

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBALE

(Coram: Hellen Obura, Catherine Bamugemereire and Christopher Madrama, JJA.)

CRIMINAL APPEAL NO. 0328 OF 2015

5 **1. OMASET TOM**

2. ANGOPA EKISA PATRICK:.....APPELLANTS

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Tororo before His Lordship Hon. Justice David Wangutusi, J in Criminal Session Case No. 0142 of 2013 delivered on the
10 *01/07/2015.)*

JUDGMENT OF THE COURT

Introduction

The appellants were indicted, tried and convicted of the offence of Murder contrary to sections
15 188 and 189 of the Penal Code Act by the High Court (David Wangutusi, J.) on the 01/07/2015. They were each sentenced to 27 years' imprisonment.

Background

The particulars of the offence as contained in the Charge Sheet were that Omaset Tom and
20 Angopa Ekisa Patrick, on the 01/07/2015 at Kojim A Zone in Tororo district with malice aforethought unlawfully killed Okacuga Moses. The appellants were consequently arrested, indicted, tried and convicted of the offence of Murder and sentenced as aforementioned.

Being dissatisfied with the decision of the trial court, the appellants appealed to this Court on only one ground on sentence, namely;

“That the learned trial Judge erred in imposing a sentence of 27 years’ imprisonment which is deemed to be manifestly harsh and excessive in the obtaining circumstances.”

5 **Representation**

At the hearing, Ms. Luchivya Faith represented the appellants on State Brief whereas Mr. Ojok Alex Michael, Assistant Director of Public Prosecutions represented the respondent. The appellants were present in Court. Counsel for the appellants sought for leave of this Court to appeal against sentence only under S.132(1b) of the Trial on Indictments Act (T.I.A) and the
10 same was granted since Counsel for the respondent did not object. Counsel for both sides filed written submissions which were adopted and have been considered in this judgment.

Appellants’ Submissions

Counsel submitted that in sentencing, there must be consistency and that this position was enunciated by the Supreme Court in **Aharikundira vs Uganda, SCCA No. 27 of 2015**
15 **(reported on Ulii in 2018 as [2018] UGSC 49 (03 December 2018))**. Counsel also relied on **Tumwesigye vs Uganda (Criminal Appeal No.46 of 2012) [2014] UGCA 61 (18 December 2014)**; where the appellant was convicted of murder and sentenced to 32 years’ imprisonment but on appeal this Court set it aside and imposed a sentence of 20 years’ imprisonment.

Counsel further buttressed his arguments with the decision in **Mulolo vs Uganda (Criminal**
20 **Appeal No.504 of 2017) [2022] UGCA 242 (28 September 2022)** where the appellant was tried, convicted of murder and sentenced to 15 years’ imprisonment and on appeal this Court maintained the sentence of 15 years. He prayed that the “harsh” sentence of 27 years is reduced so that the principle of consistency is maintained in sentencing.

Respondent's Reply

Counsel submitted that it is trite law that an appellate court can only interfere with the sentence imposed by a trial court in very limited circumstances. He further submitted that this Court has in numerous cases discussed the circumstances under which an appellate court can interfere with the discretion of the lower court and thus cited **Nashimolo Paul Kibolo vs Uganda, Criminal Appeal No. 46 of 2017** at page 6 in support of his submission.

Counsel referred to the decision in **Kyalimpa Edward vs Uganda, SCCA No. 10 of 1995** that an appropriate sentence is a matter for the discretion of the sentencing judge and that each case presents its own facts upon which a trial Judge exercises his discretion. It is the practice that as an appellate court, this Court will not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice. He supported his submission with the decision in **Ogalo S/O Owoura vs R (1954) 1 EACA 270 and R vs Mohamedali Jamal (1948) 1 EACA 126**.

He also submitted that looking at the facts before this Court, the appellants, while armed with pangas, in a waton, barbaric and inhumane manner waylaid the deceased between 7:00-8:00pm as he was going back home. They proceeded to hack, cut him and injure the deceased on various parts of his body and by the time the wife responded to the alarm, she found her husband with injuries and just dying. Further, that the appellants unlawfully terminated the life of the deceased. Counsel further submitted that the trial court having considered the aggravating and mitigating factors and the period on remand of 3 years, sentenced each of the appellants to 27 years' imprisonment.

