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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA TA KAMPALA

CRIMINAL APPEAL NO. 004 OF 2016

(Coram: Buteera, DCJ, Mulyagonja & Mugenyi, JJA)

1. **NSUBUGA PETER**
2. **SEKIZIYIVU PATRICK :: APPELLANTS**

VERSUS

UGANDA:: RESPONDENT

(An appeal against the decision of Elizabeth Nahamya Ibanda J dated 13th December 2015 at Mubende High Court).

JUDGMENT OF COURT

Background

The appellants were convicted of one count of murder contrary to sections 188 and 189 and one count of Aggravated robbery contrary to sections 285 and 286 of the Penal Code Act. They were sentenced to 25 years and 8 months' imprisonment on each count to run concurrently. The facts as garnered from the lower court record are that the appellants together with others during the night of 29th May 2011 at Brund fuel station in Bakijulula LC1 in Mubende Town Council, Mubende district strangled Mwiranda Ronnie Hunter, who was guarding the petrol station. The culprits took the guard's keys and

dumped his body in a pit latrine. The appellants while armed with iron bars, a tyre rubber band and a 303 rifle No. K41143, entered the office and stole money and a bio disc, among others. The appellants were convicted on a plea of guilty and sentenced to 30 years imprisonment on each count to run concurrently. Dissatisfied with the decision, the appellants appealed to this court based on the following grounds of appeal.

Grounds of appeal

1. **The learned trial Judge erred in law and fact when she did not follow the correct procedure for plea taking hence occasioning a miscarriage of justice to the appellants.**
2. **The learned trial Judge erred in law and fact when she passed a manifestly harsh and excessive sentence against the appellants.**

Representation

At the hearing of the appeal, the appellants were represented by Ms. Wakabala Suzan Sylvia while the respondent was represented by Mr. Richard Birivumbuka a Chief State Attorney from the office of the Director of Public Prosecutions.

Both counsel filed their written submissions and prayed that court adopts them as their final arguments in the determination of the

appeal. The prayer was granted by court and we have ably considered them in the determination of this appeal.

The Appellant's submissions

Ground one

Counsel for the appellant contended that the procedure adopted by the trial Judge while recording the plea of guilty was erroneous and thereby occasioned a gross miscarriage of justice to the appellants.
Counsel explained that when the matter came up for hearing in the trial court, the indictment was read and explained to the appellants but it is not indicated on the record where the facts were read out to disclose the offences with which they were charged.
Counsel relied on **Adan v Republic (1973) EA 445,** which set out the procedure for recording a plea of guilty.

It was counsel's argument that there was apparent failure to explain to the appellants the salient elements of the offences for which they were indicted. Counsel added that the appellants never fully appreciated the charges brought against them and this procedural step was vital thus omitting it was not only prejudicial to the appellants but also amounted to an illegality. Counsel invited this court to allow this ground of appeal.

Ground two

Counsel submitted that the sentence passed by the trial Judge was manifestly harsh and excessive in the circumstances of this case. It was counsel's contention that the appellants were convicted on a plea of guilty, which shows that they were remorseful and did not waste court's time of going through a full trial.

Counsel submitted that Nsubuga Peter was 21 years old at the time the offence was committed and he had high chances of reform. Further, that Sekiziyivu in mitigation stated that he had family responsibilities, as he was the one taking care of his siblings. Counsel contended that the mitigating factors were not given due weight that they deserved. She cited **Kabatera Steven v Uganda CACA No. 12 of 2001** for the proposition that the age of an accused person is always a material factor that ought to be taken into account before sentencing.

Counsel urged this court to set aside the sentence and substitute it with a more appropriate sentence taking into account the mitigating factors and parity of sentence by this court.

The respondent's submissions

Ground one

Counsel submitted that the record indicates that the facts were read to the appellants as indicated on page 14 of the record where the trial Judge noted that;

"Do the facts reflect true facts of what happened on that day."

Counsel submitted that the appellants indicated that the facts were true and correct on all counts.

It was counsel's contention that the record clearly shows that essential facts were read out to the appellants but it was omitted while typing the record. He cited **Uganda v Guster Nsubuga & Robinhood Byamukama SCCA No. 92** of 2018 where it was held that;

"However, it would be expecting too much to demand that all trials must run like clockwork, short of which they would result in nullification of the entire trial. We do not live in a perfect world so we would have to evaluate the impact of any particular imperfection on the entire trial."

Counsel submitted that it could not have been possible that the appellants pleaded to nonexistent facts. He prayed that ground one should fail.

