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)

BETWEEN

DHEWUME ABDALLAH.....APPELLANT

AND

UGANDA.....RESPONDENT

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

JUDGMENT OF THE COURT

Introduction

1.] The appellant was charged with one count of murder contrary to sections 188 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 13th day of April 2012, the appellant hatched a plan to kill the deceased and introduced the same to the deceased's sons including Isima Kalera, Kairuku Yusuf, and Baganzi Isaac. On 13th 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 the body towards a swamp, dug a pit, and disposed of it alongside the

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 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 1st wife). The three were subsequently charged with murder. When the case came up for hearing on the 5th of November 2014, charges were withdrawn from Madina by way of a Nolle Prosequi.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 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 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 convicted the appellant on his own plea of guilty without following the due process.*

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, 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

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 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, 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.

7.] It was further submitted that as a matter of law, it was required that the trial Judge followed the plea taking procedure to the letter. The fact that the appellant had first pleaded not guilty to the offence and then changed their plea, does not take away the standard procedure in plea taking. Counsel cited **Adan Vs. Republic (1973) E.A 446 – 447** cited in the case of **Nsubuga Ali a.k.a. Cobra Vs. Uganda, Criminal Appeal No. 276 of 2017** and the case of **Oroni Basil Vs. Uganda, Criminal Appeal No. 0142 of 2018.**

8.] It was argued that from the foregoing, it is the appellant's understanding that the rationale behind this principle is to ensure that an accused person is properly convicted on his own plea. It is evident from the record that the particulars and facts of the case were never read back to the appellant for him to plead to, rather the record shows the Court noting that the appellant is hereby convicted on his own plea of guilty. Counsel submitted that the facts of this case are similar to those in **Oroni Basil Vs. Uganda Criminal Appeal No.0142 of 2018 at page 4.**

9.] It was submitted that the trial Judge having failed to follow due process in taking plea, the sentence was illegal. This should not be sanctioned by the Court. This was the position in the case of **Makula International Ltd. Vs. His Eminence Cardinal Emmanuel Nsubuga and Re. Fr. Dr. Kyeyune CACA No. 04 of 1981 or 1982 HCB 11** that;

> *"A court of law cannot sanction what is illegal, and illegality once brought to the attention of Court overrides all question of pleadings, including any admissions made thereon and the court cannot sanction an illegality".*

10.] Counsel prayed that this court is pleased to quash the said conviction and set aside the sentence.

Submissions by counsel for the respondent

Preliminary points

11.] Counsel for the respondent sought to clarify the record of appeal.

a) On the 27th of April 2023, the respondent received an online service of Record of Appeal (ROA) from the Court, and upon perusal, it was established that the same was incomplete as it missed all the evidence of prosecution witnesses who testified before the appellant's change of plea. This was reported to the registry and the appellant's counsel was also notified. The first ROA is properly indexed and paged (ROA – Vol 1).

b) On 31st May 2023, the respondent received an online service of the missing records. The same was not paginated and so, for ease of reference, counsel for the respondents have manually pagenated it from pages 1 to 50. (ROA – Vol 2).

12.] Turning to the merits of the case, it was submitted that the appellant first took plea on the 16th of March 2016. Both records confirm that the charges were read to him, he understood and denied the charge and stated *"I have understood it but I did not commit it."* From 16th March 2016 to 7th April 2016, 3 prosecution witnesses testified giving details of how the appellant was involved in the murder and his specific participation. In fact, the appellant had an opportunity to confront the witnesses which he properly exercised by cross examining them. He was at all times legally represented. The testimony of PW2 gave a chronological account of what transpired during the commission of the offence and the appellant's participation. Upon reading the charges afresh to him, the appellant replied *"I understand the offence, it is true I did it."*

13.] It was contended that the facts of the case which were material to the charge against the appellant had already been clearly brought out in evidence against him as pointed out above. Counsel submitted that they were mindful of the procedure laid down in the **Adan Case** cited by the appellant but contended that this case presents peculiar circumstances where the change of plea came after the closure of the prosecution case. It was submitted that the appellant's change of heart to confess was a result of appreciating a case against him and he perfectly understood what he was doing. Therefore, the issue at hand is "*whether "not reading the facts" to the appellant at the stage amounted to a miscarriage of justice!"* In the counsel's view, failure to read the facts back to him as complained about is a technicality curable under **Article 126** of the **1995 Constitution**. This is consistent with **Section 139 of the Trial on Indictments Act, Cap 23.**

