

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MUKONO**  
**CRIMINAL SESSION NUMBER 279 OF 2021**

**UGANDA:.....PROSECUTOR**

**VERSUS**

**NAKANYIKE ANITA:.....ACCUSED**

**BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA**

**SENTENCE AND REASONS FOR SENTENCE**

**Background:**

When this matter came up for plea taking on 11<sup>th</sup> April, 2024, the Accused had been indicted on three different counts of Murder Contrary to Sections 188 and 189 of the Penal Code Act, Cap 120 as amended, attempted Murder contrary to Section 204 of the Penal Code Act, Cap 120 and child stealing contrary to section 159 (1) (a) of the Penal Code Act Cap 120.

Upon the charges being read to the accused, she pleaded guilty to all the three counts. Court requested Prosecution to read the summary of the case to her and she stated that the facts were all correct. The Accused was there after convicted as charged on her own plea of guilty.

In this case, I have considered all the aggravating factors as submitted on by learned Senior State Attorney Babirye Sarah and the mitigating factors as espoused by learned Defence Counsel Mujuni Januario which are briefly are;

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In aggravation the Prosecution submitted that though the convict had no previous criminal record her actions were premeditated, well planned and cautiously executed. That the Accused lied to her husband that she was pregnant and the intention of going to Wakiso Village was to kill the deceased and take her baby. That the Murder was gruesome, violent vicious and inhumane. That even though the daughter of the deceased Nantale begged her to leave her mother she refused. That Nantale was also attacked and subdued by the Accused so that she could steal the baby. That the two children have been left without a mothers love which is difficult to replace and the accused wanted to be a mother while denying the two children an opportunity to be mothered. She prayed for a deterrent sentence and recommended on Count I 30 years, Count II 20 years and Count III 7 years and that the sentences should run consecutively.

The defence in mitigation stated that the convict is a first time offender who was compelled by infertility for 5 years to commit the offences and regretted her actions. That at time of committing the offence she was 27 years old and has a likelihood of being reformed and the stolen child had been recovered unhurt. That she had pleaded guilty on her own volition and did not waste Court's time and that of the Investigators. The defence on the other side prayed for a lenient sentence of 20 years in both count I and II and three years for count III and that the sentences should run concurrently.

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The Accused stated that she had learnt her lesson and she would never do it again.

**Sentence:**

Our Criminal Justice System propels us to consider the circumstances of a particular case before imposing a sentence that is, the nature of the offence, how the offence was committed, whether the accused subjected the court to a full-blown trial or not, the aggravating and mitigating factors as put forth by the prosecution and the defence then the need to ensure consistency in sentences.

In the instant case, I make reference to the following cases,

In **Nwerinde Lauben Vs Uganda, Criminal Appeal No. 151 of 2013**, the Court of Appeal substituted a sentence of 35 years which had been imposed on the convict with 30 years' imprisonment.

In the case of **Oyita Sam Vs Uganda, Court of Appeal Criminal Appeal No. 307 of 2010** the Court of Appeal substituted a sentence of death for an Appellant who was convicted on his own plea of guilty to 25 years' imprisonment.

**In Tumusiime and Anor versus Uganda 2016 UGCA 73**, the Appellants were convicted of Murder contrary to sections 188 and 189 of the Penal Code Act and Aggravated Robbery contrary to sections 285 and 286 (2) of the Penal Code Act and sentenced to 16 years and 14 years' imprisonment respectively on each count to run concurrently.

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The Court of Appeal was of the view that the sentence was inordinately low and amounted to a miscarriage of justice due to the circumstances of the case in respect of the offence of Murder being that the Murder was premeditated, and was compounded with Aggravated Robbery. It stated that had the issue of severity of sentence arisen, it would have enhanced the sentence to 35 years' imprisonment.

**In Bakubye & Anor v Uganda [2018] UGSC 5**, the Appellants were indicted and convicted of Murder contrary to sections 188 and 189 of the Penal Code Act and Aggravated Robbery contrary to sections 285 and 286 (2) of the Penal Code Act. The trial Judge sentenced them to 40 years imprisonment on count 1 and 30 years of imprisonment on count 2 and the sentences were to run consecutively. On Appeal against the sentence, the Court of Appeal found that the sentence was neither harsh nor excessive and thereby upheld the conviction and sentences given by the High Court Judge. The Supreme Court confirmed the sentence.