Ground two

Counsel submitted that a plea of guilty is not a true reflection of remorse to entitle an accused person to a sentence that is not commensurate with the offence. Counsel further submitted that the appellant's age is not a prerequisite for a lenient sentence in heinous crimes like the present one. He cited **Nabongho Ibrahim v Uganda**

CACA No. 0181 of 2014 where this court imposed a sentence of 38 years' imprisonment on the appellant who was 20 years old.

Counsel contended that the sentence given to the appellants was too lenient given the circumstances of the case. He referred to **Bakubye Muzamiru & anor v Uganda SCCA No. 56 of 2015** where the Supreme Court upheld sentences of 40 years and 30 years' imprisonment for murder and Aggravated robbery.

He also cited **Magero Patrick & Gudoi Dauda v Uganda CACA No. 076 of 2019** where this court imposed a sentence of 45 years' imprisonment on the appellants who were charged with murder and Aggravated robbery.

Counsel submitted that the trial Judge took into consideration all material facts before sentencing the appellants to 30 years imprisonment, which sentence was neither harsh nor excessive. He prayed that ground two should also fail.

Decision of Court

We perused the lower court record and the authorities referred to by counsel and we have taken into consideration the submissions filed by both counsel in the resolution of this appeal.

This being a first appeal, it is our duty as a first appellate court to subject the evidence adduced at trial to a fresh re-appraisal and to draw our own conclusions, bearing in mind however, that we did not

have the opportunity to see the witnesses testify. **(See Rule 30 of the Judicature (Court of Appeal Rules) Directions S.I l3-10, Bogere Moses v Uganda [998] UGSC 22).**

Ground 1

On ground one, the appellants faulted the trial judge for not following the correct procedure in plea taking. Counsel for the appellant contended that the state did not read out the facts to the appellants to disclose the offences with which they were charged, which was a procedural irregularity that occasioned a miscarriage of justice.

We have had the opportunity to appraise the lower court record on the recording of the plea of guilty of both appellants. It is on record that the indictment was read and explained to the accused persons and they pleaded guilty. The state was then called to present the facts. In his statement, the state started by tendering in exhibits. For ease of reference, we shall reproduce the trial court's proceedings on plea verbatim;

"Court: do the facts reflect true facts of what happened on that day?

Accused: (Peter Nsubuga) A6 : The facts are true

Count 1- murder

Court: I Convict you peter Nsubuga upon your own plea of guilty of the offence of Murder c,/s 188 & 189 of the penal Code Act, Cap. 120.

Sekiziyivu Patrick: The facts are true.

Count 1 - (Murder):

Court: I convict you Patrick Sekiziyivu of the offence of Murder c,/s 188 & l89 of the Penal Code Act, Cap. 120 based on your plea of guilty.

Signed

Judge

13th December 2015

Count II (Aggravated Robbery):

I hereby Convict you peter Nsubuga upon your own plea of guilty to the offence of Aggravated Robbery c/s 285 & 286 (2) PCA Cap 120

Signed

Judge

13th December 2015

Count II Sekiziyivu _ facts are correct.

Count II (Aggravated Robbery) I convict you Patrick Sekiziyivu of Aggravated Robbery c/s S.285 & 286 (2) of the PCA upon your own plea of guilty.

Signed

Judge

13th December 2015"

From the proceedings of the lower court record above, it is evident that the facts were read out and explained to the accused persons who were

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fully represented by a lawyer. The appellants affirmed that the facts were true on both counts.

The procedure for recording a plea of guilty was clearly set out in **Adan v Republic (1973) EA 446** where the East African Court of Appeal stated as follows:

"When a person is charged with an offence, the charge and the particulars thereof should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. Thereafter the court should explain to him the essential ingredients of the charge and he should be asked if he admits them. If he does admit his answer should be recorded as nearly as possible in his own words and then a plea of guilty formerly entered. The prosecutor should then be asked to state the facts of the case and the accused be given an opportunity to dispute or explain the facts or to add any relevant facts he may wish the court to know. ..if the accused does not dispute the alleged facts in any material aspect, a conviction should be recorded and further facts relating to the question of sentence should be given before sentence is passed."

In the earlier case of **Tomasi Mufumu v. R (supra)**, court stated that;

"...It is very desirable that a trial judge, on being offered a plea which he construes as a plea of guilty in a murder case, should not only satisfy himself that the plea is an unequivocal plea, but should satisfy

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himself also and record that the accused understands the elements which constitute the offence of murder...and understands that the penalty is death."

Further in **Sebuliba Siraji v Uganda CACA No. 319 of 2009** this court held that:

"The record clearly indicates that the indictment and facts were not only put but fully explained to the appellant. His answers to all the stages of the proceedings indicate that he understood what was said to him, its consequences, and what the proceedings were all about. Moreover, there is no protest on record from his counsel to indicate that the appellant did not understand or misunderstood anything. In the premises, we conclude that the conviction was valid under section 63 of the Trial on Indictments Act and uphold it for being unequivocal."

