THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HELD AT JINJA

(Coram: Elizabeth Musoke, Cheborion Barishaki and Hellen Obura, JJA)

CRIMINAL APPEAL NO. 219 AND 488 OF 2015

ESIYA SEKU:: APPELLANT

VERSUS

UGANDA ::: RESPONDENT

*[Appeal from the decision of the High Court of Uganda sitting at Pallisa (**Hon. Justice Stephen Musota**) delivered on 2nd April 2015 in Criminal Session Case No. HCT-CR-SC-0098-2012]*

JUDGMENT OF THE COURT

The appellant was on the 2nd day of April, 2015 convicted of the offence of murder contrary to Sections 188 and 189 of the Penal Code Act (CAP 120) and sentenced to suffer death, by Hon. Justice Stephen Musota in High Court Criminal Case No. 0098 of 2012 at Pallisa.

Brief facts

The facts as put forth by the prosecution in the trial court are that;

The appellant was a stepbrother to Olamor Stephen, the deceased. There had been a long standing land dispute in the family in regard to land situate in Kakoro village Pallisa District.

On 17th July 2007 at around 12:00pm the deceased went to the land in dispute with his son, the area LC1 Chairman, the Secretary for Defence, the LC111 Chairman, a team of surveyors, two policemen and others. The intention was to survey the deceased`s land and erect survey marks. At the scene, the deceased showed the surveying team the boundaries between his land and that of his brothers. Suddenly, the accused and another brother of his called Tom Akora emerged from a swamp while alarming that the deceased was stealing their land. They tried to remove the survey equipment but the Secretary for Defence stopped them and they then focused their anger on the deceased.

They chased him, pulled out their pangas which they had hidden in their trousers and started cutting him. They cut him around the head and he fell down. They continued cutting him mercilessly several times. The unarmed police men who had been detailed as security for survey operation were the first to flee for their dear lives. The other persons who were at the scene also ran away in fear of the vicious conduct of the appellant and his brother.

The matter was reported to Kakoro Police Post whose officers went to the scene. The appellant and his brother fled. They found the badly cut body of the deceased lying in a pool of blood. The police took photographs of the body of the deceased. Upon examination of the body it was found to have deep cut wounds on the head, back and the part of the right hand was almost severed. The cause of death was established to be haemorrhage and brain damage due to the deep cut wounds.

The accused and his brother went into hiding. Tom Akora was later killed by a mob in a theft related incident. On the night of 24th April 2012, the appellant was arrested at his home in Kakora village, Pallisa District.

The appellant was indicted with the offence of murder and upon his medical examination found to be 30 years old and of normal mental status. He put up an alibi that at the material time he was in the field grazing his cattle. He was convicted of murder and sentenced to suffer death.

He now appeals against both conviction and sentence. There exits two memorandums of appeal on record both dated 13th August 2021, we will rely on the one dated and signed by both counsel and the Registrar. We shall disregard the amended one since the grounds therein are similar and no prejudice will be caused since the appellant`s submissions are also in line with the dated and signed memorandum.

The appellant appeals on the following grounds.

1. ***That the learned trial Judge erred in the evaluation of PW5`s evidence and thereby came to a wrong conclusion that the appellant killed the deceased.***
2. ***That the learned trial judge erred dismissing the appellant`s alibi evidence.***
3. ***That the learned trial judge failed in exercising his discretion judiciously and thereby imposed the death penalty, which was manifestly excessive sentence in the circumstances of this case.***

At the hearing of this appeal learned, Counsel Mr. Geoffrey Turyamusiima appeared for the appellant on Private Brief, while learned Assistant DPP Ms. Naluzze Batala Aisha appeared for the respondent. The appellant attended the proceedings via video link.

The Appellant's case

On ground one, it was submitted for the appellant that the evidence adduced at the trial was insufficient to sustain a conviction against the appellant. Counsel contended that, the appellant had not been sufficiently identified by any of the prosecution witnesses and as such his participation in the commission of the crime had not been proved to the required standard.

Further, that there being no direct evidence to link the appellant to the offence, the learned trial Judge relied entirely on circumstantial evidence to convict the appellant, which evidence was entirely lacking and insufficient, in so far as it did not prove the appellant's participation in the commission of the offence.

