

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL MITIGATION SESSION NO.0066 OF 2015

**UGANDA :::PROSECUTIO
N**

VERSUS

**ETUDEBO JAMES & 3
OTHERS:::CONVICTS**

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Background facts.

The 4 convicts were charged with murder Contrary to Section 188 and 189 of the Penal code Act, Cap. 120, Laws of Uganda.

The convicts were tried, found guilty, convicted and sentenced to death by the then Hon. Mr. Justice Augustus Kania, at High Court of Uganda sitting at Gulu, on 3rd July, 2002. At that time, the only sentence for murder was to suffer death, see the case of Attorney General –VS- Susan Kigula & 417 other Constitution Appeal No.3 of 2006, and the case of Amba Jacob & Another –VS- Uganda, Criminal Appeal No. 10 of 2009.

The 4 convicts who were subject to the automatic death sentence had not exhausted the appeal process were remitted back to High Court of Uganda, by the Supreme Court of Uganda for mitigation and sentencing.

Therefore, the 4 convicts are before me for mitigation and sentence. The mitigation for sentence was done on 27th August, 2015 by Ms. Barbra Masinde, Senior State Attorney for the prosecution and Mr. Senkeezi Stephen from Senkeezi, Saali Advocates & Legal consultants for the 4 convicts.

2. Sentence for each Convict.

In passing the appropriate sentence on each convict, I have considered the following mitigating factors:-

- i. The mitigating factors presented to Court by Counsel for the prosecution.
- ii. All the mitigating factors presented on each convict by Counsel for the 4 convicts.
- iii. I note that the maximum sentence to which the convicts are convicted of murder.
- iv. The case of Kyalimpa Edward –Vs- Uganda, Criminal Appeal No. 10 of 1995 the Supreme Court of Uganda, quoted the case of –R-V- De Havingland [1983] Cr. App. R (s) 109 and held that:-

“As Dunn, L.J. observed in R-VS- Havingland’s case at page 114, an appropriate sentence of the sentencing judge. Each case presents its own facts upon which a Judge exercises his discretion.”
- v. The Constitution (sentencing Guidelines for Courts of Judicature) (procedure) Directions, Legal Notice No.8 of 2013, particularly PART VI- sentencing in capital offences, paragraphs, 17,18, 19, and 21.
- vi. The convicts were convicted of murder, which is a grave offence.
- vii. From the Court proceedings, and judgment the convicts planned to kill the deceased who was their clan mate. The victim was murdered in cold blood.
- viii. The deceased was brutally killed by the convicts.
- ix. The convicts inflicted various deep cut wounds on the victim according to the postmortem report.
- x. The convicts also caused injuries on the son of the deceased. Thus in commission of the offence the convicts are convicted of committed another offence of assault against the deceased’s son.
- xi. The offence of murder is on the increase in our society Uganda as a Country.
- xii. Accordingly the said sentencing guideline, legal Notice No.8 of 2013 youthful age is defined as age between 18-35 years.

In consideration of all the above mitigating facts, I am of the considered view that the death sentence might not be appropriate in the circumstances. However, I feel each convict must be given a proper deserving sentence appropriate to the offence of murder

they committed. I, thus, apply the sentencing range in capital offences as per the Constitution (sentencing guidelines for Courts of Judicature (Practice) Direction, 2013. I would sentence the convicts to fifty, (50) years imprisonment. Considering the period of about 2 years on remand, I sentence each convict to 48 years imprisonment; from the date of conviction, that on 3rd July,2002. Each convict has been in prison of 13 years since the date of their conviction. Thu, in calculating the remaining sentence each convict has already served 13 years.

Dated at Kampala this 15th day of September, 2015.

Joseph Murangira
Judge.