

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

**HIGH COURT CRIMINAL SESSION CASE NO.164 OF 2014 (arising from HCT –
Crim. No. 107 of 2001)**

**UGANDA :::PROSECUTIO
N**

VERSUS

AKANDWANAHO

NATHAN :::CONVICT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 This matter was placed before me in a mitigation and re-sentencing session for sentencing the convict. It should be noted that I was not the trial Judge in this case that involved the convict. The trial Judge was Hon. Mr. Justice V.T. Zehurikize (Retired). The convict was tried, convicted and sentenced to death by the aforestated Judge.

1.2 The convict came before the High Court for sentencing pursuant to the decision of the Supreme Court of Uganda in Attorney General-vs-Susan Kigula & 417 others, Constitutional Petition Appeal No. 3 of 2006, which found that the previous mandatory death penalty regime was unconstitutional. Each convict who was subject to the automatic death sentence and not yet exhausted the appeal process was remitted to the High Court for mitigation and sentence, which was confirmed by the subsequent case of Ambaa Jacob & Another –vs-Uganda, Criminal Appeal No. 10 of 2009.

1.3 The prosecution is represented by the Directorate of Public Prosecutions. This matter was argued by Ms.Nalwanga Sherifah, State Attorney. Whereas, the convict are represented by Mr. Senkezi Stephen of Senkezi, Saali Advocates & Consultants. Both Counsel for the parties ably presented their mitigating factors in their submissions.

2. Sentencing the convict.

2.1 In sentencing the convict the following factors/reasons are considered:-

- 1) The cases of Attorney General-vs- Susan Kigula & 417 others (Supra) and Tigo Stephen –vs- Uganda Criminal Appeal No.8 of 2009.
- 2) All the mitigating factors submitted by both Counsel for the parties.
- 3) The Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, Legal Notice No.8 of 2013 particularly part 1 of the 3rd schedule.
- 4) For special emphasis, I have also considered the following factors:-
 - (i) The convict was convicted of murder which offence carries a maximum sentence of death.
 - (ii) The offence of murder is rampantly committed in Uganda. Hence the need to pass appropriate sentences against the offenders.
 - (iii) From the facts of the case and the way the deceased was killed, the deceased suffered a brutal death. The actions of the convict in relation to the murder of the deceased fall under paragraph 20 of the sentencing Guidelines (Supra). The submissions by Counsel for the prosecution brought out very well the aggravating factors, which put the case in rarest of the rare cases.
 - (iv) I have also considered the prison's report, social inquiry report and the pre-sentence reports in respect of the convict and I have no doubt that the convict has the capacity to reform.
 - (v) The convict is a first offender.
 - (vi) The convict spent about 3 years on remand before conviction, which period I have put into consideration in passing the sentence against convict.

In the result and for the reasons given hereinabove in this ruling, the convict deserved the death sentence. However, owing to the applicable law, this court has discretionary powers to pass a sentence of imprisonment on the convict. In the circumstances of this case and considering the mitigation factors presented by both counsel for the parties, I make a finding that the convict deserves an appropriate imprisonment sentence.

Thus, taking into account the 3 years period the convict spent on remand before conviction, I would have sentenced the convict to 40(forty) years imprisonment, but I deduct the said period the convict spent on remand before conviction. I therefore sentence the convict to 37 years imprisonment from the date of conviction.

Dated at Kampala this 16th day of July, 2014.

Joseph Murangira

Judge.