Counsel submitted that the evidence did not link the appellant to the weapon used in the crime. Further that, the prosecution failed to prove that the panga exhibited in Court was in fact the murder weapon. He further faulted the Judge for having accepted the prosecution evidence on identification of the appellant, without having properly evaluated evidence in respect of identification. He contended that the Judge disregarded the fact that the crime having been committed at night, the conditions for positive identification were unfavourable.

Had he properly evaluated the evidence he would have found that, it was dark, the distance between the witnesses and the scene of crime was far.

He would also have found that the prosecution witnesses had not positively identified the appellant as one of the people seen at the scene on the night of the murder but could only have speculated it. The Judge failed to consider the fact that there was an existing land dispute between the family of the deceased persons and that of the appellant, which could have influenced the witnesses to speculate or give false testimony.

On ground 2, counsel submitted that the learned trial Judge did not evaluate the defence of alibi judiciously. That he summarised the prosecution evidence, that they managed to disapprove the accused`s defence of alibi which comprised falsehoods. That the learned Judge did not evaluate the evidence provided by the accused and two defence witnesses in support of his alibi.

In respect to ground 3, Counsel submitted in the alternative that, a sentence of death imposed upon the appellant was manifestly harsh and excessive. He argued that, the appellant being a first offender, and of young age, ought to have been given a lesser sentence. He asked Court to reduce the sentence to at least 10 (ten) years imprisonment.

Respondent's reply

In reply, the respondent opposed the appeal. On ground 1, he submitted that the prosecution witnesses ably identified the appellant participating in cutting the deceased to death. That the witnesses were examined and their evidence was not shaken except for PW5`s evidence which was expunged from the record for

being hostile which the learned judge so did. He cited **Okwonga Anthony v Uganda, CA NO.45 of 1999** and **section 154(c)** of the Evidence Act.

That the incident happened during the day in clear view of all locals that had gathered at the land to be surveyed.

On ground 2, it was submitted for the respondent that he was properly placed at the scene of crime and that his participation was proved beyond reasonable doubt. That PW3 Nakawulika Sam, PW4 Otau Fred, PW6 and PW8 testified to know the accused so well and that the defense of alibi was full of falsehoods. That the appellant`s conduct of disappearing from the village for over 5 years is not a conduct of an innocent man. That the learned trial judge properly evaluated the evidence on record and placed the appellant at the scene of crime. He cited **Baguma Fred v Uganda, SCCA No. 7/2004** for the proposition that where a question arises as to which of the witnesses is to be believed rather than another and that questions flows on manner and demeanour, the Court of Appeal always must be guided by the impression made on the judge who saw the witnesses. That in the instant case, the trial judge took into consideration the demeanour of the appellant`s witnesses who attested to the alibi.

On ground 3, it was submitted for the respondent that in arriving at the sentence of death, the trial judge had a comprehensive consideration of both the mitigating and aggravating factors raised by both parties. That the maximum penalty for murder is death. That the sentencing guideline provide the starting point to be 35 years and the sentencing range to be 30 years to death. He cited **Bashasha Sharif vs Uganda, SCCA No. 82 of 2018** where the Supreme Court upheld the

death sentence and noted that one of the objectives of sentencing is deterrence and that the manner in which the appellant killed his brother and dismembered his body, depicts a depraved person devoid of all humanity. That the death sentence meted out to the appellant was not harsh and court rightly directed itself on the law and applied to the facts.

Analysis

This being a first appeal, we are required to retry the case, by re-evaluating all the evidence adduced at the trial and coming up with our own inferences on all issues of law and fact. **See; *Rule 30(1)* of the Rules of this Court, *Bogere Moses Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997* , *Kifamunte Henry Vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997. Fr. Narsensio Begumisa and 3 Others Vs Eric Tibebaga, Supreme Court Civil Appeal No. 17 of 2002.***

We will resolve grounds 1, 2 and 4 in that order. Since ground 3 is a general ground pertaining to the judge`s failure to evaluate evidence, the same will be resolved as we resolve grounds 1, 2 and 4.

The appellant faults the learned trial judge for failing to evaluate PW5`s evidence and thereby came to the wrong conclusion that the appellant killed the deceased. That PW5`s evidence, supported rather than undermined the defence which was incapable of safely supporting a finding of guilt. And the conviction was rendered safe.

