

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL CASE No. 0118 OF 2020

UGANDA PROSECUTOR

5

VERSUS

1. OJOK MICHAEL alias ZAGAZAGA }
2. OTILE FRANCIS } ACCUSED
10 3. OPIYO JOEL }

Before: Hon Justice Stephen Mubiru.

PROCEEDINGS

15 8th July, 2020
9.30 am
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 Ojok Michael alias Zagazaga: 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 two others on the 16th day of December, 2017 at Awimon village in Omoro District murdered Okello Tony Mugisha.

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: On the night of 16th December, 2017 the accused killed the deceased after disagreement that night. Then deceased was from the bar of the accused going home. He killed him along the road to Gulu. The body was found the following morning with a bottle of beer. The deceased had injuries on his head. A post mortem was undertaken and it was found the cause of death was stab wounds on the left forehead and neck and the occiput and maxilla and a depressed skull fracture and massive subdural hematoma. The cause of death was severe brain tissue damage as for head trauma with open and depressed skull fractures and subdural haemorrhage. Both blunt and sharp objects were used. The accused was arrested and subjected to medical examination whereupon he was found to be 23 years old with no injuries and of sound mind.

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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.

.....
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 used excessive force with multiple weapons.

Counsel for the accused: the mitigation is that he readily pleaded guilty, he is a first time offender, he is of youthful age at 24 years of age and is remorseful.

10 **Accused:** I pray for forgiveness. I was taking care of three orphans of my elder brother who died. I was paying school fees for them.

SENTENCE AND REASONS FOR THE SENTENCE

15 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.

20 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 have taken into account the current sentencing practices in relation to cases of this nature. I have
25 thus adopted a starting point of a range of 30 – 35 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 footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of*
30 *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 convict readily pleaded guilty as one of the factors mitigating her sentence.

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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 Cr App R (S) 511*). Similarly in *R v. Buffrey 14 Cr. App. R (S) 511*). The Court of Appeal in
10 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 sentence by one third from the starting point of a range of 30 – 35 years to a range of 20 – 25
15 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 submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in
20 accordance thereto, to find the proposed sentence of twenty (20) years' imprisonment as befitting the circumstances of the case and the antecedents of the convict, especially in light of his age.

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
25 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 28th December, 2017 and been in custody since then. I hereby take into account and set off two (2) years and seven (7) 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 five (5) months to be
30 served starting today.

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 **OJOK MICHAEL** alias **ZAGAZAGA** the **1st** Prisoner in Criminal Session Case No.**0118** 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 FIVE (5)** **MONTHS' IMPRISONMENT.**

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

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

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JUDGE.