

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0034 OF 2014

UGANDA **PROSECUTOR**

VERSUS

ATHUMAN TABAN **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

When this case came up on 15th December 2016, for plea taking at the beginning of the criminal session, the accused was indicted with the offence of Murder c/s 188 and 189 of The *Penal Code Act*. It was alleged that on 7th February 2013 at Kebir Cell in Arua District, the accused murdered Candiru Lillian.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Richard Bundu. The court then went ahead to ascertain that the accused had full understanding of the implications of a plea agreement and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The indictment was then read and explained to the accused in Lugbara whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the accused and the deceased, a physically disabled

woman, were cohabiting together with her nine year old son, a few days before she met her death. On 7th February 2013 the accused returned home after his day's errands and found the deceased already home. The deceased asked the accused for the plates she had served him food on. The accused responded that he had sold off the plates. The deceased demanded for compensation in the form of payment. A quarrel ensued between the two. In the course of the quarrel, the accused picked the deceased's walking stick and hit her on the neck, throwing her down on the floor. She could not get up without her crutches. The accused left her lying on the floor.

In the morning, the accused realised the victim had died and he fled into hiding without notifying anyone of her death. Later her neighbours discovered her body in the house and notified the L.Cs. The body of the deceased was taken to Arua Regional Referral Hospital where a post mortem examination was done. The cause of death was found to be a fracture at the base of the skull and cervical spine contusion. The findings were recorded on Police Form 48. The accused was later arrested and medically examined. The findings were recorded on Police Form 24A. He was found to be aged 36 years and of sound mind. Both police forms were received as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Murder c/s 188 and 189 of the *Penal Code Act*. In justification of the sentence of twelve (12) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement as follows; - the offence attracts a maximum penalty of death, the victim was a person with disability who ought to have been protected by the convict. The deceased is survived by a child with no one to care for the child. Life is sacred and should be protected.

In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the convict readily pleaded guilty thereby saving court's time, he has spent three years and ten months on remand, he was the sole bread winner for his family, he is remorseful and HIV positive . In his *allocutus*, the convict prayed for forgiveness. He left children at home with no one to care for them yet three of them were of

school going age. He is also on HIV medication. None of the members of the family of the deceased was available to make a victim impact statement.

I have reviewed the proposed sentence of thirteen years' imprisonment in light of the *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Bukenya v Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22nd December 2014, the Court of Appeal upheld a sentence of life imprisonment for a 36 year old man convicted of murder. He had used a knife and a spear to stab the deceased, who was his brother, to death after an earlier fight. In *Sebuliba Siraji v Uganda C.A. Cr. Appeal No. 319 of 2009*, in its decision of 18th December 2014, the court of appeal confirmed a sentence of life imprisonment. In that case, the victim was a businessman and the accused was his casual labourer. On the fateful day, the accused waited for the deceased with a panga hidden in a kavera (polythene bag) and when the deceased opened his vehicle, the appellant attacked him and cut him with a panga on his head, neck and hand. In *Uganda v Businge Kugonza H.C. Cr. Sess. Case No. 162 of 2012* the accused was convicted of murder after a full trial and was on 11th September 2013 sentenced to 20 years' imprisonment. The convict in that case had dug hole in the wall of the victim's house and cut him to death with a panga while he slept in his bed. In *Uganda v Ocitti Alex and another, H.C. Cr Sessions Case No. 0428 of 2014*, an accused who plead guilty to an indictment of murder was on 7th November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head multiple times. In *Uganda v Mutebi Muhamed and another, H.C. Cr Sessions Case No. 038 of 2011*, one of the accused who pleaded guilty to the offence of murder was on 17th January 2014 sentenced to 25 years' imprisonment while the other convicted after a full trial was sentenced to 30 years' imprisonment. The two convicts had killed the deceased by stabbing repeatedly on vulnerable parts of the body such as the head, the chest and near the breast during a robbery. Lastly, the case of *Tom Sazi Sande alias Hussein Saddam v Uganda C.A Cr Appeal No. 127 of 2009*, where in its decision of 24th March 2014, the Court of Appeal upheld a sentence of 18 years' imprisonment for an accused who pleaded guilty to an indictment of murder. He had been on remand for 2 years and 3 months.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, the aggravating and mitigating factors outlined above and the fact that the convict has already spent three years and ten months on remand (having been charged on 19th February 2013), I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to twelve (12) years' imprisonment to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Arua this 23rd day of December, 2016.

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Stephen Mubiru,
Judge.