PW5 LC.1 Chairman testified the he was present at the scene and he saw the deceased was cut by Akora Tom and that he is the one that they reported to

police. That he didn`t see any other person. He confirmed this during his cross examination

The prosecution prayed that the witness be declared hostile since he deviated from his police statement. Indeed court declared him hostile and coupled with the fact that since the statement was in two hand writings and the witness denied the signatures thereon, the same was expunged from the record.

The learned trial judge stated as follows;

> *"Since there is controversy about the admissibility of the statement in question, and the author has not testified the same shall not be allowed on record. Prosecution may rely on other witnesses."*

In summing up the assessors the learned trial judge further informed them that PW5 was a hostile witness whose evidence was not useful for the prosecution or defence.

In Sankar's Law of Evidence (supra) at p.1318 the learned author writes:

> *"A hostile witness is one who from the manner in which he gives evidence (within which is included the fact that he is willing to go back upon previous statement made by him) shows that he is not desirous of telling the truth [Penchanan vs R.34 C.W.N. 526: A1930, C.276: 51 C.L.J. 203]."*

Section 153 and 154 of the Evidence Act provides that;

153. Question by party to his own witness

The court may, in its discretion, permit the person who calls a witness to put any question to him or her which might be put in cross-examination by the adverse party.

154. Impeaching credit of witness

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him or her—

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him or her to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his or her evidence;

(c) *by proof of former statements inconsistent with any part of his or her evidence which is liable to be contradicted*;

(d) when a man is prosecuted for rape or an attempt to ravish, by evidence that the prosecutrix was of generally immoral character.

In **Batala Vs Uganda [1974]1 EA 402 (CAK)** court stated that;

> *"The giving of leave to treat a witness as hostile is equivalent to a finding that the witness is unreliable. It enables the party calling the witness to cross-examine him and destroy his evidence. If a witness is unreliable, none of his evidence can be relied on, whether given before or after he was treated as hostile, and it can be given little, if any, weight (see Alowo v. Republic,*

[1972] E.A. 324). The rule of practice is based on logic, because if a person is found to be untruthful, there is no reason to suppose that he was any more truthful before he was caught out than after: indeed, it is the very evidence that he has given that has shown his unreliability."

In **Okwonga Anthony versus Uganda, SCCA No. 20 of 2000** Court stated that it is up to a party calling a witness to apply that he or she be declared hostile.

In the present case PW5, Osodo David the LC1 Chairman was declared a hostile witness and was cross examined by the Prosecution. It follows therefore that his evidence against the appellant could not be relied upon and it was not relied upon.

We are satisfied that the learned trial Judge correctly applied the relevant law to the facts of this case, and rightly held PW5 as a hostile witness. The learned prosecuting State Attorney did in fact apply to tender PW5's police statement in evidence. The defence counsel objected to its admission on grounds that the first page was made by someone else and the second page by another but in the end left it to discretion of the court. The learned trial judge ruled in favour of the appellant on the inadmissibility of the statement in evidence.

Through the record and more specifically the learned trial judge`s judgment, he never relied on PW5 Osodo David`s evidence to find that the appellant participated in killing the accused since he had declared him a hostile witness and his Police statement expunged from the record. We find reason to fault the learned trial judge.

Ground one fails.

On ground 2, the learned trial judge is faulted for dismissing the appellant`s alibi. Counsel argued that the trial judge did not evaluate the appellant`s alibi judicially. That he summarised the prosecution evidence and concluded in the context of identification evidence that the prosecution managed to disprove the appellant`s alibi which comprised falsehoods.

In reply, it was submitted for the respondent that the prosecution relied on the testimonies of PW3, Nawalika Samson, PW4 Otau Fred, PW6 PC Ndeke Hakim and PW8 D/C Ejuki Gilbert who placed the appellant at the scene of crime and proved his participation in the murder of the deceased.

An accused person who sets out a defence of alibi has no duty to prove it. The onus and the burden of proof lies with the prosecution throughout the case. ***See;***

- Sekitoleko vs Uganda [1967] 1 EA 531 (HCU).

The appellant was identified by PW3 Nakawulika Sam and PW4 Otau Fred as the person together with Akora who jumped out of the swamp and attacked the deceased using pangas.

