



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA  
AT ARUA Jinja**

*(Coram: Kiryabwire; Kibeedi & Mugenyi, JJA)*

**CRIMINAL APPEAL NO. 397 OF 2016**

ROSE NAKANDI ..... APPELLANT

VERSUS

UGANDA ..... RESPONDENT

**(Appeal from the High Court of Uganda holden at Mukono (Mutonyi, J) in  
Criminal Case No. 125 of 2016)**

## JUDGMENT OF THE COURT

### A. Introduction

1. Ms. Rose Nakandi ('the Appellant') was convicted on her own plea of guilt for the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. The facts of the case as garnered from the record of appeal are that the Appellant and one Hamuza Kauba both lived in Ntenjeru village. Mr. Kauba was a father to two children – Jona Nicholas (5 years, now deceased) and Jessey Kasujja (2 years). Given his busy work schedule, following his separation from the children's mother, Mr. Kauba hired the Appellant to look after the children in his absence. However, the Appellant's neighbours observed her continually beating up Jona Nicholas ('the deceased') when the children started living with her.
2. On 12<sup>th</sup> September 2015 at around 9.00 pm, the Appellant beat up the deceased, causing him to bleed to death. She thereupon informed her neighbours that the child was ill before, along with her eight-year old daughter, Scovia Nanduga, taking the deceased's body to the home of one Nakiganda (deceased) and throwing it in a pit latrine. She thereafter returned Scovia Nadunga back home and went into hiding. The child, however, informed some neighbours of what her mother had done.
3. The deceased was retrieved from the latrine and taken for post-mortem examination, while shoes attributed to the Appellant were recovered from the scene of crime. The matter was subsequently reported to the police and the accused was arraigned and convicted for the murder of the deceased, and sentenced to thirty years' (30) imprisonment.
4. Dissatisfied with the decision of the trial court, the Appellant lodged the present Appeal in this Court, proffering the following grounds of appeal:
  - I. The Learned trial Judge erred in law and in fact when she failed to follow the proper procedure of recording a plea of guilty.*
  - II. The Learned trial Judge erred in law and fact when she manifestly passed a harsh and excessive sentence to the Appellant.*

5. At the hearing of the Appeal, the Appellant was represented by Mr. Daniel Mudhumbusi while Ms. Samalie Wakooli, Assistant DPP, represented the Respondent.

**B. Parties Legal Arguments**

6. Under *Ground 1* of the Appeal, it is proposed that the Appellant's supposed plea of guilt took the following form: '*I understand the facts. Some are not true.*' Learned Counsel for the Appellant thus contends that insofar as the Appellant disputed the veracity of some of the facts of the case that had been read to her, she did not make an unequivocal admission of guilt and therefore the trial judge ought to have recorded a plea of *not guilty* and proceeded to hear the case as required under section 65 of the Trial on Indictments Act Cap 33 (TIA). Citing **Adan vs Republic (1973) EA 445**, it is argued that for a conviction to be properly based on a plea of *guilty*, the plea must be an unequivocal admission of all the essential elements and facts of the offence, which was not the position in this case.

7. Conversely, while conceding that the plea in this case was improperly recorded, learned State Counsel nonetheless contends that no miscarriage of justice was occasioned by this procedural lapse. She relied on section 139(1) of the TIA to argue that an appellate court can only reverse or alter a finding of the High Court on account of an error, misdirection or irregularity if it can demonstrate that such error has in fact occasioned a failure of justice.

8. Counsel cited of **Kifamunte Henry vs. Uganda (1998) UGSC 20** for the proposition that '**even where a trial Court has erred, the appellate Court will interfere only where the error has occasioned a miscarriage of justice.**' Pointing out that section 139 of the TIA enjoins parties to point out an irregularity at the earliest stage of the proceedings so as to arrest the miscarriage of justice, it is argued that the accused was fully represented at trial and if there was such an anomaly, the advocate ought to have raised it then.

9. Article 126(2)(e) of the Constitution is additionally invoked in support of the view that justice must be administered without undue regard to technicalities. State Counsel sought to illustrate the fallacy of undue reliance on procedural