In the present case, we find that the procedure as laid down in **Adan v. R (supra)** for the recording of a plea of guilty was followed in every detail. The record of proceedings from page 10 to page 15 shows in detail how the plea was taken. The appellants stated that the facts were true. The Prosecutor presented all exhibits including the charge and caution statement for Sekiziyivu where he had admitted that he committed the offences. We note that the appellants understood the nature of the offences they were charged with and pleaded guilty from

an informed position. We also noted that the appellants were also duly represented by an advocate while taking their pleas. We therefore do not find any irregularity in the recording of the pleas, which would have occasioned a miscarriage of justice.

The conviction was valid. Ground No. 1 of the appeal lacks merit and therefore fails.

Ground 2

On Ground No. 2, counsel for the appellants submitted that the sentence of 25 years and 8 months' imprisonment was harsh and excessive. We refer to **Karisa Moses v Uganda SCCA No. 23 of 2016** where the Supreme Court held that an appropriate sentence is a matter for the discretion of the sentencing Judge and each case presents its own facts upon which a Judge exercises his discretion.

We are also alive to the fact that courts are enjoined to maintain consistency in sentencing while being mindful that each case presents its own facts.

In **Nabongo Ibrahim v Ug. CACA NO. 181 of 2014**, the appellant was indicted of murder and aggravated robbery. He was convicted and sentenced to life imprisonment by the High Court. On Appeal, this Court reduced the sentence of life imprisonment meted out to the appellant to 38 years imprisonment on the Count of Murder and 30 years imprisonment on the Count of aggravated robbery.

In **Guloba Rogers v Uganda [2021] UGCA 16**, the appellant had been convicted of murder and aggravated robbery and sentenced to 47 years' imprisonment. On appeal, this court reduced the sentence to 35 years' imprisonment.

In **Bakubye & anor v Uganda [2018] UGSC 5,** the appellants were convicted of murder and aggravated robbery and were sentenced to 40 years on count 1 and 30 years on count 2 to run consecutively. This Court and the Supreme Court confirmed the sentences.

In the above quoted cases, the Courts were sentencing in respect of appellants who had not pleaded guilty but had gone through a full trial.

We have herein below looked at cases where the appellants pleaded guilty to murder and aggravated robbery.

In **Oyita Sam v Uganda CACA No. 307 of 2010**, the appellant pleaded guilty to having murdered his brother and was sentenced to death by the trial Judge. On appeal, this court substituted the death sentence with a sentence of 25 years imprisonment.

In **Mwerinde Lauben v Uganda CACA No. 151 of 2013** this court substituted a sentence of 35 years imprisonment with that of 30 years imprisonment after considering that the appellant had pleaded guilty and was a first time offender in a murder case. The years spent on remand were deducted and he was sentenced to 27 years and 9 months imprisonment.

In **Kayondo v Uganda CACA No. 51 of 2018,** the appellant indicted of murder and aggravated robbery at the High Court. He pleaded guilty to both counts. The trial Court convicted and sentenced him to 25 years and 21 years' imprisonment on conviction of murder and aggravated robbery respectively. On Appeal, this Court maintained the sentences has meted out to the appellant by the trial Court.

It is trite that there is a high threshold to be met for an appellate court to intervene with the sentence handed down by a trial judge on grounds of it being manifestly excessive. Sentencing is not a mechanical process but a matter of judicial discretion thus perfect uniformity is hardly possible. An appellate court will only intervene where the sentence imposed exceeds the permissible range or sentence variation **(See Aharikundira Yustina v Uganda SCCA No. 27 of 2015).**

The trial Judge in the instant case considered all the aggravating and mitigating factors. She considered the fact that the appellants were part of a dangerous gang. The murder and aggravated robbery in this case were premeditated. These offences were committed in the middle of Mubende Town causing apprehension and fear to the population. All the counts carry a maximum sentence of death.

Additionally, according to the sentencing range laid down in the third schedule of the Sentencing guidelines, both offences range from 35 years to death sentence after considering the mitigating and aggravating factors.

We find that the sentence of 25 years and 8 months' imprisonment on each count to run concurrently is neither harsh nor excessive. It is an appropriate sentence in the circumstances of this case.

Ground two also fails. In conclusion, the entire appeal fails and is hereby dismissed.

Dated at Kampala this.....19th.....day of.....October.....2023.

Richard Buteera

Deputy Chief Justice

Irene Mulyagonja

Justice of Appeal

Monica K Mugenyi

Justice of Appeal