14.] It was argued that for justice to prevail in this matter, this Court is required to interrogate the question as to *"whether the error of not reading the facts to the appellant who had heard and cross examined prosecution witnesses about the facts and evidence against him, had in fact, occasioned a failure/ miscarriage of justice".*

15.] A miscarriage of justice is defined to mean:

> *"a grossly unfair outcome in a judicial proceeding, as when a defendant (accused person) is convicted despite a lack of evidence on an essential element of the crime".* ***(Bryan A. Garner, Black's Law Dictionary 8th Edition Thomson West Publishers at page 1019***

16.] The question therefore is to determine whether the failure to read the facts caused a miscarriage of justice. Counsel prayed that this Court answers

this in the negative and finds that there was no miscarriage of justice at all and that this was simply a technicality.

17.] Counsel submitted that the rule set out in **Adan** is advisory/a guide and not mandatory, thus giving courts of record a chance to develop jurisprudence on a case to case basis. Counsel prayed that this Court should be pleased to find that the skipping of one step set up in **Adan case,** *Supra*, in the circumstances of the instant case, is neither detrimental to the appellant's right to a fair trial nor a miscarriage of justice.

18.] It was submitted that counsel for the appellant complained that more facts concerning the twins allegedly sired by the appellant, were new facts asserted in his explanation during plea taking, which should have caused doubt as to whether he intended to plead guilty. With due respect, this line of argument is devoid of merit as the issue of twins was immaterial since the Court was trying a murder charge and not a paternity case. It was contended that had the Court considered the issue to have had an effect on the matter, then, it would require the Court to record a plea of not guilty and set the case for hearing. However, the same case had already been heard and the prosecution had closed its case. Re-opening the same case at such a stage would be absurd and an injustice to the prosecution.

19.] In specific reply to the counsel's submission with regard to the case of **Oroni Basil Vs Uganda, Criminal Appeal No. 0142 of 2018**, the counsel submitted that the facts in the case of Oroni are distinguishable. Counsel submitted that in Oroni's case, it was a plea bargain that he had negotiated while still at police before the Regional Police Commander. On appeal, the Court found that the provisions of the law under **S.60-63** of the **TIA** were not followed thus a retrial was ordered. Counsel contended that in this instant case, the relevant sections of the law were followed save for the reading of

facts to the appellant after full trial and upon change of plea as already argued above.

20.] It was reiterated that this is a matter where an error in procedure, if any, can be cured as it did not occasion a miscarriage of justice to the appellant's detriment.

In the alternative and without prejudice to the foregoing;

21.] Counsel submitted that, in the unlikely event that this honourable Court will agree with the appellant on ground 1, the case be reverted to Court so that the facts can be read to him if he still maintains a guilty plea for purposes of rectifying the error.

22.] Counsel prayed that this appeal should fail.

Consideration of Court

23.] This being a first appellate Court, it has a duty to re-evaluate the evidence, weighing conflicting evidence, and reach its own conclusion on the evidence, bearing in mind that it did not see and hear the witnesses. According to **Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions S.I 13-10.**

24.] In ***Kifamunte v Uganda Supreme Court Criminal Appeal No. 10 of 1997*** court stated that:

> *We agree that on the first appeal, from a conviction by a Judge, the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to 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.

See also the cases of ***Pandya v. R [1957] EA 336, Bogere Moses v. Uganda SCCA No. 1 of 1997.*** It has the same effect.

25.] Considering the burden of proof and standard of proof in Criminal cases and based on the presumption of innocence enunciated in Article 28(3) of the Constitution of the Republic of Uganda 1995, an accused person can only be convicted by a court of law on the strength of the prosecution case and not on the weakness of the defense case.

26.] The law on the procedure on taking a plea of guilty is well stated in **Adan vs. R** (*Supra*) where the court held that;

> *"When a person is charged, the charge and the particulars 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. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or add any relevant facts, if the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to not guilty and proceed to hold a trial."*

27.] During the hearing the appellant pleaded not guilty from the onset. The prosecution led their evidence through three witnesses. The appellant had an opportunity to cross examine the witnesses which he actually did. After the

closure of the prosecution case, and the Court found that the prosecution had made a prima facie case against the appellant, his counsel informed the Court that the appellant was desirous of changing his plea. The court then read the statement of facts as follows;

> *"Dhewume Abdallah 32 years a resident of Budoliyo, Irundu, Kagulu Sub County, Buyende District. You are charged with the offence of murder of a person, you and others still at large, on 13th April 2012 in Kibugo Zone, in Buyende district, you killed Mwase Issa contrary to sections 188 & 189 of the Penal Code Act. Do you understand the charge? is it true or false?"*
>
> ***Accused***
>
> *I understand the offence; it is true I did it.*
>
> ***Court***
>
> *What is true?*
>
> ***Accused***
>
> *I murdered Mwase Issa as charged before this honourable Court."*

28.] We believe the essence of reading of the statement and particulars of the case to the appellant is to secure the unequivocal plea of the appellant after ascertaining that he understood what he is pleading to. This is to establish whether the Court and the appellant are having the same mind about the plea.