PW3 testified that the appellant cut the deceased first on his hand and Akora Tom cut him behind head and again the appellant cut the head several times. That the two were violent and many who had come to survey the land ran away.

It was PW4 `s testimony that the appellant cut the deceased several times on the head. Then they both cut the deceased jointly several times. That when the deceased tried to ask for his help while being attacked, he tried to hit the

appellant with the stick but failed as the appellant turned to chase him. That later when he went to the scene he found the deceased`s head split, intestines out and many cut wounds. That all happened around mid-day.

PW5 Osodo David`s was declared a hostile witness and his police stamen expunged from the record.

PW6 PC No. 45457 Ndeke Hakim testified that the appellant and one Kong surrounded the deceased and started cutting him (their brother) using pangas. That the LC1 told the LCIII and all people to run away. That he was 50 meters away and it was around lunch time.

It was PW7 Daya Esau`s testimony that when he was taken to photograph the body, the body was in the bush near the swamp in a recently ploughed garden Exhibit P.3 the photographs and the post mortem Exh P1 report clearly corroborate the testimonies of PW3, PW4 and PW5 that the deceased was cut by a panga.

The appellant testified that on the fateful day the deceased was murdered, he was cultivating in his garden between 10am-3:00pm and moving up and down in the village selling his things in the town centre. That he was with one Ageta, Juma Mayega and Oule Wilson. That he attended his burial and he was only arrested after some time at his home.

DW2 Omaiga Juma testified in cross-examination that he left Kachumbala market at around 2:00pm and on his way home, he met the appellant in company of Opule Wilson and Kapeya Ageta. That they had a rumor that brothers had killed each other, Akora Tom and Olamar Stephen. That as they

neared the scene he branched off and left the appellant and others proceeding to the scene. That the next day he attended the burial and the appellant was present.

The learned trial Judge stated that;

"After careful evaluation of the evidence of both the prosecution and defence, I am satisfied that PW3, PW4 and PW6 were present at the scene of crime on 17/7/2007 when they had gone to witness the survey of the deceased`s land. They all gave consistent and corroborative evidence of how the incident in which the deceased lost his life unfolded. The incident took place in the morning hours of 8:00am-9:00am during broad day light. They all know the deceased and Akora Tom (now deceased) and the accused savagely attacked and cut the deceased severally causing his instant death.

....The principles governing visual identification were in the case or ***Roria v Republic [1967] EA 583*** *followed in our Supreme Court Criminal Appeal 2 of 1993* ***Frank Ndahebe v Uganda****. The prosecution fulfilled all these principles in its consistent evidence....The conditions were favourable for correct identification.*

Consequently I will find that the defence by the accused person has been disproved. He has been placed at the scene of crime and his participation in the commission of this offence has been proved beyond any reasonable doubt."

From the evidence on record, the appellant was well known to PW3 and PW4. To PW3 he had known the appellant since 2006 as a resident of Kakoro when he campaigned to become LC1 Chairperson. For PW4, he also knew the appellant as his dad since he was the brother to the deceased. It's clear from the record that the attack on the deceased happened in broad day light in the presence of many people including the local council leaders. The appellant was ably identified by PW3 Nawulika Samson and PW4 Otalu Fred as one of the persons together with Akora Tom who lynched the deceased to death. This evidence was corroborated by PW6 PC Ndeke Hakim who had gone with the deceased and other persons to survey the land who also saw the appellant cut his brother using a panga with one Kong. The conditions of identification were clear and above all the appellant was very much known to the PW3 and PW4.

We find the defence raised by the appellant full of false hoods. He testified that he was in the village cultivating between 10am-3:00pm. He further stated that he went to sell his things in town and he was up and down and that he was with Juma. However, DW2, Juma testified that on 17/7/2007 between 9:00am-3:00pm he was in Kachumbala market. That he left the market at around 2:00pm and found the appellant and others on the way. However, during cross examination, he testified that he met the appellant in the market around 8-9am and that he had come to sell onions. During re-examination, he stated that he was with the appellant both morning and afternoon. The testimonies of the appellant and DW2 attesting to his alibi are full of falsehoods as there are many

inconsistencies regarding where the appellant whereabouts between 9:00am to about 2:00pm the time within which the attack happened.

