

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
Coram; Buteera, DCJ, Mulyagonja & Mugenyi, JJA

CRIMINAL APPEAL NO. 496 OF 2016

5 **MASEREKA JACKSON ::::::::::::::: APPELLANT**

AND

UGANDA ::::::::::::::: RESPONDENT

*(Appeal from the decision of Mukasa, J delivered at Nakawa on
12th June 2014 in High Court Criminal Session Case No. 262 of
2014)*

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Introduction

The appellant was indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. He entered into a plea bargain agreement and was sentenced to 22 years and 9 months' imprisonment.

15 **Background**

The facts that were admitted by the appellant were that he and the deceased, Nabasa Benjamin, were casual labourers at a farm in Kiduduma Village, Kitumbi Sub County in Mubende District. In the night of 27th February 2012, one of the neighbours heard the deceased make an alarm 20 from the house that he shared with the appellant. Neighbours quickly responded to the alarm only to find the appellant alone in the house. On inquiring about the whereabouts of the deceased, the appellant informed them that he must have spent the night at a friend's place but he offered

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to lead them there. The neighbours followed the appellant but he disappeared only a few metres away from his house.

Shortly thereafter, the search party discovered the half-naked body of the deceased in a blue long sleeved shirt, only. The farm owner was informed 5 about the incident and a report was made to the Police. The deceased's body was later examined and it was established that he died as a result of a spinal cord injury with consequent asphyxia. The appellant who was already the prime suspect was arrested as he tried to flee from the village.

When the matter came up for hearing before the trial court on 5th June 10 2014, the prosecution informed court that the appellant entered into a plea bargain agreement. The court admitted the agreement onto the record after observing the necessary procedures attendant to the appellant's constitutional rights. The appellant endorsed the agreement and took his plea upon which he pleaded guilty and was convicted on his own plea. The 15 matter was adjourned to the following day for sentencing.

When the matter came up for sentencing on 6th June 2014, counsel for both parties prayed that the appellant be sentenced to 20 years' imprisonment including the 2 years and 3 months spent on remand, as it was stated in the plea bargain agreement. The trial judge adjourned the 20 matter to 12th June 2014 to sentence the convict. The judge then handed down a sentence of 22 years and 9 months' imprisonment, which was above what had been agreed upon with the prosecution. Dissatisfied with the sentence, the appellant now appeals on one ground as follow:

That the learned trial judge erred in law and fact when he departed from the plea bargain agreement in sentencing the appellant.

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Representation

At the hearing of the appeal on 17th August 2023, Ms Suzan Sylvia Wakabala represented the appellant. The respondent was represented by Ms. Adrine Asingwire, Chief State Attorney in the Office of the Director of 5 Public Prosecutions. The appellant followed the proceedings by video link to Murchison Bay Prison.

Counsel for the appellant applied to appeal against sentence only and leave was granted to her to do so. Both parties filed written submissions before the hearing as directed by court. They each applied that the court 10 considers them as their final arguments in the appeal and the prayers were granted.

Submissions of Counsel

Ms. Wakabala, counsel for the appellant, referred to the plea bargain that he signed wherein it was recommended that he would serve a sentence of 15 20 years' imprisonment, including the two years and three months that he spent on remand. She contended that the trial judge departed from the agreement when he sentenced the appellant to 25 years' imprisonment instead. Relying on Rule 13 of the Plea Bargain Rules, she asserted that court does not have the power to enhance the sentence agreed upon by 20 the prisoner. That the trial judge occasioned an injustice to the appellant when he did so. She prayed that this court sets the sentence aside and substitutes it with that which was agreed upon in the plea bargain agreement.

In reply, Ms. Asingwire conceded to the fact that the sentence that was 25 passed by the trial judge offended rules 13 and 15 of the Plea Bargain

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Rules. She added that for that reason the sentence imposed by the trial judge was illegal. She relied on **Wangwe Robert v Uganda; CA No. 572 of 2014** a matter in which as it happened to the instant case, the trial judge enhanced the sentence that was recommended in the plea bargain agreement. She pointed out that this court held that enhancing the sentence was prejudicial to the appellant and set the sentence aside. She observed that the sentence in the appeal now before us was passed on 12th June 2014, long before the Plea Bargain Rules came into force. Further that it was the same position in **Wangwe's** case (supra) but this court held that even then, the same principles applied. And that where a judge rejects the plea bargain agreement, she or he records the reasons why and refers the case back for a full trial to be held.

She urged this court to follow its decision in **Wangwe** (supra), invoke section 11 of the Judicature Act and section 132 (5) of the Trial on Indictments Act, set aside the sentence and substitute it with that which was agreed upon in the Plea Bargain Agreement.

Analysis and Determination

It has long been settled that this court will only interfere with a sentence imposed by the trial court when it is illegal or founded on wrong principles of law. The court will also interfere with the sentence where the trial court has not considered a material factor in the case, or has imposed a sentence that is harsh and manifestly excessive in the circumstances. [See **Kiwalabye Bernard v Uganda Supreme Court Criminal Appeal No. 143 of 2001 (unreported)**, **Bashir Ssali v Uganda [2005] UGSC 21** and **Livingstone Kakooza v Uganda [1994] UGSC 17**.] We took cognizance of these principles in disposing of this appeal.