29.] We acknowledge the fact that the procedure in Adan was not followed to the letter, should we say that the learned Justice, by not strictly following procedure (*according to Adan set rules*), to wit, not reading the facts, which the appellant had already heard and understood prior to being asked to defend himself, resulted into a grossly unfair outcome in the judicial proceedings and thus amounted to a serious miscarriage of justice? The Trial on Indictments Act gives room to Courts to uphold decisions even when there was an error

during the proceedings as long as it does not lead to a miscarriage of justice. Section 139 of the Trial on Indictment Act provides that;

> *"Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, warrant, indictment, order, judgment or other proceedings before or during the trial unless the error, omission, irregularity of misdirection has, in fact, occasioned a failure of justice".*

30.] In the circumstances of this case, the pertinent question for this Court to interrogate then is, whether considering section 139 of the Trial on Indictments Act, the omission by the trial Judge to explain the ingredients to the appellant caused a failure of justice to the appellant so as to necessitate quashing the conviction and set aside the sentence.

31.] We note from the record of appeal, and as quoted above that as the Court read the statement to the appellant he seemed not confused as to what was being stated. He demonstrated that he understood and in his own words stated that he was guilty as charged by the Court. As observed earlier this plea was changed after the prosecution had closed its case against the appellant. The appellant was legally represented and his counsel did not protest to the fact that the appellant did not understand what was being said. The procedure in **Adan** *supra*, ought to be understood in the context that it is intended to ensure that Courts accepting the plea of guilt are satisfied that the same has been entered consciously, freely, and in clear and unambiguous terms as was observed in **Elijah Njihia Wakianda Vs. R., Kenya Court of Appeal Case No 437 of 2010 cited by** Counsel for the Respondent. In the instant case, when the court was ready to listen to the appellant's defense, the latter decided to confess to his guilt. Any ambiguity in the change of

appellant's mind, if any, was cleared when the court probed into the meaning of what the appellant had said and the latter clarified that "*I murdered Mwase Issa as charged before this honorable Court.*"

32.] We note that even though there was an omission to explain to the appellant the ingredients of the offence of murder it was neither detrimental to the rights of the appellant nor did it occasion a miscarriage of justice.

33.] This ground fails.

Ground 2

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

Submissions by counsel for the Appellant

34.] It was submitted for the appellant that the sentence was manifestly harsh considering the circumstances of the case. Counsel cited **Kamya Johnson Wavamuno vs. Uganda, SCCA No. 16 of 2000,** and **Kyalimpa Edward vs. Uganda, SCCA No. 10 of 1995**, which are of the same effect. They hold that the court will not interfere with a sentence unless the trial Court has acted on wrong principles or overlooked a material factor or where manifestly excessive or too low to amount to a miscarriage of justice.

35.] Before any Court of law reaches the conclusion on the sentence to be passed, the Court is under obligation to take into consideration both the mitigating and aggravating factors. In the case of **Aharikundira Yusitina vs. Uganda SCCA No 27 of 2015**, it was held that:

> "*before a convict can be sentenced, the trial court is obliged to exercise its discretion by considering meticulously all the mitigating factors and other pre-sentencing requirements as elucidated in the*

constitution, statutes, prosecution directions together with general principles of sentencing as guided by case law".

36.] It was submitted that the appellant was at the time aged 35 years when he committed the offence. There is no doubt that the appellant was a very young person with a bright future which fact the trial Judge ought to have taken into consideration. That much as the appellant took a life and he indeed confessed and prayed for forgiveness, he deserves another chance. The appellant had many dependents to be precise 8 children plus his elderly 2 parents who all depended on him. The appellant himself also went on to state that since he admitted the offence, and he was a 1st time offender he prayed for leniency.

37.] Counsel submitted that with a life sentence it means that as per the sentence passed by the trial Court, the appellant will never have a chance to leave the prison as he has to serve the sentence for the rest of his natural life.

