

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT GULU

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

CRIMINAL APPEAL NO. 255 OF 2017

(Arising from High Court of Uganda Criminal Session Case No. 007 of 2006 at Lira)

BETWEEN

Atine Bonny=====Appellant

AND

Uganda=====Respondent

(Appeal from a Judgment of the High Court of Uganda (Byabakama, J.) delivered on the 16th April 2009)

JUDGMENT OF THE COURT

Introduction

- [1] The appellant was indicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offence were that on the 3rd day of September 2005 at Bar-Acaci village in Lira District he murdered Adongo Jenifer. He was tried and convicted as charged on 23rd April 2009. He was sentenced to life imprisonment.
- [2] Dissatisfied with that sentence he now appeals against sentence only on the sole ground,

‘That the learned trial judge erred in imposing a sentence of life imprisonment which was deemed to be illegal and manifestly hash (sic) and excessive in the obtaining

circumstances and his prayer is that this appeal be allowed, set aside the sentence and substitute the sentence.'

- [3] The respondent opposed the appeal and supports the sentence of the trial court.
- [4] The appellant was represented by Ms Akello Alice Latigo. The respondent was represented by Ms Angutoko Immaculate, Chief State Attorney, of the Office of the Director of Public Prosecutions, holding brief for Ms Caroline Nabasa, Principal Assistant Director of Public Prosecutions, in the Office of the Director of Public Prosecutions. Both counsel filed written submissions upon which this appeal proceeded.

Facts of this Case

- [5] The learned trial judge found that the appellant and deceased were married customarily. In 2004 they separated, and the deceased's father had returned the dowry to the appellant. However, the deceased and appellant began dating afresh. The appellant often spent a night at the deceased's place including the last night the deceased was seen alive; on the 3rd of September 2005. The appellant left the deceased's home and apparently went to live in either to Hoima or Lugazi. He was finally arrested on 10th January 2006 and prosecuted for the murder of the deceased. He was convicted after a full trial on the 23rd April 2009 and was sentenced to life imprisonment.
- [6] The learned trial judge made the sentencing order below after hearing from the parties.

'SENTENCE:-

I have listened to both sides. The convict is said to be a first of offender. He is aged 34 years. The crime, he committed is indeed heinous. The deceased was his wife turned girl friend. He murdered her for no apparent reason. This ugly practice of killing wives must be met with the full force of the law. Women who are mothers of us all should be treated with respect, leave alone the fact that human life is sacred.

The convict ruthlessly terminated the life of the deceased who was still making a contribution to society since she was working. As a man he should have been her protector not the one to end her life in such bizarre manner.

The maximum penalty for murder is death. I however take into consideration the accused is still a young man. He ought to be given chance to reform and become someone who respects the lives of others. I also take into account the period of 3 and 1/2 years spent on remand. I therefore consider a sentence of life imprisonment appropriate in the circumstances.'

The case for the Appellant

[7] Counsel for the appellant submitted that the sentence imposed upon the appellant by the learned trial judge was harsh and excessive in the circumstances of this case. He stated that the appellant was only 25 years old when this offence was committed and had spent a considerable period of time on remand before conviction and sentence. This should have weighed in his favour. He proposed that a sentence of 17 years' imprisonment would be appropriate in the circumstances of this case.

[8] In support of his case, counsel for the appellant referred this court to Muhwezi Obedi v Uganda [2014] UGCA 52 where on appeal this court set aside a sentence of death and substituted it with 17 years' imprisonment for murder. He also referred to Uganda v Rwabugande Moses [2017] UGSC 8 where the Supreme Court reduced a sentence for murder from 25 years to 21 years' imprisonment.

The Case for the Respondent

[9] Counsel for the respondent submitted that the sentence imposed on the appellant was neither harsh nor excessive. She submitted that given the date of sentence, 23rd April 2009, before the Supreme Court decision in Tigo v Uganda [2011] UGSC 77 the sentence of life imprisonment was in effect 20

years' imprisonment, and this is really what the appellant has to bear. It was in line with the cases referred to by the counsel for the appellant.

- [10] Counsel for the respondent prayed that we find the appeal devoid of merit and clarify the meaning of the sentence handed down by the lower court and dismiss the appeal.

Analysis

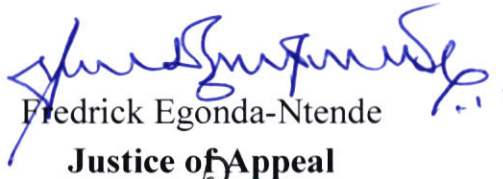
- [11] The law with regard to a sentence of life imprisonment or imprisonment for life was fairly well settled and was understood to mean a period of 20 years' imprisonment in accordance with section 46 of the Prisons Act at the time. See Livingstone Kakooza v Uganda [1994] UGSC 17. However, this settled position was unsettled by the Attorney General v Kigula and Others [2009] UGSC 6. It was categorically stated to be imprisonment for the remainder of the natural life of the convict in Tigo v Uganda [2011] UGSC 77. Sundya Muhamud and others v Uganda [2022] UGCC 7 by the Constitutional Court attempted to put the genie back in the bottle but the same is on appeal to the Supreme Court. A legislative response to the confusion surrounding life imprisonment sentences has been settled with the enactment of The Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act, 2019. But this is only for offences that were committed after the coming into force of that Act.
- [12] The case before us was committed before the enactment of the said Act, which among other things, defines what life imprisonment is and caps the number of years a sentence of imprisonment may attract.
- [13] Given the different interpretations that the courts have given the meaning of life imprisonment, those who administer sentences, and the victims of sentences must be at a loss as to which interpretation to follow. As counsel for respondent called upon this court to provide clarity it is essential that we provide the same, but we cannot, in doing so, hearken to either interpretations that hold contest. We shall provide clarity by denoting the sentence in a


determinate period to do away with the vagueness or lack of clarity associated with an indeterminate sentence of life imprisonment.

Decision

[14] The appellant committed a grave offence for which the maximum penalty is a death sentence. However, the appellant was a first offender and a young man capable of reform. We find that a sentence of 20 years' imprisonment would be the optimal punishment for the offence in question. We deduct therefrom 3 years and 4 months that the appellant spent in pre-trial custody. We order the appellant to serve a period of 16 years and 8 months' imprisonment from 23rd April 2009, the date of conviction.

Dated, signed, and delivered this ^{25th} day of ^{May} 2023


Fredrick Egonda-Ntende
Justice of Appeal


Catherine Bamugemereire
Justice of Appeal


Irene Mulyagonja
Justice of Appeal