

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.