

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDEN AT
KAMPALA

CRIMINAL APPEAL NO. OO32 OF 2014 & 109 OF 2021
(CORAM: BUTEERA, DCJ, LUSWATA & KIHKA, JJA)

1. MUTEBI MUHAMMED

2. NSIIZA ISAAC ::::::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

UGANDA::: RESPONDENT

*(An appeal against the decision of Masalu Musene, J in
High Court criminal session case No. 181 of 2012 dated
17th January 2014 at Entebbe)*

JUDGMENT OF THE COURT

Introduction

The appellants were indicted with one count of murder contrary to sections 188 and 189 and one count of Aggravated robbery contrary to sections 285 and 286 of the Penal Code Act, Cap 120. It was the prosecution's case that on the 4th October 2011 at around 7:00 am, a one Nagitta Dorah, neighbor to the deceased was approached by the deceased's children aged 6 and 4 years who informed her that the body of their mother was lying in a pool of blood. Other neighbors were informed and they found the body of the deceased lying in a pool of blood and beside it was a knife with bloodstains. It was discovered that several



properties of the deceased were missing in her house to wit; two television sets, radio cassette, a crown DVD player, two Compaq, two CPU, two key boards, two extension cables, a battery starter, a woolen blanket, two bags, among others. The police were informed. They carried out investigations and discovered the property of the deceased hidden at Kigozi's home. He informed police that the appellant, Mutebi Mohamed (A1) had taken the property to his home. Mutebi was arrested. Nziiza Isaac (A2) went into hiding but he was also arrested on 11th May 2012.

At the trial, Nziiza Isaac (A2) pleaded guilty and he was convicted accordingly. He was sentenced to 10 years imprisonment for aggravated robbery and 25 years imprisonment for murder. Mutebi Muhammad pleaded not guilty and went through a full trial. He was convicted and he was sentenced to 16 years for aggravated robbery and 30 years for murder. The sentences were to run concurrently.

The appellants being dissatisfied with the sentences passed by the trial Judge for the count of murder, appealed to this court on only that one ground.

Ground of appeal

That the trial Judge erred in law and fact when he sentenced the 1st appellant to 30 years imprisonment and the 2nd appellant to 25 years imprisonment for murder which



sentences were manifestly harsh and excessive in the circumstances.

Representation

At the hearing of the appeal, Ms. Nabisenke Vicky Assistant DPP and Ms. Lunyolo Stella Maris State Attorney represented the respondent while, Ms. Shamim Nalule represented the appellant on state brief. The appellants appeared in court via video link from Murchison Bay Prison.

Both counsel filed written submissions and asked court to adopt the same in determining the appeal. The prayer was granted and court has considered the written submissions in resolution of the appeal.

Submissions for the appellants

Counsel submitted that the trial Judge did not properly take into account the mitigating factors thereby arriving at harsh and excessive sentences. Counsel added that the trial judge did not put into consideration the fact that the appellants had no previous record and were first offenders. Further, that the Judge did not consider the age of the appellants when sentencing them. It was counsel's contention that had the trial judge considered the ages of the appellants, he wouldn't have sentenced the appellants to such harsh sentences of 30 and 25 years imprisonment on the count of murder.

It was counsel's further contention that the trial Judge departed from the conventional rule of uniformity in sentencing thereby arriving at very excessive sentences. He referred to **Francis Bwalatum v Uganda CACA No. 048 of 2011** where the appellant was convicted on two counts of murder and sentenced to 50 years imprisonment, and this court on appeal reduced the sentences to 20 years imprisonment on each count to run concurrently.

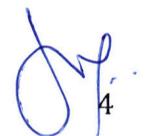
Counsel cited other cases involving murder where the death sentence was reduced to 20 years, 25 years reduced to 14 years and 37 years reduced to 20 years imprisonment. We have looked at all these authorities.

Counsel implored this court to set aside the sentences imposed on the appellants and reduce the same to 20 years imprisonment.

Submissions for the respondent

Counsel submitted that it is a settled position of law that an appropriate sentence is a matter for the discretion of the sentencing judge. She cited **Kyalimpa Edward v Uganda CACA No. 23 of 2016** to that effect.

