



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT FORT PORTAL**

(Coram: Egonda-Ntende, Bamugemereire & Mugenyi, JJA)

CRIMINAL APPEAL NO. 126 OF 2017

1. NGONGO MUSTAFA aka MAWASO
2. WALISA HAMIS APPELLANTS

VERSUS

UGANDA RESPONDENT

**(Appeal from the High Court of Uganda at Kasese (Oyuko Ojok, J) in Criminal
Session Case No. 54 of 2015)**

JUDGMENT OF THE COURT

A. Introduction

1. This is a first appeal from the decision of the High Court in Masindi (Oyuko Ojok, J) in which Messrs. Mustafa Ngongo aka Mawaso and Hamis Walisa ('the Appellants') were on 10th July 2019 convicted of seven (7) counts of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120 and one count of arson contrary to section 327 of the Penal Code Act. They were each sentenced to forty (40) years' imprisonment on all counts of murder and five (5) years imprisonment for arson, which sentences were to run concurrently.
2. The prosecution case as accepted by the trial court is that on 5th July 2014 at about 3.00pm at Bigando village, Kitsamba subcounty, in Kasese district, a group of Bakonzo including the Appellants invaded Basongora living in the area, hacked several of them to death, locked others in a grass-thatched house and set it ablaze. The persons that were murdered in this attack included CPL Grace Nabimanya (40) and his children Joseline Tarindeka (13), Rosette Karikunda (6), Enid Nabagye (5) and Pofia Karungi (3), who were locked up in a house that was then set ablaze, as well as Alice Akankunda and Monica Bariho, who were hacked to death. The attack was attributed to a dispute between the Bakonzo and Basongora communities following the resettlement of the latter at Nsinungi and Bigando villages in Kitswamba subcounty, Kasese district by the Government.
3. Dissatisfied with their conviction and sentence, the Appellants lodged this Appeal in this Court proffering the following grounds of appeal:
 - I. *The learned Trial Judge erred in law and fact when he convicted the Appellants of murder and arson without evaluating the evidence in respect of their defence of alibi hence arriving at an erroneous decision.*
 - II. *The learned Trial Judge erred in law and fact when he ignored the inconsistencies and contradictions in the evidence of the prosecution witnesses in respect of participation of the Appellants which touched the root of the matter hence arriving at an erroneous decision.*
 - III. *The Trial Judge erred in law and fact when he sentenced the Appellants to a harsh and manifestly excessive sentence of 40 years imprisonment for 7 counts of murder and 5 years' imprisonment for arson to run concurrently without considering the mitigating factors.*