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In this appeal, counsel for both parties agreed that the sentence that was imposed by the trial judge was outside the Plea Bargain Agreement and that it ought to be set aside because it is illegal. We perused the agreement that appears on pages 12 to 17 of the record of appeal. We observed that 5 in clause 5.2 thereof, the recommended sentence was stated as “*20 years in custody to include the time spent on remand.*” However, in his ruling on sentence, the trial judge found and held as follows:

10 “*The convict, then aged 28 years, was arrested and charged. He has pleaded guilty. In his allocutus the convict stated that he has children to look after and prayed for leniency.*

15 *The offence carries a maximum sentence of death. Under the Sentencing Guidelines the sentence ranges from 30 years with a starting point of 35 years of imprisonment. The prosecution and defence agreed to a sentence of 20 years' imprisonment to include the time spent on remand of 2 years and 3 months.*

20 *Considering all the above I find a sentence of 25 years' imprisonment (sic) I deduct therefrom the 2 years and 3 months spent on remand. I sentence the convict to 22 years and 9 months' imprisonment from conviction – i.e. 5/6/2014.*

25 *The convict has a right of appeal against sentence within 14 days.”*

It is evident that the trial judge did not agree with the sentence that was recommended in the agreement. He thus disregarded it and imposed his own sentence of 25 years' imprisonment which he deemed to be more appropriate in the circumstances of the case. At page 16 of the record, the 25 plea bargain agreement stated that:

“The foregoing plea bargain represents the full and complete agreement between the prosecution and the accused and it is reached freely without coercion or undue influence. Pending the



approval and sentencing/orders by the court, this agreement represents a final resolution in the matter. ...”

Since the parties bound themselves as stated, the court had no power to interfere in the agreement between them for it was a contract just like any other entered into with free minds, though subject to the court accepting the sentence and imposing it upon the prisoner as agreed. Since the agreement was subject to the court's acceptance of the terms, if the court refused them, the bargain would of necessity come to an end because sentencing is in the discretion of the trial judge. The matter would then have to go to full trial because the plea of guilty was in consideration of getting a lower sentence than would be imposed following a full trial.

In **Wangwe Robert v Uganda** (supra) the appellant entered into a plea bargain agreement in June 2014, before the coming into force of the Judicature (Plea Bargain) Rules, SI 43-2016. The prosecution and the prisoner agreed that he would be sentenced to imprisonment for 15 years if he pleaded guilty to the offence of aggravated defilement. However, the trial judge did not accept the recommended sentence for the reason that the prisoner was not remorseful. In her opinion, he needed to be put away for a long time because he defiled the victim repeatedly. She thus disregarded the recommended sentence and imposed the higher sentence of 20 years' imprisonment. She deducted the period spent on remand and sentenced the appellant to 18 years and 10 months' imprisonment. On appeal, this court faulted the trial judge for disregarding the plea bargain and held thus:

We note that the Judge's sentence in this case was imposed on 4th June, 2014, long before the Plea Bargaining Rules became effected. However, even before the Rules came into force, the same principles applied, to wit, that where a judge rejects the Plea Bargaining Agreement, she/he will record the

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reasons and refer back the file for full trial. There were guidelines to that effect.

With due respect, we find that the learned trial judge erred when she sentenced the appellant outside the plea bargain agreement, to his prejudice. According to the court record, the parties had participated in plea bargain agreement whereby they agreed upon a sentence of 15 years' imprisonment but the trial judge enhanced the sentence to 18 years and 10 months. Having done so, we find that the learned trial judge imposed an illegal sentence on the appellant. The sentence is, therefore, hereby set aside.

10 We were unable to find the Guidelines referred to in the decision but the court restored the agreed sentence of 15 years and deducted the period spent on remand bringing the sentence to 13 years and 10 months' imprisonment, pursuant to its powers in section 11 of the Judicature Act.

We have no reason to depart from the previous decision of this court in
15 **Wangwe's** case (supra). We find that the enhanced sentence of 22 years and 9 months imprisonment that was imposed by the trial judge in this case contrary to the Plea Bargain Agreement was prejudicial to the appellant and illegal; we therefore hereby set it aside. Pursuant to the powers vested in this court by section 11 of the Judicature Act, we shall
20 proceed to sentence the appellant pursuant to the terms in the agreement.

However, we cannot maintain the wording in the agreement that the appellant is sentenced to "20 years' imprisonment to include the period spent on remand." We are obligated to show that we are enforcing the provisions of Article 23 (8) of the Constitution to take into account the
25 period spent on remand before sentence, by crediting it to the convict. For that reason, we now deduct the period of two years and three months that the appellant spent in lawful custody before he was convicted.

The appeal thus succeeds and we hereby sentence the appellant to a period of 17 years and 9 months' imprisonment, and the sentence shall run from the date of conviction, 5th June 2014.

Dated at Kampala this 25th day of October 2023

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K. Buteera

Richard Buteera

10 **DEPUTY CHIEF JUSTICE**

Irene Mulyagonja

JUSTICE OF APPEAL

20 Monica K Mugenyi

JUSTICE OF APPEAL