

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CRIMINAL SESSION CASE NO.183 OF 2014

(arising from HCT – Crim. No. 116 of 2001)

UGANDA :::PROSECUTION

VERSUS

1. BWANGALO HERBERT	}	:::CONVICTS
2. KUYOKA JACKSON		
3. LULE CHARLICE		

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 convicts. It should be noted that I was not the trial Judge in this case that involved the convicts. The trial Judge was Hon. Mr. Justice E.B. Mwangusya (as he then was). The convicts were tried, convicted and sentenced to death by the aforestated Judge.

1.2 The convicts 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 convicts are represented by Mr. Senkezi Stephen of Senkezi, Saali Advocates & Consultants. Both Counsel for the parties ably presented their mitigating factors in their submissions. I must say.

2. Sentencing the convicts.

2.1 In sentencing the convicts 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 prosecution and the convicts. Both Counsel presented convincing arguments which have ably guided me to pass an appropriate sentence against each convict.
- 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 convicts were convicted of murder and sentenced to death.
 - (ii) The offence of murder is rampantly committed in Uganda. Hence the need to curb it down by passing deserving sentences against the wrongdoers/convicts.
 - (iii) From the facts of the case and the way the deceased was killed, certainly, the deceased was brutally killed. Thus this case falls under the rarest of the rare cases (see paragraphs 18 and 20 of the Sentencing Guidelines (Supra). The submissions by Counsel for the prosecution brought out very well the aggravating factors, which I need not emphasise here.
 - (iv) Each convict is a first offender.

- (v) The convicts spent 2 years and 6 (six) months on remand before conviction, which period I have taken into account in passing a sentence against each convict.

In the result and for the reasons given hereinabove in this ruling, each convict deserved the death sentence. However, owing to the legal authorities cited hereinabove, this Court has a wide discretion in determining a sentence to pass against each convict.

Accordingly, therefore, I make a finding that each convict in this case deserves an appropriate sentence of imprisonment. Thus, taking into account the 2(two) years and 6 (six) months each convict spent on remand before conviction, I would have sentenced each convict to 40 (forty) years imprisonment, but I deducted the said period each convict spent on remand before conviction.

Therefore, I sentence,

- a) Bwangalo Herbert to 37 ½ years imprisonment from the date of conviction.
- b) Kuyoka Jackson to 37 ½ years imprisonment from the date of conviction.
- c) Lule Charles to 37 ½ years imprisonment from the date of conviction.

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

Joseph Murangira

Judge.