

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CRIMINAL SESSION CASE NO.163 OF 2014
(arising from HCT – Crim. No. 199 of 2001)

UGANDA :::PROSECUTION

VERSUS

- 1. BAHEMUKA WILLIAM**
- 2. ABIGABA CLOVIS :::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 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 V.T.Zehurikize (now retired). 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 & 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.

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 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 convicts were convicted of murder, an offence that carries a maximum sentence of death.
 - (ii) The offence of murder as a crime is rampant in Uganda. Hence the need to pass reasonably stiff sentences so as to curb down the said crime.
 - (iii) From the facts of the case and the submissions by Counsel for the parties, the deceased was killed in a bluttal manner; which puts this case under the rarest of the rare cases (see paragraphs 18 and 20 of the Sentencing Guideline (Supra). The submissions by Counsel for the prosecution brought out very well the aggravating factors which put this case under the rarest of the rare-cases.
 - (iv) I have also considered the prison’s report, social inquiry report and the pre-sentence report of each convict; and I have no doubt that the convicts have the capacity to reform.
 - (v) The convicts are first offenders.

- (vi) The convicts spent about 2 years on remand before conviction, which period has been considered in passing the sentence against each convict.

In the result and for the reasons given hereinabove in this ruling, I would have sentenced each convict to 40 (forty) years imprisonment. However, I am alive at the law that this Court has discretionary powers to impose an imprisonment Sentence against a person convicted of a capital offence. In the circumstances of this case, I find that the convicts deserve an appropriate imprisonment sentence. Thus, taking into account the 2 years each convict spent on remand, and deducting from the 40 years I would have imposed as a sentence, I do sentence:-

- (a) Bahemuka William to 38 years imprisonment from the date of conviction.
- (b) Abigaba Clovis to 38 years imprisonment from the date of conviction.

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

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Joseph Murangira

Judge.