

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL

[Coram: Egonda-Ntende, Bamugemereire & Mugenyi, JJA]

CRIMINAL APPEAL NO. 264 of 2021

(Arising from High Court Criminal Session Case No.0138 of 2014 at Masindi)

BETWEEN

Musiita Byaruhanga David=====Appellant No.1
Komakech Patrick *alias* Okwera=====Appellant No.2

AND

Uganda=====Respondent

*(An appeal against the Judgement of the High Court of Uganda [Byaruhanga, J]
at Masindi delivered on 5th August 2021)*

JUDGMENT OF THE COURT

Introduction

- [1] This is an appeal against sentence only. The appellants were convicted of the offence of murder contrary to sections 188 and 189 of the Penal Code Act and acquitted of aggravated robbery contrary to sections 285 and 286 (2) of the Penal Code Act. The particulars of the offence for murder were that on 7th December 2013 the appellants with another person at Kayembe village in Kiryadongo district caused the death of Kulabako Monica. The learned trial judge determined that the appropriate sentence was a term of 30 years' imprisonment from which he deducted 7 years and 8 months that they had spent on remand. He ordered them to serve a term of 22 years and 4 months' imprisonment.
- [2] The appellants have appealed against the sentence on the sole ground that,

‘That the learned trial judge erred in law and fact when he passed a manifestly harsh and excessive sentence of 30 years’ imprisonment against the appellants, thereby occasioning gross miscarriage of justice.’

- [3] The respondent opposed the appeal and filed a cross appeal seeking the enhancement of the sentence. The sole ground of the cross-appeal states,

‘that the learned trial judge erred in law and fact when he passed a very lenient sentence of 22 years and 4 months’ imprisonment against the appellants, thereby occasioning a miscarriage of justice.’

Brief facts of the case

- [4] In the evening of 7th December 2011 the appellant no.1, a friend of the deceased, Kulabako Monica, was seen in the evening seated on the veranda of the deceased’s shop. The two were friends. When the deceased’s sister came to check on her the following evening on 8th December 2011 she found her lying in a pool of blood already dead. This was reported to the police who commenced investigations into the matter. The post mortem examination revealed that the deceased had suffered deep multiple cuts all over the body.
- [5] Police investigations revealed and it was established at the trial that the deceased was attacked on the night of 7th December 2011 by 4 people including the 2 appellants. She was asleep in her bed. The assailants were armed with 2 pangas, iron bars and a knife. She was removed from the bed and cut multiple times with very deep wounds including on the head and neck. She tried to make an alarm and her mouth was tied with a piece of cloth until she died. The assailants then left.
- [6] The appellant no.1 was the mastermind of this murder and retained the other assailants to carry out this heinous crime.
- [7] One of the perpetrators pleaded guilty to the charges of murder and robbery and was convicted mid trial.
- [8] The appellants were tried and convicted of the murder of Kulabako Monica.

Submissions of counsel

- [9] At the hearing of this appeal and cross appeal Ms Angella Bahenzire, appeared for the appellants, on state brief, while the respondent was represented by Ms Sherifah Nalwanga, Chief State Attorney, in the Office of the Director, Public Prosecution. Both counsel filed written submissions upon which this appeal proceeded.
- [10] Ms Angella Bahenzire submitted that this court was empowered by section 132 (1) of the Trial on Indictments Act to interfere with a sentence passed by the trial court. The appellants were sentenced to 30 years' imprisonment from which the period spent on remand of 7 years and 8 months was deducted. She contended that this period was harsh and manifestly excessive as to amount to an injustice. She referred, in support of her submissions with regard to the power of a first appellate court to interfere with a sentence of the trial court, to Kyalimpa Edward v Uganda SC Criminal Appeal No. 10 of 1995 (unreported). She also referred to Aguipi Isaac alias Zako v Uganda Criminal Appeal No. 106 of 2012 (unreported) where on appeal a sentence of 26 years' imprisonment for murder was reduced to 18 years' imprisonment. She prayed that this appeal be allowed and the sentences reduced accordingly.
- [11] Ms Sherifah Nalwanga for the respondent submitted that the sentence of 22 years and 4 months' imprisonment meted out to the appellants was too lenient. She submitted that the deceased, an elderly woman was killed like an animal. The post mortem report revealed that she suffered a fractured skull, a deep cut wound on the neck and that she suffered haemorrhagic shock. She further submitted that the appropriate sentence in this regard should be life imprisonment. She referred to a slew of cases where the Supreme Court had confirmed sentences of life imprisonment for murder which included Sunday Gordon v Uganda SCCA No. 103 of 2006; Magezi Gad v Uganda SCCA No. 17 of 2014 (unreported); Kaddu Kavulu Lawrence v Uganda SCCA No. 72 of 2018 (unreported); Ssekawoya Blasio v Uganda SCCA No. 24 of 2014 (unreported); Sebuliba Siraji v Uganda SCCA No. 319 of 2009 (unreported); and Angupiyo and Others v Uganda Court of Appeal Criminal Appeal No. 128 of 2018 (unreported).
- [12] Ms Nalwanga further referred us to a number of cases where the Supreme Court and this court upheld sentences longer than 30 years' imprisonment.