He argued that looking at these very grave circumstances of commission, a sentence of 27 years' imprisonment was even lenient, that the two appellants were even lucky that they were sentenced to 27 years. He invited this Court to consider the Supreme Court decision in

Nashimolo Paul Kibolo vs Uganda (Supra) and also take into account the principle of consistency as discussed in **Aharikundira Yusitina vs Uganda (supra)** to maintain the sentence of 27 years imposed by the trial court.

5 Counsel contended that the decision in **Tumwesigye Anthony vs Uganda (supra)** which counsel for the appellants relied on to support her argument for a reduction of the appellant's sentence is distinguishable from the present case. He pointed out that in that case, the appellant and another allegedly murdered one Nahabwe Edson Kalisa a herdsman working for Rev. Canon Kamara. The reason for the murder was that the deceased had caused the arrest of the said Isaac Munene while he was trying to steal the chicken of the said Rev.
10 Canon Kamara. The deceased's death was due to a deep cut wound on the head, a fractured skull that led to intracranial hemorrhage.

Counsel concluded his submissions by stating that the above facts compared to the matter before this Court shows that the two are different and distinguishable. He then prayed that the sentence of 27 years' imprisonment be maintained in the circumstances of the case before
15 this Court.

Resolution by the Court

We have carefully studied the record of appeal and considered the submissions of both counsel as well as the law and authorities cited to us plus those not cited but which are relevant to the issues under consideration. We are alive to the duty of this Court as a first
20 appellate court to review the evidence on record and reconsider the materials before the trial Judge, and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. See **Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10.**

There is only one ground upon which this appeal is premised and this Court is required to
25 consider whether the learned trial Judge erred in imposing a sentence of 27 years'

imprisonment which is deemed to be manifestly harsh and excessive in the obtaining circumstances.

Counsel for the appellants submitted that the learned trial Judge erred in imposing a sentence of 27 years' imprisonment which was deemed to be harsh and excessive. Further, that in
5 sentencing there must be consistency of sentences in offences of similar nature as was observed by the Supreme Court in **Aharikundira Yusitina vs Uganda (Supra)**. He also relied on the decision in **Tumwesigye vs. Uganda (Supra)** and **Mulolo vs Uganda (supra)** in support of his submission that the sentences imposed on the appellants are manifestly harsh and excessive in the circumstances of the case and ought to be reduced by this Court to bring
10 it within the range of sentences in those authorities.

Conversely, counsel for the respondent opposed the appeal and invited this Court to consider the Supreme Court decision in **Nashimolo Paul Kibolo vs Uganda (Supra)** which states the circumstances under which an appellate court can interfere with the discretion of the lower court in sentencing. He submitted that this Court will not normally interfere with the discretion
15 of the sentencing Judge unless the sentence is illegal or unless Court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice. He argued that the decision in **Tumwesigye Anthony vs Uganda (supra)** relied on by counsel for the appellant is distinguishable because its facts are different from those in the present case.

20 Counsel urged this Court to take into account the principle of consistency as discussed in the case of **Aharikundira Yusitina vs Uganda (supra)** and maintain the sentence of 27 years imposed by the trial court.

In determining whether or not the sentence of 27 years' imprisonment imposed on the appellants is manifestly harsh and excessive in the circumstances, we have been guided by
25 the principle on consistency of sentences in offences of similar nature committed in similar

circumstances as stated by the Supreme Court in **Aharikundira Yusitina vs Uganda (supra)**. To that end, we will review the sentencing decisions of this Court and the Supreme Court in offences of murder committed in similar circumstances as we pay particular attention to the aggravating and mitigating factors in those cases and in the instant case. Before we do so, we wish to first of all point out that in **Aharikundira Yustina vs Uganda (supra)** the Supreme Court underscored the importance of sentencing as the tail end of a criminal justice system. It stated as follows;