Counsel submitted that the trial Judge gave the reasons for his sentence and a clear reading of the sentencing notes reflects that the Judge considered all the mitigating and aggravating factors and exercised leniency by not sentencing the appellants to the maximum penalty which is death.



Counsel submitted that the appellants failed to show that the sentences imposed by the trial judge were manifestly excessive or exceeded the permissible range or sentence variation. He cited **Muhwezi Bayon v Uganda CACA No. 198 of 2013** where this court held that *“the term of imprisonment for murder of a single person ranges between 20 to 35 years imprisonment, in exceptional circumstances the sentence may be higher or lower.”* Counsel also referred to cases where this court upheld imprisonment for life sentences for the offence of murder. He cited **Bukenya Muhammed & 2 ors v Uganda CACA No. 903 of 2014** to that effect.

Counsel contended that the sentences imposed by the trial Judge fall within the range of 20-30 years imprisonment thus they were neither harsh nor excessive. She prayed that this court upholds the sentence passed by the trial Judge and dismiss the appeal.

Decision of the court

This appeal is against sentence only. The appellants faulted the trial Judge for sentencing them to sentences of 30 years and 25 years' imprisonment, which they considered manifestly harsh and excessive and also argued that the mitigating factors were not, considered.

As an appellate Court, we are constrained on how much we can intervene on the discretionary power of a sentencing Judge. It is trite that we are not to interfere with a sentence imposed by a



trial court merely because we would have imposed a different sentence had we been the trial Court.

We can only interfere with a sentence where it is either illegal, or founded upon a wrong principle of the law, or a result of the trial Court's failure to consider a material factor, or that the sentence is harsh or manifestly excessive in the circumstances of the case. (see **Kiwalabye Benard v Uganda CACA No. 143 of 2001** and **Kawooya Joseph v Uganda CACA No. 0512 of 2014**).

We shall be guided by the above principles as we analyze the grounds of appeal in this case.

We have looked at the sentencing notes of the trial Judge. He noted thus:-

“Without writing it again, I wholly adopt the submissions by M/S Basute Cate for the state. It was indeed sad that A1, Mutebi Muhamed, who was brought up in that family turned against the very woman who cooked for him from childhood. The whole plan was hatched by Mutebi Muhamed, which indeed portrays him as a dangerous person. These are the type of people who can blow themselves to death like the Osama Bin Laden of this world and his cohorts. They deserve to be kept out of society for long, so that even if are young as their advocate, M/S Glorai Basaza has started, they will come out of prison relatively old and reformed. A2, Nziiza Isaac, although pleaded guilty is not excused especially where life was lost. If it had been robbery alone, A2 could have been



treated leniently. But to the extent that murder was committed, life lost, this court will be firm and pass such sentence as to deter other would be criminals. In the premises, I sentence you as follows..."

From the trial Judge's sentencing notes, we note that he stated at the beginning of his sentencing notes that "*without writing it again, I wholly adopt the submissions by M/S Basute Cate for the state.*"

In writing that, the trial Judge considered the allocutus of both sides. He considered the fact that the appellants had no previous criminal record. The trial Judge further stated in his notes that even if the appellants were young as their advocate had stated, they would come out of prison reformed. The trial Judge also noted that although A2, Nziiza Isaac had pleaded guilty, he would be given a deterring sentence because life was lost in the process.

We find that the trial Judge considered the mitigating factors and weighed them against the aggravating factors.

Secondly, on the issue of consistency in sentencing, counsel for the appellants submitted that the sentences meted out onto the appellants were out of range as compared to other cases of murder where courts have given lesser sentences. On the other hand, counsel for the respondent argued that sentencing is in the discretion of the trial Judge and she also cited cases where

courts have sentenced convicts to sentences ranging from 20-35 years for murder.

We are cognisant of the need to maintain consistency in sentencing. But we are also alive to the fact that each case presents its own unique facts that are distinguishable.