38.] The Constitution (Sentencing Guidelines for Court of Judicature) (Practice) Directions provide for the starting point in sentencing for murder as 35 years and a maximum of death. This is in line with what the prosecution proposed. Counsel prayed that this Court invokes its power under Section 11 of the Judicature Act, sets aside the sentence by the High Court, and sentence to appellant to a sentence it deems fit.

39.] Counsel prayed that the principle of consistency provided for under Guideline No. 6(c) of the Constitution (Sentencing Guidelines), should be followed. He cited the case of **Tusingwire Samuel Vs Uganda, {2016} UGCA 53,** which cited the case of **Manige Lamu Vs. Uganda, Court of Appeal, Criminal Appeal No. 384 of 2017,** where this Court found the sentence of life imprisonment imposed against the appellant for the offence of murder, harsh and manifestly excessive, and reduced the sentence to 30

years' imprisonment. Counsel also cited the case of **Atiku Vs. Uganda {2016} UGCA 20,** which cited the case of **Manige Lamu Vs. Uganda** (*Supra*) where the appellant was convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act, and sentenced to life imprisonment. On appeal, this court reduced the sentence to 20 years' imprisonment.

40.] In **Rwabugande Vs. Uganda, Supreme Court Criminal Appeal No. 25 of 2014**, cited the case of **Anguipi Isaac Alias Zako Vs. Uganda, Criminal Appeal No. 282 of 2016,** where the Court of Appeal had sentenced the appellant to 35 years in custody for murder, on appeal to the Supreme Court, the Supreme Court reduced the sentence to 21 years.

41.] Counsel submitted that the sentence of imprisonment for life in the circumstances would be extremely harsh and that this Court be pleased to set aside and substitute it with a more lenient sentence.

Submissions for the respondent

42.] Counsel for the respondent submitted that counsel for the appellant rightly cited the principle espoused in **Kyalimpa Edward V. Uganda, Cr. App. No. 10 of 1995** that has been followed subsequently in other celebrated cases including; **Kiwalabye Bernard Uganda, (SC Cr. App. No. 143 of 2001), Kariisa Moses Vs Uganda, SC Cr. App. No 23 of 2016 et al.** Counsel underscored the fact that on the issue of *"manifestly excessiveness"*, the Court ought to look for the catch point which is the resultant effect, that is to say; *"amounting to an injustice" or "a miscarriage of justice"*.

43.] It was contended that the said catch points ought to be envisaged in the circumstances of the case to warrant the appellate court's interference with the sentence. For this case, counsel needed to demonstrate how the sentence

complained against amounted to *an injustice that led to a miscarriage of justice.*

44.] It was submitted that counsel for the appellant failed to demonstrate how imprisonment for life was illegal and excessive when the maximum sentence was the death penalty. Citing with approval the case of **Ogalo S/O Owoura Vs R [1954] 24 EACA 270),** the case of **Aharikundira Yustina VS Uganda, Criminal Appeal No. 104 of 2009**, held that;

> *"Interfering with sentence is not a matter of emotions but rather one of law. Unless it can be proved that the trial Judge flouted any of the principles in sentencing, then it does not matter whether the members of this court would have given a different sentence if they had been the ones trying the appellant. In the instant case, the trial Judge had the opportunity to hear the case and watch the appellant and all the witnesses testify. In his wisdom, he found that the most appropriate sentence was death. Without proof that this discretion was biased or unlawful, this court would have lawful means of interfering with the same".*

45.] Counsel for the respondent further argued that counsel for the appellant alluded to the fact that by entering a plea of guilt, the appellant was remorseful and did not waste the Court's time. Counsel for the respondent contended that the record reveals that the appellant changed plea after the Court and the State in general had spent both time and financial resources. So his change of plea cannot be construed as remorsefulness but rather guilty consciousness of knowing that the truth against him had been proved. Counsel for the respondent further argued that even if that was to be credited to him in mitigation, still he being the author and implementer of such a heinous crime deserved to spend the rest of his life in prison. He was spared the maximum sentence and therefore a less severe sentence was most

appropriate in the circumstances and as such does not qualify to be adjudged excessive.

