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**THE REPUBLIC OF UGANDA**

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

(Coram: B Cheborion, JA, C. Gashirabake, JA, O. Kihika, JA.)

**CRIMINAL APPEAL NO. 0128 OF 2018**

*(Arising from Criminal Session No. HCT-00-CR-CS-88/2015)*

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BETWEEN

**ALIAT TIMOTHY LOPUTUKA.....APPELLANT**

AND

**UGANDA..... RESPONDENT**

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*(Appeal from the Judgment of the High Court of Uganda Holden at Moroto, by Henrietta Wolayo, J. delivered on 28<sup>th</sup> July, 2016)*

**JUDGMENT OF COURT**

**Introduction**

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1.] The appellant was charged with one count of murder contrary to sections 188 and 189 of the Penal Code Act.

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2.] The facts are that the appellant was a close friend of the deceased. Before the incident, the wife of the deceased had reported to the Local Council authorities of being harassed by the appellant and his friend. The deceased had warned them not to lay his wife. On the fateful day while at their marital home, one of the deceased's sons came running to the mother informing her that her husband had been murdered. The matter was reported to the police and the appellant together with his friend was tried for the offence of murder. At the conclusion of the trial, the friend was acquitted and the appellant was convicted and sentenced to 32 years' imprisonment.

5 3.] The appellant being aggrieved with the decision of the High Court lodged an  
appeal in this Court. The appeal is premised on two grounds set out in the  
Memorandum of Appeal as follows;

1. *The learned trial Judge erred in law and fact when she failed to  
properly evaluate the evidence on the court record and only based  
10 her judgment on the evidence of the prosecution in isolation thus  
coming to a wrong conclusion which occasioned a miscarriage of  
justice.*

2. *That the learned trial Judge erred in law and fact when he meted  
out a manifestly harsh and excessive sentence of 32 against the  
15 appellant without considering the mitigating factors.*

### **Representation**

4.] At the hearing of the appeal, the appellant was represented by Ms. Faith  
Luchivya. The respondent was represented by M. Samali Wakooli, Assistant  
Director of Public Prosecution (A DPP.)

### **Ground one**

**The learned trial Judge erred in law and act when she failed to properly  
evaluate the evidence on the court record and only based her judgment on  
the evidence of the prosecution in isolation thus coming to a wrong  
conclusion which occasioned a miscarriage of justice.**

5.] Before we consider this ground the respondent raised a preliminary objection  
on grounds that ground one offends Rule 66(2) of the Court of Appeal Rules  
for not being specific. Counsel submitted that counsel for the appellant did  
not clearly indicate which particular piece of evidence was wrongly decided.  
Counsel prayed that this Court applies the principles laid down in **Benjamin**

5           **Oteka Vs. Uganda, Criminal Appeal No. 175 of 2018**, and strike out this ground.

6.] Counsel for the appellant did not respond to this objection.

### Consideration of Court

1.] According to **Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions S.I 13-10 and Selle & another v Associated Motor Boat Co. Ltd.& others, (1968) E. A 123**, the Appellate Court is mandated to re-evaluate the evidence that was before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity to see and hear the witnesses firsthand. This duty was stated in **Kifamunte Henry vs. Uganda, Supreme Court Criminal Appeal No. 10 of 1997**. It was held that a first appellate Court has the duty to review the evidence of the case and reconsider the materials before the trial Judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanor the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanor, which may show whether a statement is credible or not which may warrant a court differing from the Judge even on a question of fact turning on the credibility of the witness which the appellate Court has not seen. **See Pandya vs. R. (1957) E.A. 336.**

