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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KABALE

(Coram: Muzamiru Mutangula Kibeedi, Christopher Gashirabaki & Oscar John Kihika, JJA)

CRIMINAL APPEAL NO. 093 OF 2020

10 TURAMYE BENSON.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

[An appeal against the sentence only arising from the decision of the High Court of Uganda
at Rukungiri (Hon. Justice Moses Kazibwe Kawumi) delivered on 15th March 2019 in
15 Criminal Session Case No. HCT-011-CR-SC-0006-2019]

JUDGMENT OF THE COURT

Introduction

The appellant was indicted for the offence of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120

20 The particulars of the two counts of the offences stated that TURAMYE BENSON alias TUMURAMYE and others still at large on the 28th day of July, 2018 at Kempazi village in the Rukungiri District murdered AKANYIJUKA BENARD and AKAMPURIRA EVERLINE.

The trial was conducted pursuant to the Plea Bargain Agreement (PBA).

25 The facts as admitted by the appellant under the PBA are that both of the deceased were children of the appellant's sister. The appellant's sister (deceaseds' mother) and the

5 deceased were all staying in the same homestead with the appellant and appellant's mother who was also the grandmother of the deceased.

On 28th July 2018, the deceased's mother went to work leaving her children (the deceased) at home. The deceased's grandmother was also not at home. The appellant sent his son to buy super dip (powder) which he bought from a nearby shop. The appellant mixed poison in
10 super dip and put it in a plastic bottle containing water. The appellant then gave the bottle containing the poisonous orange drink to his biological son, Alex Musiima, to take it to the deceased. The appellant cautioned his son not to drink it and the son acted as instructed.

The son proceeded to the deceased's home and gave them the bottle that contained the juice laced with poison. The deceased took the drink in turns until they emptied the bottle
15 and the appellant's son returned the bottle to him.

The appellant thereafter instructed the son to go to the garden and the appellant followed the son to the garden. The deceased died shortly after while vomiting. The bodies were found in the compound. The appellant and his sister, the mother of the deceased, had a pre-existing grudge. He did not want them to stay at his mother's home but the deceased
20 stayed with their mother.

The appellant had threatened to kill his mother, sister and the deceased, thus making him the first suspect in their murder.

The appellant surrendered himself to the police and revealed that he had killed the deceased children. The scene of the crime was visited, and a search conducted and the
25 plastic bottle with remains of the poison was recovered with the sachet of super dip. They were taken for forensic examination.

A post mortem was carried out on the bodies of the deceased on 29/07/2018 by a police surgeon. It revealed that the digestive system and the lungs were hemorrhaged. The

5 internal organs were inflamed. The certificate of death revealed the cause of death was poison ingestion.

A charge and caution statement was recorded, and the appellant admitted to the offence. He was examined on PF 24 on 30/07/2018 and was found to be 36 years and mentally sound.

10 The appellant was indicted for two counts of murder. He entered into a PBA with the prosecution and was pursuant thereto, sentenced to 24 years' imprisonment in respect of each count as agreed under the PBA.

The appellant was dissatisfied with the sentence only and, with leave of court, lodged an appeal before this Court on the sole following that:

15 *The learned trial Judge erred in law and in fact when she failed to offset the period spent on remand thereby passing an illegal sentence occasioning to a miscarriage of justice.*

Representation

At the hearing of the appeal, Muhammed Mbalirwe appeared for the appellant on State
20 Brief, while Joseph Kyomuhendo, Chief State Attorney, appeared for the respondent. The appellant was present in court.

Both parties sought, and were granted leave to proceed by way of written submissions, which were already on the court record.

Appellant's Written Submissions

25 Counsel for the appellant contended that the record of appeal indicates that the appellant was arrested on 28th July 2018 and committed to the High Court for trial on 15th March 2018.

5 That, however, the trial Judge did not deduct the period the appellant spent on remand from the sentence, which rendered the sentence illegal. For this submission, Counsel relied on the authority of ***Rwabugande Moses Vs. Uganda, Supreme Court Criminal Appeal No. 25 of 2014.***

Counsel prayed to this Court to allow the appeal and substitute the illegal sentence with an appropriate one after deducting the time spent on remand by the appellant

Respondent's Reply

Counsel for the respondent opposed the appeal and supported the conviction and sentence. Counsel for the Respondent contended that a sentence of 24 years' imprisonment in the circumstances is appropriate, from which a period of 7 months and 19 days spent on remand be deducted by this court in exercise of powers under Section 11 of the Judicature Act.

