



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

(Coram: Egonda-Ntende, Bamugemereire and Mugenyi, JJA)

CRIMINAL APPEAL NO. 524 OF 2015

JULIUS ATWEBEMBIRE APPELLANT

VERSUS

UGANDA RESPONDENT

**(Appeal from High Court of Uganda at Fort Portal (Batema, J) in Criminal
Session Case No. 139 of 2013)**

Muty.

JUDGMENT OF THE COURT

A. Introduction

1. Mr. Julius Atwebembire ('the Appellant') was convicted of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120, and sentenced to twenty (20) years' imprisonment. The facts of the case as garnered from the record of appeal are that on or about the 14th June 2013 at 6. 30 am, the Appellant attacked and hacked his biological father, Yosamu Rugogamu ('the deceased') to death, cutting him on the head several times and severing the deceased's hand and leg. He thereafter ran to his brother Tundu's home with a blood-stained panga and told him that he had just killed his father. He was subsequently arrested and recorded a charge and caution statement in which he confessed to having killed the deceased.

2. On 17th December 2015, the Appellant executed a plea bargain agreement with the prosecution in which he agreed to a 20-year custodial sentence. He was accordingly sentenced to 20 years for the offence of murder but has since lodged the present Appeal in this Court on the following grounds:
 - I. *He was wrongly committed to Mulukuhu Mbale prison without being convicted and without taking plea on the indictment and this caused him a serious miscarriage of justice.*

 - II. *The Learned Trial Judge improperly handled the plea taking process consequent to a plea bargain agreement and this caused injustice to the Appellant.*

3. When the Appeal came up for hearing, Mr. Richard Bwiruka represented the Appellant while the Respondent was represented by Ms. Josephine Aryong, a Senior State Attorney. Ms. Aryong conceded the Appeal on the premise that the trial judge had not followed the procedure for plea bargain and plea taking. Consequently, the Appeal was allowed and the matter remitted back to the High Court for retrial, but the detailed reasons therefor reserved. We do now furnish our reasons for that decision hereinbelow.

Muty.

B. Reasoned decision

4. Section 60 of the Trial on Indictments Act, Cap. 23 delineates the procedure to be followed in plea taking, while section 63 of the same Act enjoins the High Court to record an accused person's plea of guilt prior to his/ her conviction on such plea. The cited provisions read as follows:

60. Pleading to indictment

The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment ...

63. Plea of guilty

If the accused pleads guilty, the plea shall be recorded and he or she may be convicted on it.

5. Rule 12(2) of the Judicature (Plea Bargain) Rules, 2016 incorporates plea taking in the recording of a plea bargain as follows:

The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.

6. The import of the foregoing rule was espoused in **Musinguzi Apollo vs Uganda (2019) UGCA 157**, where this Court held the absence of plea taking to vitiate the Appellant's conviction and sentencing, observing that **'where there is a plea bargain, the accused shall still have to plead guilty and the proceedings in plea taking should be on record.'** The same position was reiterated in **Bangizi Godfrey vs Uganda, Criminal Appeal No. 337 of 2017**. (unreported).
7. The record of appeal in the present Appeal clearly depicts no record whatsoever of any plea taking having ensued before the trial court. Given the succinct provisions of the legal provisions cited above, as well as case law on the subject, it becomes apparent that a plea bargain agreement would not over-ride statutory provision for plea taking in criminal trials. In the absence of plea taking, there was

no conviction as would legally justify the 20-year sentence handed down to the appellant by the trial court or the commitment warrant in respect thereof.

8. It is for the foregoing reasons, therefore, that we did allow the Appeal and order the remission of the file to the High Court for retrial at the earliest opportunity.

Dated and delivered at Kampala this ^{16th}..... day of ^{April}....., 2023.



Fredrick M. S. Egonda-Ntende
Justice of Appeal



Cathereine Bamugemereire
Justice of Appeal



Monica K. Mugenyi
Justice of Appeal