Suffice to say that the positive identification of the appellant by PW3, Nawulika Samson and PW4, Otalu Fred at the scene of crime in broad day light destroys the appellant`s *alibi,* and we find so.

PW8 D/C Ejuku Culbert did testify that he arrested the appellant on 24th April 2012. That when they reached the suspect`s house and ordered him to come out, he refused until when they fired a bullet that he came out and tried to run. We find that the learned trial judge rightly dismissed the appellant`s alibi and we find no reason to fault him in deciding the way he did.

Ground 2 fails. The conviction is hereby upheld.

On ground 3, the learned trial Judge is faulted for failing to exercise his discretion judiciously and thereby imposing the death penalty which was manifestly excessive in the circumstances. Counsel for the appellant argued that the death penalty may only be passed in exceptional circumstances in the rarest of rare cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate. He cited the **Constitutional Sentencing Guidelines for Courts of Judicature (Practice) Directions 2013, AG versus Suzan Kigula and 417 others, Mbunya Godfrey versus Uganda** and **State versus Makwanyane [1995] (3) SA 391.**

Further that owing to the appellant`s mitigating factors, the appellant`s capacity to reform, he was married and had 5 children.

In reply, it was submitted for the respondent that the learned trial Judge had a comprehensive consideration of both the mitigating and aggravating factors. That the injuries inflicted, the degree of force used by use of pangas on his own brother made the death sentence appropriate in the circumstances.

Taking into account the fact that the appellant is a first offender, and was only 20 years at the time. We find that the death sentence was manifestly harsh and excessive. We hereby set it aside.

Section 189 of the Penal Code Act provides that the punishment for murder may be death.

In **Mbunya Godfrey versus Uganda** (Supra), the Supreme Court held that;

"With the greatest respect to the two courts below, we are of the view that the death sentence should passed in very grave and rare circumstances because of its finality. When a death sentence is executed, the Appellant has no chance of reform and /or to reconcile with the community. We are live to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."

In sentencing the appellant to death, the learned trial Judge stated as follows;

> *"While sentencing the convict I will take into account the submissions by respective counsel. Although the convict is a first time offender, his initial crime is horrendous. He mercilessly took the life of a brother because he was surveying land he had won in courts of law. Land related homicides are common in this area and a clear message ought to be sent to the lawless groups to the note that the long arm of the law still exists. The deceased was*

cut mercilessly and with impunity and the convict with his late accomplice ensured that he died. The offence was committed in presence of civic leaders. From what has been revealed in this trial the convict deserves no mercy and or eventual integration into society. He is dangerous fellow if he could do this to his own brother. This is one of the rarest of rare cases where the ultimate punishment should be handed down."

Paragraph 17 of the Constitution Sentencing Guidelines for the Court of Judicature (Practice) Directions 2013 provides; imposing a sentence of death. The court may only pass a sentence of death in exceptional circumstances in the "rarest of the rare" cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate.

The "rarest of the rare" cases.

The "rarest of the rare" cases include cases where—

(a) the court is satisfied that the commission of the offence was planned or meticulously premeditated and executed;

(b) the victim was--

(i) a law enforcement officer or a public officer killed during the performance of his or her functions; or

(ii) a person who has given or was likely to give material evidence in court proceedings.

(c) the death of the victim was caused by the offender while committing or attempting to commit--

(i) murder;

(ii) rape;

(iii) defilement;

(iv) robbery;

(v) kidnapping with intent to murder;

(vi) terrorism; or

(vii) treason;

(d) the commission of the offence was caused by a

person or group of persons acting in the execution or furtherance of a common purpose or conspiracy;

(e) the victim was killed in order to unlawfully remove any body part of the victim or as a result of the unlawful removal of a body part of the victim; or

(f) the victim was killed in the act of human sacrifice.

Paragraph 20 of the Guidelines provides factors aggravating a death sentence.