Resolution of the appeal

The sole complaint of the appellant against the sentence is about the failure of the trial Judge to deduct the time spent on remand by the appellant, which rendered the sentence illegal.

The respondent conceded that the remand period was not deducted from the sentence, hastened to add that the sentence of 24 years' imprisonment in the circumstances is appropriate. That all that was needed was for this court to deduct the remand period from it.

We have reviewed the sentencing proceedings of the trial Court. The trial Judge endorsed the sentence as set out in the PBA without deducting the period of seven (7) months spent by the appellant on remand. This was an error. Sentences pursuant to PBAs are not exempt for the constitutional requirement in Article 23(8) of the Constitution of the Republic of

5 Uganda, 1995 requiring the Court to take into account the remand period when sentencing a convict in the following terms:

10 *“Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment.”*

The impugned sentences in the instant matter was imposed on the appellant on 15th March 2019. This was after the Supreme Court had held in March 2017 in the case of **Rwabugande Vs Uganda (op cit)** that “taking into account” was arithmetical and required the court to deduct the remand period from the final sentence. The court stated it thus:

15 *“It is our view that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited*
20 *to an accused.”*

As such, the failure of the trial Court to deduct the remand period from the sentence imposed on the appellant in contravention of article 23(8) of the Constitution rendered the sentences illegal. Illegality of a sentence is one of the grounds upon which this court can set aside the sentence imposed by the trial Court. See: **Rwabugande Moses Vs. Uganda, (op**
25 **cit) and Kyalimpa Edward Vs. Uganda, Supreme Court Criminal Appeal No.10 Of 1995.**

The appeal against sentence accordingly succeeds, with the consequence that the sentence of the trial court is hereby set aside.

Re-sentencing

30 We have noted the error in the typed record at Page 9 and 10 which shows that the appellant was sentenced to 7 years’ imprisonment whereas not. We have also checked with the handwritten notes of the trial judge and have confirmed that the learned trial judge

5 sentenced the appellant to 24 years' imprisonment as agreed upon in the Plea Bargain Agreement. The typed record should be disregarded to this extent.

We shall now proceed to sentence the appellant afresh pursuant to **Section 11 of the Judicature Act** which provides as follows:

"11. Court of Appeal to have powers of the court of original jurisdiction.

10 *For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."*

As already stated in this judgment, the appellant in the instant matter was convicted upon
15 his own plea of guilty and sentenced under the terms of the PBA. The Court is obliged under Rule 13(1) of the rules to embrace plea bargain any time before sentence when either party before it expresses interest in the process unless it is intended to pervert the cause of justice. See Inensko Adanns Vs Uganda, HCCA No.004 of 2017 cited with approval by this Court in Luwaga Sulaiman Vs Uganda Crimlnal Appeal No.858 of 2014.

20 The sentence agreed upon by the parties in the PBA was 24 years for each count of murder to run concurrently. When the period of approximately seven (7) months and 19 days, which the appellant was on remand is deducted therefrom in pursuant to article 23(8) of the Constitution, the appellant remains with an imprisonment term of 23 (twenty three) years, 5 (five) months and 11 days.

25 **DISPOSITION.**

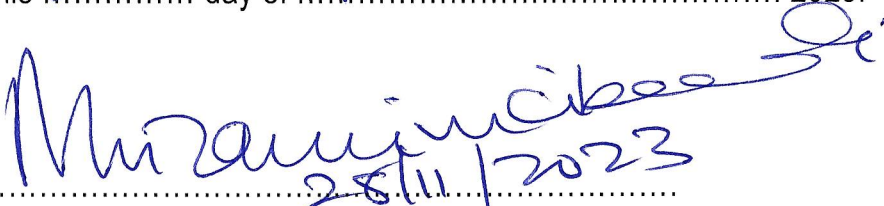
1) The appeal against sentence is allowed.

2) The sentences imposed by the High Court against the appellant for each one of the counts are hereby set aside.

- 5 3) The appellant shall serve an imprisonment term of 23 (twenty-three) years, 5 (five) months and 11 days from the 15th day of March 2019, the date of conviction, in respect of each one of the counts for murder. Both sentences shall run concurrently.

We so order.

Delivered and dated this 28th day of November 2023.


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MUZAMIRU MUTANGULA KIBEEDI
Justice of Appeal


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Christopher Gashirabake
Justice of Appeal


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Oscar John Kihika
Justice of Appeal