46.] In advancing the consistency argument, Counsel cited a few cases where appellate Courts have reduced sentences claiming similarity. With the instant case, counsel for the respondent contended that no single case is ever similar to the other, and in all those cases counsel for the appellant cited, none of them had exact facts and calculated moves similar to those made by the appellant in the instant case. It was argued that the Court should be guided by decisions where a death sentence and imprisonment for life were appropriate. See **Rwalinda John vs. Uganda, SC Cr. App. No. 3 of 2015** where life imprisonment was upheld twice by this court and Supreme Court, **Sekandi Hassan Versus Uganda, Cr. App. No. 86 of 2015**, this Honourable court dismissed the appeal and confirmed the Death sentence for a gruesome murder. Likewise, in **Kato Kajubi Vs. Uganda, SC Cr. App. No 20 of 2014,** a sentence of life imprisonment was upheld. It was the counsel's contention that the instant case falls squarely within the category of the cases that deserved a maximum sentence, and therefore submitted that the Court was instead too lenient to save the appellant the maximum penalty but found the second most severe sentence most appropriate, given the prevailing circumstances.

47.] It was argued that the learned trial Judge considered all the factors and judiciously exercised her discretion to find imprisonment for life appropriate under the circumstances.

48.] In conclusion, counsel submitted that the circumstances of this case deserved a deterrent sentence rather than reformatory as advanced by the appellant. It was prayed that the appeal be dismissed and both conviction and sentence be upheld and confirmed respectively.

Consideration of Court

49.] The Supreme Court has laid down the principles upon which an appellate Court should interfere with the sentencing discretion of the trial Court, in **Kyalimpa Edward vs. Uganda; Supreme Court Criminal Appeal No.10 of 1995,** the Court relied on **R vs. Haviland (1983) 5 Cr. App. R(s) 109** and held that:

> *"An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice:* ***Ogalo s/o Owoura vs. R (1954) 21 E.A.C.A 126 and R vs. MOHAMEDALI JAMAL (1948) 15 E.A.C.A 126."***

50.] In **Kiwalabye vs. Uganda, Supreme Court Criminal Appeal N0.143 of 2001** it was held:

> *"The appellate court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentences unless the exercise of the discretion is such that the trial court ignores to consider an important matter or circumstances which ought to be considered when passing the sentence."*

51.] The case must present facts that warrant the Court to interfere with the discretion of the Court. Otherwise, the appellate Court will uphold the trial Court's sentence as long as the Court did not fault any of the sentencing principles or lead to a miscarriage of justice.

52.] As to whether the sentence is harsh and excessive, this varies from case to case. Even when the case has similar facets, each case carries a unique identifier that guides the Court to pass an appropriate sentence. The Court passes the sentence after considering all factors of the case. There is no weighing scale of what amounts to excessive save that the Court is guided by the fact that the sentence neither amounts to an injustice nor a miscarriage of justice.

53.] Considering the similarity in facts, in **Kato Kajubi vs. Uganda** *(Supra)* referred to by counsel for the respondent, the Supreme Court upheld the sentence of life imprisonment having considered the gruesome way the victim was murdered. Additionally, in **Ssekawoya Blasio, SC Criminal Appeal No. 24 OF 2014**, the Appellant was imprisoned for life for the premeditated murder of his three children. In **Turyahabwe Ezra and 14 others vs. Uganda, SCCA No. 50 of 2015**, this Court and the Supreme Court upheld a life imprisonment sentence against some of the Appellants who were convicted of murder. Lastly, in **Sunday vs Uganda, CACA NO. 103/2006** the Court of Appeal upheld a sentence of life imprisonment for a 35-year-old convict who was part of a mob that attacked a defenceless elderly woman until they killed her,

54.] While sentencing the Judge is to be guided by both the mitigating and aggravating factors in making the sentencing decision but they are not binding on the Court. In mitigation, the appellant was remorseful, was a first time offender, and had 8 children and 2 elderly parents to take care of. For aggravating factors, murder attracts a maximum penalty of death, the death was pre-meditated, deceased sustained repeated injuries both on the body and head. The deceased was suffocated to death in a polythene bag. Deadly weapons, that is a hoe and a small panga were used. The accused influenced

the children against the father and there was an attempt to conceal the evidence. The appellant only pleaded guilty after considering the strength of the evidence of the prosecution against him.

55.] In our own analysis after considering both the mitigating factors and the aggravating factors together with previously decided cases, we find that the life sentence in the circumstances of this case was appropriate.

56.] This ground fails

57.] Consequently, the appeal fails.

58.] The Orders of the lower Court are upheld.

We so Order

Dated at Kampala this 1st **day of** Nov **2023**

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CHEBORION BARISHAKI

JUSTICE OF APPEAL

.....

CHRISTOPHER GASHIRABAKE

JUSTICE OF APPEAL

.....

OSCAR JOHN KIHIKA

JUSTICE OF APPEAL