**In Opolot Justine and Agamet Richard alias Acment Richard Vs Uganda, Court 5 of Appeal Criminal Appeal No. 155 of 2009**, the Court of Appeal maintained a sentence of 15 years meted out to the Appellant for the offence of attempted Murder. **In Anthony Okwanga Vs Uganda, Court of Appeal Criminal Appeal No. 45 of 10 1999**, the Court of Appeal upheld a sentence of 15 years for the offence of Attempted Murder.

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On count III for Child stealing; Section 159 1(b) of the Penal Code Act Cap 120 provides for a sentence of 7 years. In the instant case it is upon the arrest of the convict that the child was recovered.

In the present case, I have considered that these are very serious offences whose maximum penalties are a death sentence for Murder and life imprisonment for attempted Murder. I have considered the brutal manner in which the offences were committed against the victims who were completely innocent and defenseless, without any regard to the sanctity of life. The deceased died by manual strangulation and the victim Nantale Patricia Kisakye suffered grievous harm due to strangulation. This was because she responded to the cry of her mother. The second offence was committed in order to stop the venture of stealing a child. In order to get her coveted child, the convict committed two capital crimes.

The offence of Murder was committed partially in presence of Nantale Patricia Kisakye; the impact of the crime of attempted murder on the Nantale; the injuries sustained the Medical Report classified the injuries as grievous harm; the impact of the crime of Murder on the family of the victims, Nakiwala and Nantale who lost a mother; premeditation in arming herself with a rope before attacking the victims. The Court observes that the convict meticulously planned the events leading to the commission of the offences in all counts and abused the trust that the deceased had as a friend.

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There was pre-meditation when the convict lied to her husband that she was pregnant and had to go back to their home in Wakiso Village, Nama Subcounty in Mukono District to give birth.

I have considered the following mitigating factors: the fact that the convict is a first time offender with no previous conviction; the youthful age of the convict being 27 years of age at the commission of the offence she is a young woman capable of reform and the fact that she pleaded guilty from the onset and did not waste Courts time. The Aggravating factors by far outweigh the mitigating factors.

Under Article 23 (8) of the Constitution of the Republic of Uganda and Regulation 15 (2) of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, the Court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account.

The Prosecution has asked the Court to impose sentences of 30 years, 20 years and 7 years that run consecutively on the ground that the Murder was committed against the deceased and that even though the victim (Nakazi) tried to stop the convict from killing her friend and mother to the children; it means that the convict would serve a total or aggregate term of imprisonment of 57 years.

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The Defence prayed for leniency and prayed for a concurrent sentence as mentioned earlier.

Whether a Judge opts for a consecutive or a concurrent running of sentences, what is key, is that the total sentence must be proportionate to the culpability of the offender (**See Magala Ramathan v. Uganda, SCCA 01/2014**).

After considering the totality of the circumstances of this case I consider a sentence of 30 years for the offence Murder in Count 1 to be appropriate to the culpability of the convict in this case. I therefore sentence the convict to 30 years on Count 1 (Murder), and discount the period spent on remand being 3 years 2 months 2 days. The convict will now serve a period of 26 years 9 months and 28 days.

I sentence the convict to a term of 15 years' imprisonment in Count II. The convict shall serve a sentence of 11 years, 9 months and 28 days' imprisonment for the offence of Attempted Murder.

In regard to the offence of stealing a child I sentence the convict to 7 years. The sentences in Count 1 and Count III shall run consecutively while the sentence in Count 11 of Attempted Murder are to run concurrently. The convict shall therefore serve a period 33 years, 9 months and 7 days.

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The convict is advised that she has a right of Appeal against the legality and severity of the sentence within 14 days from today.

**Dated** and delivered at **Mukono** this **17<sup>th</sup>** day of **April, 2024**.

  
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**Christine Kaahwa**

**JUDGE**