In considering imposing a sentence of death, the court shall take into account—

(a) the degree of injury or harm;

(b) the part of the victim's body where harm or injury was occasioned;

(c) sustained or repeated injury or harm to the victim;

(d) the degree of meticulous pre-meditation or planning;

e) use and nature of the weapon;

(f) whether the offender deliberately caused loss of life in the course of the commission of another grave offence;

(g) whether the offender deliberately targeted and caused death of a vulnerable victim;

(h) whether the offender was part of a group or gang and the role of the offender in the group, gang or commission of the crime;

(i) whether the offence was motivated by, or demonstrated hostility based on the victim's age, gender, disability or other discriminating characteristic;

(j) whether the offence was committed against a vulnerable person or member of a community like a pregnant woman, child or person of advanced age;

(k) whether the offence was committed in the presence of another person like a child or spouse of the victim;

(l) whether there was gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse;

(m) whether there was any attempt to conceal or dispose of evidence;

(n) whether there was an abuse of power or a position of trust;

(o) whether there were previous incidents of violence or threats to the victim;

(p) the impact of the crime on the victim's family, relatives or the community; or

(q) any other factor as the court may consider relevant.

In light of the above provisions, the deceased was cut several times on the head, hands and other parts of the body by using a panga. PW4 Otula Fred testified that the deceased`s intestines were out. Whereas there existed factors that did aggravate the death penalty i.e. the degree of injury or harm, the part of the

victim`s body where harm or injury was occasioned, sustained or repeated injury or harm was occasioned, use and nature of the weapon. There were no factors that made the instant case to follow within the ambit of "the rarest of rare cases" as laid down in paragraph 18 of the guidelines.

Therefore, the sentence of death meted out against the appellant was harsh and excessive. We shall there invoke the powers of this court under section 11 of the Judicature Act cap 13 to resentence the appellant.

During allocutus it was submitted for the respondent that the offence comitted was grave and attracts a maximum of death, the appellant and the deceased were brothers, the deceased had won a land dispute case but the appellant not being happy took the law in his own hands, the cases relating to land are rampant a message be sent, this was a gruesome murder, he cut the brother with impunity, people were present including LC officials, he was intent on ending the deceased's life savagely, he is not fit to remain in society, he is a danger if he could do it to his own brother. He prayed for a death penalty.

In mitigation, counsel for the appellant stated that; the convict was a first offender and remorseful, a young man useful to the community, he has been on remand for sometime and asked court to be lenient.

The sentencing range for murder in the third schedule of the Sentencing Guide lines starts from 35 years. In addition, the range is from 30 years up to death after taking into account both aggravating and mitigating factors.

We are alive to the fact that the appellant was arrested on 24th April 2012 and convicted on 2nd April, 2015 meaning that the appellant at the time of conviction, had spent 3 years on remand which period this court is enjoined under Article 23(8) of the Constitution to deduct before sentencing.

We are also alive to the principle regarding uniformity and consistency in sentencing. In **Mbunya Godfrey vs Uganda,** (Supra) the Supreme Court held that court should try as much as possible to have consistency in sentencing. Therein the appellant had been convicted of murder of his wife. The Supreme Court set aside the death sentence and imposed a sentence of 25 years imprisonment.

In the case of **Oyita Sam Vs Uganda, C.A.C.A No. 307 of 2010**, where the Appellant assaulted his brother, now deceased, over a piece of land over which they were wrangling. He hacked him with an axe on his head while the deceased was asleep causing his death. This Court reduced the death sentence to a term of imprisonment of 25 years.

In **Uwihayimaana Molly vs Uganda, Court of Appeal Criminal No. 103 of 2009** in which the appellant had murdered her husband by hacking, this Court reduced her sentence from death to 30 years imprisonment.

In **Aharikundira Yusitina Vs Uganda, Supreme Court Criminal Appeal No. 27 of 2015,** where the appellant brutally murdered her husband and cut off his body parts in cold blood, the Supreme Court set aside the death sentence

imposed by the trial court and substituted it with a sentence of 30 years imprisonment.

From the record, the appellant was 26 years old at the time and he ought to be given an opportunity to reform. However, murder is a heinous and serious offence. Thus in light of the aforementioned aggravating and mitigating factors, the principle of uniformity and consistency and the 3 years the appellant had spent on remand, we resentence the appellant to 30 years imprisonment to be served from the date of conviction.

We so order.

Dated at Jinja this 16th day of November 2023

Elizabeth Musoke

JUSTICE OF APPEAL

Cheborion Barishaki

JUSTICE OF APPEAL

Hellen Obura

JUSTICE OF APPEAL