

5 **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. 0141 OF 2016**

*(Arising from Criminal Session No. HCT-00-CR-CS-345/2012)*

10 BETWEEN

**DHEWUME ABDALLAH.....APPELLANT**

AND

**UGANDA..... RESPONDENT**

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

**JUDGMENT OF THE COURT**

**Introduction**

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

2.] Briefly, the appellant lived in the same village with Mwase Musa (the  
deceased), Kalera Isima (the deceased’s son), and Kwaturira Madina (the  
deceased’s wife) at Kibugo zone in the Buyende district. Prior to the 13<sup>th</sup> day  
of April 2012, the appellant hatched a plan to kill the deceased and introduced  
25 the same to the deceased’s sons including Isima Kalera, Kairuku Yusuf, and  
Baganzi Isaac. On 13<sup>th</sup> April 2012, the appellant hit the deceased’s head with  
a hoe and the other 3 assisted him in cutting the body into pieces, stuffed it in  
a polythene bag, and put it in a hole they dug inside his house. The body was  
kept there till evening. At about 8.00 p.m. of the same day, they all carried  
30 the body towards a swamp, dug a pit, and disposed of it alongside the

5           deceased's bicycle and gum boots. After the deceased went missing, his  
second wife Maimuna reported to the authorities who mounted a fruitless  
search. Due to a grudge that existed between the deceased and his sons, the  
residents suspected them, causing them to flee the village. About four days  
later, Isima Kalera (PW2) returned home at night and was arrested. Upon his  
10       arrest, he confessed to having participated in the murder of his father together  
with the appellant and his 2 brothers (the fugitives). He led police to recover  
the deceased's body, his gum boots, and a bicycle. Further Investigations led  
to the arrest of the appellant and Kwatulira Madina (PW2's  
mother/deceased's 1<sup>st</sup> wife). The three were subsequently charged with  
15       murder. When the case came up for hearing on the 5<sup>th</sup> of November 2014,  
charges were withdrawn from Madina by way of a Nolle Prosequi. Isima  
Kalera admitted the offence and entered into a plea bargain arrangement and  
was sentenced to 20 years' imprisonment. The appellant denied the charge  
and on 16/3/2016 he was arraigned before the Court. He pleaded not guilty  
20       and subsequently underwent a full trial. To prove its case, the prosecution  
adduced evidence from 3 witnesses and documentary exhibits before closing  
its case. Upon finding that a prima facie case had been made out against the  
appellant, he opted to change his plea and pleaded guilty. He was convicted  
on his own plea and sentenced to imprisonment for life. The appellant was  
25       aggrieved by both conviction and sentence hence this appeal.

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. *That the learned trial Judge erred in law and in fact when he  
30       convicted the appellant on his own plea of guilty without following  
the due process.*



5                    2. *That the learned trial Judge erred in law and fact in passing an  
                             illegal, manifestly harsh, and excessive sentence.*

**Representation**

4.] At the hearing of the appeal, the appellant was represented by Mr. Nappa  
                             Geoffrey. The respondent was represented by Ms. Nabasa Caroline Hope,  
10                    Principal Assistant DPP.

**Ground one**

**That the learned trial Judge erred in law and in fact when he convicted the  
appellant on his own plea of guilty without following the due process.**

**Submissions by counsel for the Appellant**

15                    5.] It was submitted for the appellant that according to the record of appeal, it  
                             shows that after the prosecution had closed its case and the matter was coming  
                             up for hearing of the defense case, counsel for the appellant informed the  
                             Court that the appellant was desirous of changing plea from not guilty to  
                             guilty. The Court went ahead to read for the appellant the indictment which  
20                    the appellant is said to have understood. However, the appellant went on to  
                             add some statements saying that he never had any twins with the deceased's  
                             first wife.

6.] It was submitted for the appellant that the plea raises two issues; first, after  
                             the indictment had been read back to the appellant and said to have admitted,  
25                    in counsel's view it was important that all the particulars of the offence would  
                             be explained back to the appellant and facts equally read back to him to ensure  
                             that he had properly understood the charge. However, the record simply  
                             shows that only the indictment was read back.

