younger brother of the Asara