"It is important that at the end of the trial an appropriate sentence is passed by the trial court. Sentencing is the heart and soul of Article 126 of the Constitution. It is one of the various ways courts are accountable to the people of Uganda on whose behalf they exercise judicial Power under Article 126 of the Constitution. The people of Uganda expect courts of law to pass sentences which are in conformity with law and must bear in mind the values, norms and aspirations of the people. Before a convict can be sentenced, the trial court is obliged to exercise its discretion by considering meticulously all the mitigating factors and other pre-sentencing requirements as elucidated in the constitution, statutes, Practice Directions together with general principles of sentencing by case law."

The Supreme Court further stated as follows in regard to consistency;

"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."

In terms of sentences imposed in offences of murder committed in similar circumstances like the instant case, we have looked at the following cases;

In **Otuba Patrick & Another vs Uganda, CACA No. 218 of 2010**, the 2nd appellant cut the deceased's neck (a 14-year-old boy) with a panga thereby killing him, they were arrested,

tried, convicted of the offence of murder and sentenced to 45 years' imprisonment. \On appeal, this Court reduced the said sentence of 45 years to 33 years' imprisonment.

In ***Okwong Mungu Ronald vs Uganda, Court of Appeal Criminal Appeal No. 212 of 2016***, the appellant killed the deceased by strangulation, he was charged with the offence of murder and he pleaded guilty and was sentenced to life imprisonment by the trial court. He appealed to this Court which reduced the sentence to a term of 32 years' and 8 months' imprisonment.

In ***Aharikunda Yusitina vs Uganda, Supreme Court Criminal Appeal No. 27 of 2015***, the appellant brutally murdered her husband and cut off his body parts in cold blood, the Supreme Court set aside the death sentence imposed by the trial court and substituted it with a sentence of 30 years' imprisonment.

In ***Kapolok William vs Uganda, Court of Appeal Criminal Appeal No.221 of 2011***, the appellant stabbed the deceased in the lower abdomen and his intestines started protruding out, the appellant was convicted and sentenced to life imprisonment. He appealed to this Court which reduced a sentence of life imprisonment to 27 years' imprisonment.

In ***Ayikanying Charles vs Uganda, Court of Appeal Criminal Appeal No.08 of 2012***, the appellant stabbed the deceased who died on spot. The appellant and deceased had a land dispute which was determined by court in the deceased's favour. The appellant was convicted and sentenced to 25 years for the offence of murder. This court upheld both conviction and sentence.

From the above decisions in which the circumstances were more or less similar to the ones in the instant case, we see that the sentences range from 25 years to 33 years. However, we are aware that there may be other cases with similar circumstances where the sentences are lower than 25 years depending on the mitigating factors while there could be others with higher sentences than 33 years because of the aggravating factors.

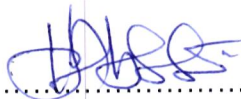
In the instant case, the aggravating factors that were presented by the prosecution were that the appellants hit the head of the deceased which was a vulnerable part of the body and the murder was premeditated since the appellants used pangas. Meanwhile the mitigating factors presented on behalf of the appellants were that they were first time offenders, remorseful and young men capable of reforming.

Considering the aggravating and mitigating factors and being guided by the above authorities which give the sentencing range for murder cases with circumstances similar to those in the instant one, we find the sentence of 27 years' imprisonment imposed by the learned trial Judge not harsh and excessive. We therefore find no reason to interfere with the discretion exercised by the trial court.

In the premises, the appeal is dismissed for lack of merit and the sentence of 27 years' imprisonment imposed by the trial court is upheld.

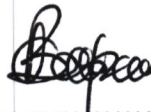
It should be noted that our learned brother, the Hon. Justice Christopher Madrama, JA does not agree with the sentence and therefore he has not signed this judgment.

Dated at Mbale this 18th day of January 2023 ~~2022~~



Hellen Obura

JUSTICE OF APPEAL



Catherine Bamugemereire

JUSTICE OF APPEAL