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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL**  
*Coram: Buteera, DCJ, Mulyagonja & Luswata, JJA*  
**CRIMINAL APPEAL NO. 109 OF 2011**

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**KUGONZA KENNETH ::: APPELLANT**

**VERSUS**

**UGANDA ::: RESPONDENT**

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*(An appeal from the decision of Akiiki-Kiiza, J delivered on 18<sup>th</sup> May, 2011 in Fort Portal High Court Criminal Session Case No. 107 of 2010)*

**JUDGMENT OF THE COURT**

**Introduction**

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The appellant was indicted with the offence of murder contrary to sections 188 and 189 of the Penal Code Act. After a full trial, he was convicted and sentenced to 25 years' imprisonment.

**Background**

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The facts as we understood them from the record were that the deceased, Emmanuel Musinguzi, was a Catholic and a member of the Xaverian Movement in his church. On 24<sup>th</sup> January 2010, at Katosa Village in Kyenjojo District, at about 7.00 pm, the members of the Xaverian Movement were on the way to Katosa Church to prepare for a function when they met the appellant, Kenneth Kugonza and one Karugaba Robert on their way. The two began to taunt the Xaverians by referring to them as prisoners and demanding that they tell them where they were going.

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The appellant grabbed their section leader, Robert Muhumuza, and a scuffle ensued to free him.

Unknown to the Xavarians the appellant had a knife with him which he used to defend himself. He used it to stab Muhumuza who fell down in pain. The appellant then grabbed the stave that was held by the deceased and a pole and run away with it. The deceased run after him to get the stave back but the appellant stopped, turned and stabbed him in the neck and fled from the scene. The deceased sustained a massive injury and was taken to hospital but it was too late to save him. He died as a result of his injury.

The appellant was arrested 2 days later and prosecuted for murder together with Robert Karugaba. However, the charges against Karugaba were withdrawn because he escaped from custody and was never found. At his trial, the appellant pleaded not guilty but the trial judge found sufficient evidence to convict him and sentenced him as stated above. Dissatisfied with both his conviction and sentence, the appellant now appeals against the decision on three grounds as follows:

1. That the learned trial judge erred in law and fact by finding and holding that the appellant was properly identified by PW2 and PW3 as the one who killed the deceased.
2. That the learned trial judge erred in law in sentencing the appellant to an illegal sentence in so far as he did not take into account the period spent on remand by the appellant as required by law.
3. Alternatively, that the sentence of 25 years' imprisonment imposed on the appellant was harsh and manifestly excessive in the circumstances.

The respondent opposed the appeal.

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## **Representation**

At the hearing of the appeal on 5<sup>th</sup> September 2022, Mr. Cosma Kateeba, learned counsel, represented the appellant on State Brief. The respondent was represented by Mr. Kulu Idambi John Boniface, Assistant Director of Public Prosecutions, from the Office of the Director of Public Prosecutions.

## **Determination of the Appeal**

The duty of this court as a first appellate court is stated in rule 30(1) of the Court of Appeal Rules. It is to reappraise the whole of the evidence before the trial court and draw inferences of fact from it. The court then comes to its own decision on the facts and the law but must be cautious of the fact that it did not observe the witnesses testify. **(See Bogere Moses & Another v Uganda; Supreme Court Criminal Appeal No.1 of 1997).** We observed these principles in the disposal of this appeal.

Counsel for both parties filed written submissions before the hearing of the appeal as it was directed by court. They each applied to court to consider the submissions as their final arguments in the appeal and their prayers were granted. We considered the related submissions before resolving each of the grounds of appeal. Counsel for both parties addressed the grounds of appeal in their chronological order and we considered them in the same order.

## **Ground 1**

The appellant's grievance in this ground was that the trial judge erred when he found that the appellant was properly identified by PW2 and PW3.

## **Submissions of counsel**

Mr. Kateeba, for the appellant submitted that the incident wherein the deceased met his death took place at night. That the only evidence implicating the appellant for the murder of the deceased was the testimony