In consideration of the Supreme Court Decision in **Mbunya Godfrey v Uganda - SCCA No. 4 of 2011**, the Supreme Court held: -

"We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."

In **Bakubye Muzamiru & Jumba Tamale Musa v Uganda SCCA N. 56 of 2015**, the appellants were convicted of murder and aggravated robbery and sentenced to 40 years and 30 years respectively, to be served consecutively. The Court of appeal decided that the sentences should run concurrently but never reduced the sentences. On further appeal to the Supreme court, it was held that:-

"It is our view that the 40 and 30 years imprisonment sentences were neither premised on wrong principles of law nor excessive. Both a conviction of murder and aggravated robbery attract the death penalty as a maximum sentence. The trial judge and the Justices of Appeal in exercise of their discretion did not award the maximum penalties prescribed



by the law for each of the respective offences.” The appeal was dismissed.

In **Guloba Rogers v Uganda CACA No. 57 of 2013**, the appellant was convicted for murder and aggravated robbery and sentenced to 47 years imprisonment on each count to run concurrently. This court reduced the sentence to 35 years imprisonment on each count to run concurrently and deducted the 1 year and 5 months spent on remand.

In **Nabongo Ibrahim v Ug. CACA NO. 181 of 2014**, the appellant was indicted of murder and aggravated robbery. He was convicted and sentenced to life imprisonment by the High Court. On Appeal, this Court reduced the sentence of life imprisonment meted out to the appellant to 38 years imprisonment on the Count of Murder and 30 years imprisonment on the Count of aggravated robbery.

We noted that A2, Nziiza Isaac pleaded guilty and was sentenced to 25 years for murder and 10 years for aggravated robbery. We have looked at similar decisions where convicts pleaded guilty and were sentenced to higher terms of imprisonment.

In **Kayondo v Uganda CACA No. 51 of 2018**, the appellant was indicted of murder and aggravated robbery and he pleaded guilty to both counts. The trial Court convicted and sentenced him to 25 years for murder and 21 years' for aggravated

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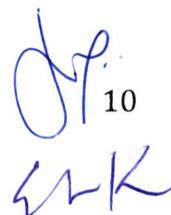
robbery. On Appeal, this Court maintained the sentences meted out to the appellant by the trial Court.

In **Nsubuga Peter & Anor v Uganda CACA No. 4 of 2016** the appellants pleaded guilty to a count of murder and aggravated robbery and this court found the sentence of 25 years and 8 months' imprisonment on each count appropriate holding that they were neither excessive nor harsh.

In **Mwerinde Lauben v Uganda CACA No. 151 of 2073** this court substituted a sentence of 35 years imprisonment with that of 30 years imprisonment after considering that the appellant had pleaded guilty and was a first time offender in a murder case.

In the instant case, the murder and aggravated robbery were premeditated. A1, Mutebi Muhammad murdered a woman who had welcomed him into her home and raised him. The deceased was slain in a horrific manner and her young children aged 6 and 4 years woke up to a shock of their lives seeing the body of their mother lying in a pool of blood. Both counts carry a maximum sentence of death, but the trial Judge did not give the maximum sentence. Additionally, according to the sentencing range laid down in the third schedule of the Sentencing guidelines, both offences range from 35 years to death sentence after considering the mitigating and aggravating factors.

In the premises, we find that the sentence of 30 years for Mutebi Muhamed (A1) and 25 years for Nziiza Isaac (A2) on the count



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of murder are neither harsh nor excessive. The sentences are in fact appropriate in the circumstances of this case.

The appeal fails and is hereby dismissed.

Dated at Kampala this ...^{24th}...day of...APRIL.....2024.



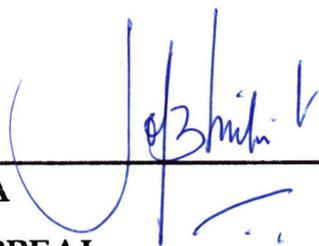
RICHARD BUTEERA

DEPUTY CHIEF JUSTICE



EVA K. LUSWATA

JUSTICE OF APPEAL



OSCAR KIHKA

JUSTICE OF APPEAL