

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA
CRIMINAL SESSION CASE NO. 021 OF 2012
(ARISING FROM SUPREME COURT CRIM. APPEAL NO. 21 OF 2006
AND CRIMINAL SESSION NO. 24 OF 2009 AT SOROTI)

UGANDA.....PROSECUTION
VERSUS
ONGODIA ELUNGAT JOHN MICHAEL.....ACCUSED
BEFORE: HON. MR. JUSTICE A. RUGADYA ATWOKI

24/2/12

Florence Akello SSA

Mark Bwengye on State Brief

Accused in court

Margaret, Court clerk.

SSA: The convict was convicted for murder and aggravated robbery and sentenced to death and sentences withstood court was suspended.

Matter arose on 5/12/1997.

He was arrested on 21/12/1997.

He was on 7/2/2002; he was convicted and sentenced to death.

He spent about 5 years on remand. To date he has spent 10 years as a convict.

Accused was convicted of two grave offences and sentenced on each count to death.

Accused was an army man entrusted with duty to protect people. He abdicated from that duty by robbing and killing one of them. There is no sentence which he deserves apart from the death sentence.

Both at police and in court he admitted committing the offences. To deter others and serve as a lesson, pray the death sentence be upheld.

In event that court finds it fit to reduce sentence, I pray for a custodial sentence of 50 years. He deserves being locked up for a long period as he does not qualify to be a useful citizen. I so pray.

Mark Bwengye: Accused was first offender. He was on remand. He spent 5 years on remand. He has so far spent 10 year after conviction. These are matters to be considered in his favour. That totals 15 years in jail. In mitigation, what was done was illegal. This court has discretion to either confirm he death penalty or reduce it.

Accused is sorry for what he did. I pray that the punishment be less than death. I visited the accused in this mitigation process. He appeared remorseful and repentant.

As a UPDF soldier, he ought to have protected life, this duty he abdicated by robbing and killing. I pray the death sentence be reduced to a custodial sentence, which will enable him return to the citizens. He was married and had one child – 4 years. At the time of offence, he was virtually illiterate. He has since reformed. He is now in Primary 4 School. He has a Certificate in Bible Studies. He has learnt how to respect the lives of others.

He can therefore reform if given a chance. I do not believe he ought to get 50 years. I ask for a custodial sentence less than life imprisonment which would enable him return to society. He will become a useful citizen if he is given such a chance. I so pray.

A Rugadya Atwoki

Judge

24/2/12J

No. 6289 Sgt. Asinge Patrick – sworn as Interpreter.

Alloctus: I was arrested 21/12/199. All this 15 years I have in prison. On 2/2002, I apologized. I apologize what I did I will never repeat the same. In prison, I also studied and started from P.1 and now I am in P.4. I also joined Alpha course and got a certificate. This is a Christian Centre. I have come

to distinguish between right and wrong. I promise to become a good citizen
I will not commit other offences. I was first offender, I pray court for
leniency.

A Rugadya Atwoki

Judge

24/2/2012

Court Sentence:

This matter went to the Court of Appeal where sentence was the only issue.
The case of Suban Kigula was considered therein and that court confirmed
the sentence. But for some reason, it was full trail since there was no
mitigation before the trial court; the Supreme Court sent this file back to the
High Court for mitigation proceedings. This court now runs the risk of
making a ruling contrary to a higher court. This is one of the matters which
the Supreme Court, we pray court to consider before sending such files back
to the High Court and I most respectfully so pray .

The matter is now before this court and we cannot abdicate our duty to do as instructed by the superior court.

The accused was convicted of murder and aggravated robbery and sentenced to death; sentence in 2nd count was suspended.

It came out from the evidence that accused admitted the offences both at the police upon arrest and in court at his trial. He was a 1st offender and those are matters which would have been considered in his favour in mitigation. I only take them into account.

He spent close to 5 years on remand, which period I have also considered. He has, since conviction spent 10 years in prison, which I have also considered, making a total of 15 years in prison to date. He appeared remorseful. He has since conviction attended classes and now in Primary 4; which is commendable for such an old person.

The State asked court to confirm the death sentence or if inclined to reduce it, to merit out a custodial sentence of atleast 50 years.

Counsel for accused suggested a period less than life imprisonment, whatever that means.

I have considered all the above. I am satisfied that if the death penalty was not mandatory at the time of conviction in 2002, the court would not have sentenced accused to death considering all the circumstances of this case including the plea of guilty and period of 5 years on remand. I accordingly set aside the sentence of death and instead sentence the accused to 15 years imprisonment. That sentence shall commence today as I have in arriving at the same duly considered the period so far spent in prison both as a remand prisoner and as a convict.

I so order.

A Rugadya Atwoki

Judge

24/2/2012

Court: Accused has a right to appeal against this sentence to the Court of Appeal within 14 days from today.

A Rugadya Atwoki

Judge

24/2/2012