These included Mpagi Godfrey v Uganda SCCA No. 63 of 2015 (unreported); and Habib Salim v Uganda CACA No. 407 of 2016 (unreported).

- [13] Ms Nalwanga invited this court to accept the cross appeal and enhance the sentence against the appellants to life imprisonment.

Analysis

- [14] The principles upon which an appellate court may interfere with a decision of the trial court on sentencing are well settled. In Lawrence Kakooza v Uganda [1994] UGSC 17 the Supreme Court set the same out in the following words,

‘An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for considerations: See *Ogala s/o Owoura v. R* (1954) 21 E.A.C.A. 270.’

- [15] We may add that an appellate court may interfere with a sentence of the trial court if the sentence was manifestly so low as to cause an affront to justice.
- [16] We shall approach the consideration of the appeal and cross appeal before us with those principles in mind.
- [17] The learned trial judge in his sentencing order gave reasons for the sentences he imposed. We shall set out his order and the reasons therefor below.

‘SENTENCE:

A1 and A3 are first offenders who have been convicted of the offence of murder which carries a maximum sentence of death. The deceased Kulabako Monica was confronted with gruesome murder while in the hands of the accused persons of which A1 was her old friend in Kiryandongo Town Council. The murder arose out of greed for the deceased was suspected to be in possession of lots of money.

The deceased died a very painful death because she was hacked all over. The scene of her body was extremely ugly. She was literally slaughtered. It was an exhibition of how a human being can be cruel to the other. Though there is no evidence that she had dependants or a family that depended on her, I, nevertheless insist

that she was entitled to live like any other human being and did not whatsoever deserve the kind of death she met.

Considering the age of the accused persons i.e. 50 years and 33 years respectively, as submitted by state Counsel, the manner of the murder of the deceased, the serious nature of the offence as it carries a maximum sentence of death, they deserve a deterrent sentence. This is not a matter for consideration of a maximum sentence of death because what motivated them to kill the deceased is not clear. In the circumstances of this case, I consider a sentence of 30 years of imprisonment appropriate. Since both of them had been on remand for a period of 7 years and 8 months, they are to serve a sentence of 22 years and 4 months imprisonment.

Right of appeal explained.

BYARUHANGA JESSE RUGYEMA JUDGE'

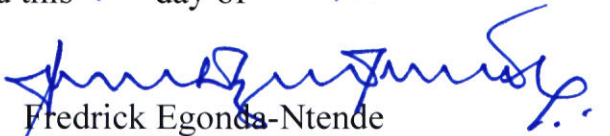
- [18] The learned trial judge considered all the factors he had to consider in this matter both aggravating and mitigating. He deliberately opted for a deterrent sentence for the reasons that he gave. He determined that the appropriate sentence would be 30 years' imprisonment after which he complied with Rwabugande v Uganda [2017] UGSC 8 and deducted the period the appellants had spent on remand. He then ordered the appellants to serve a period of 22 years and 4 months' imprisonment. The sentence in this case is in reality 30 years' imprisonment. Appellants were only credited with the period that they had spent in prison. It is therefore a misnomer, as Ms Nalwanga, pressed upon us, to suggest that the appellants were serving only 22 years and 4 months' imprisonment.
- [19] A day in Uganda's prisons, for an inmate, may well be like 100 days. It is no walk in the park.
- [20] No error of law was suggested to have been made by the learned trial judge. Neither was it suggested that there is a factor he overlooked. The learned trial judge was seized with discretion in determining the appropriate sentence. He determined the appropriate sentence and gave reasons why he came to that sentence. The fact that another judge could have come to a different conclusion is not sufficient to interfere with the sentence of the trial judge. It was never suggested that this sentence was out of range with sentences for similar offences imposed in the past though each side only quoted past decisions that put their positions in favourable light.

[21] We are satisfied on the facts of this case that neither the appeal nor the cross appeal have merit.

Decision

[22] The appeal and cross appeal are dismissed.

Dated, signed, and delivered this *22* day of *Nov* 2023


Fredrick Egonda-Ntende
Justice of Appeal


Catherine Bamugemereire
Justice of Appeal


Monica Mugenyi
Justice of Appeal