

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL CASE No. 0117 OF 2020

UGANDA PROSECUTOR

5

VERSUS

1. OREM ALEX alias ALIK }
2. ONONO CHRISTOPHER alias KAGODI } ACCUSED
10 3. RUBANGAKENE REGAN }

Before: Hon Justice Stephen Mubiru.

PROCEEDINGS

15 8th July, 2020
3.52 pm
Attendance

Mr. Kilama Stephen, Court Clerk.
Mr. Omia Patrick, Resident State Attorney for the Prosecution.
20 Mr. Abore Patrick, Counsel for the accused.
The accused is present in court

A1 : Orem Alex alias Alik; I speak Acholi.

State Attorney: we have negotiated a plea bargain and accordingly executed a plea
25 agreement which I pray to present to court.

Counsel for the accused: That is correct.

Accused: I signed the agreement willingly at pages 5. My constitutional rights were
explained to me and I willingly waived them fully cognisant of the
consequences of signing the plea agreement.

30 **Court:** The agreement is received and hereby forms part of the court record.

.....
Stephen Mubiru
Judge
8th July, 2020.

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Court: The Indictment is read and explained to the accused in the Acholi language.

Details; Murder C/s 188 and 189 of *The Penal Code Act*. It is alleged that the accused and others still at large on the 3rd day of March, 2019 at Barogal village, Labwoch Parish, Koro sub-county in Omoro District murdered Ojok Franco alias Kadogo.

Accused: I have understood the indictment. It is true.

5 **Court:** A plea of guilty is entered.

.....
Stephen Mubiru
Judge
8th July, 2020.

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State Attorney: Form the 1st March, 2019 the accused had been uttering death threats against the deceased that he would kill him because he had abused the father of the accused. On the fateful night he together with the deceased and others were seen drinking at the Trading Centre. They left for home but in the morning the body of the deceased was found lying along the Gulu-Kampala Highway with cut wounds and a depressed head injury. The accused was traced and arrested that morning as the principal suspect. Upon examination the body was found with lacerated wounds on the hand, cut wounds on the head and the palatial ears am fractured depressed palatial lobe. The cause of death was haemorrhagic shock due to severe blunt trauma on the head. The accused was examined and found to be 32 years old. He had no injury and was mentally normal.

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State Attorney: I pray to tender in the medical forms.

Defence Counsel: I have no objection.

25 **Court:** They are received as part of the facts and are marked P. Ex.1 and P. Ex.2 respectively.

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Stephen Mubiru
Judge
8th July, 2020.

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Accused: I have understood the facts. They are correct.

Court: The accused is convicted on his own plea of guilty for the offence of Murder c/s 188 and 189 of *The Penal Code Act*.

.....
Stephen Mubiru
Judge
8th July, 2020.

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State Attorney: the aggravating factors are that the convict inflicted a fatal injury on the deceased over trivial issue.

Counsel for the accused: the mitigation is that he readily pleaded guilty, he is a first time offender, he is of relatively youthful age at 33 years old, is HIV
10 positive and is remorseful.

Accused: I was raising seven children two of whom were my children and the rest defendants. I pray for mercy to give me a chance to raise the children.

SENTENCE AND REASONS FOR THE SENTENCE

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The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. This is not one of such cases, and it is for that reason that the death sentence was discounted, giving way to a plea bargain.

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Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. I
25 have taken into account the current sentencing practices in relation to cases of this nature. I have thus adopted a starting point of a range of 20 – 30 years' imprisonment.

From this, the convict is entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory
30 footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor

is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the
5 convict readily pleaded guilty as one of the factors mitigating her sentence.

The sentencing guidelines leave discretion to the Judge to determine the degree to which a sentence will be discounted by a plea of guilty. As a general, though not inflexible, rule, a reduction of one third has been held to be an appropriate discount (see: *R v. Buffrey (1993) 14
10 Cr App R (S) 511*). Similarly in *R v. Buffrey 14 Cr. App. R (S) 511*). The Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the Court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to reduce the
15 sentence by one third from the starting point of a range of 20 – 30 years to a range of 14 – 20 years' imprisonment, before mitigation.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, the aggravating and mitigating factors outlined above, I hereby accept the
20 submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, to find the proposed sentence of nineteen (19) years' imprisonment as befitting the circumstances of the case and the antecedents of the convict, especially in light of his age.

25 In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I note that the convict was charged on 15th March, 2019 and been in custody since then. I hereby take into account and set off one (1) year and four
30 (4) months as the period the convict has already spent on remand. I therefore sentence the

convict to a term of imprisonment of seventeen (17) years and eight (8) months to be served starting today.

5 Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Gulu this 8th day of July, 2020.

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Stephen Mubiru,
Judge.
8th July, 2020.

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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN**

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TO: AT GULU
The Officer in Charge,
Government Prison, Gulu.

WARRANT OF COMMITMENT

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WHEREAS on the **8th** day of **July**, 2020 **OREM ALEX alias ALIK** the **1st** Prisoner in Criminal Session Case No.**0117** of the Calendar Year for **2020** was convicted before me: Hon. Justice **STEPHEN MUBIRU, a Judge of the High Court of Uganda**, of the offence of **MURDER C/s 188 and 189** of The Penal Code Act and was sentenced to **SEVENTEEN (17) YEARS AND EIGHT (8) MONTHS' IMPRISONMENT.**

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THIS IS TO AUTHORISE AND REQUIRE YOU, the Superintendent to receive the said **OREM ALEX alias ALIK** into your custody in the said prison together with this **Warrant** and there carry the afore said sentence into execution according to Law.

GIVEN under my Hand and the Seal of the court this **8th** day of **July, 2020.**

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JUDGE.