

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CRIMINAL DIVISION**  
**HIGH COURT CRIMINAL JUVENILE SESSION CASE NO. 19 OF**  
**2016**  
**(Arising from Buganda Road Court at City Hall Court, JO -271 of**  
**2015)**

**UGANDA:..... PROSECUTION**

**VERSUS**

**BEDAYIKA NANCY :..... JUVENILE**  
**OFFENDER/ACCUSED**

**RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1. Introduction**

- 1.1 The Juvenile Offender, Bedayika Nancy is being represented by Ms. Awero Sarah Asiimwe from Uganda Christian Lawyers Fraternity, Kampala.
- 1.2 The Prosecution, Uganda, is being represented by Ms. Jacqlyn Okui, Senior State Attorney, working with the Directorate of Public Prosecutions, Kampala.
- 1.3 The Juvenile Offender is indicted with murder Contrary to Sections 188 and 189 of the Penal Code Act. The deceased, Kafuba Asaad was aged 4 years at the time of his death, on 1<sup>st</sup> November, 2015.

**2. The trial of the Juvenile Offender.**

- 2.1 On 13<sup>th</sup> September 2016, the Juvenile Offender pleaded guilty to the charge of murder. She was accordingly found guilty and I accordingly convicted her of the offence of murder Contrary to Sections 188 and 189 of the Penal Code Act, Cap. 120, Laws of Uganda.

- 2.2 At the time of writing and passing a sentence against the Child Offender, while in my Chambers it came apparent to me that both Counsel for the parties never addressed Court during mitigation of sentence in their respective submissions on the impact of Section 23 of the Children (Amendment) Act No. 9 of 2016 on the sentencing of the Children Offenders convicted of Capital Offences.
- 2.3 Consequent to the above, I postponed the passing of sentences in nine (9) separate Juvenile Session cases where the Children Offenders had pleaded guilty to the charges charged against each of them. At that juncture I invited in my Chambers all the prosecutors and the defence lawyers representing the children offenders to address the Court on the said legal issue.

The issue is whether in view of Section 23 of the Children (Amendment) Act, No. 9 of 2016, the High Court has powers to pass a sentence in a trial before it of the child offender who had been tried alone.

### **3. Submissions by Joint Lawyers for the parties on the issue raised.**

#### 3.1 The following lawyers:

Ms. Jacqlyn Okui, Senior State Attorney; Ms. Nakafeero Fatimah Senior State Attorney, both working with the Directorate of Public Prosecutions, Kampala; Ms. Winfred Adukule from M/S Adukule & Co. Advocates Kampala and M/S Awero Sarah Asiimwe from Uganda Christian Lawyers Fraternity, Kampala both representing the Children Offenders on state brief, jointly addressed Court on the said legal issue.

3.2 It was their submissions that having looked at the Sections of the Children Act, Cap 59: **94 (1), (g)100 (3) and (4) and 104 as amended by the Children (Amendment) Act, No.9 of 2016**, that it was their considered opinion that where a child offender is charged alone of an offence punishable with death, tried and proved guilty of such an offence, the High Court has no powers to sentence such a child offender. That the power to sentence the child offender lies with the Family and Children Court, presided over by a Magistrate Grade 1.

They further submitted that it is only in respect of a child offender charged jointly with an adult person, where the High Court has powers to sentence such a Child Offender. That it is mandatory for the High Court under Section 100 (3) of the Children Act, Cap. 59 to remit the case after proving the charge against the Child Offender to the Family and Children Court for passing appropriate orders against the Child Offender. And that in passing the appropriate Order against the Child Offender, the Family and Children Court is guided by Section 94 (1) (g) of the Children Act, Cap 59.

Finally, all referred to Counsel submitted that from the above referred to Sections of The Children Act, Cap.59, that The Children (Amendment) Act, No.9 of 2016 only captured where a child is jointly charged and tried with an adult person in the High Court under Section 23 (a). That the status quo in respect to the Child Offender tried alone remains as provided under Section 100 (3) of the parent Act (Supra).

#### **4. Resolution of the issue by Court.**

4.1 The issue is whether the High Court has powers to make any appropriate Orders under the Children Act, Cap.59 against the Child Offender who is tried alone. Indeed I can see a conflict between Sections 94 (1) (g), 100 (3) and 104 of the Children Act (Supra and Section 23 of the Children (Amendment) Act, No. 9 of 2016, and Article 139 (1) of the Constitution of the Republic of Uganda and Section 14 of the Judicature Act, Cap. 13, Laws of Uganda.

4.2 For clarity and better resolving of the said issue, allow me to reproduce herebelow the above stated Sections:

**“Section 100 (3) of the Children Act thereof provides that:-**

**Where a child is tried alone or jointly with an adult in a Court Superior to a Family and Children Court, the Child shall be remitted to a family and Children Court for an appropriate Order to be made if the offence is proved against him or her.”**

Then Section 23 of the Children (Amendment) Act, No.9 of 2016 provides:-

“Section 104 of the Principal Act is amended:-

**a) By substituting for Subsection (2) of the following:-**

**“(2) Where a child is tried jointly with an adult in the High Court, the High Court shall make an appropriate Order under this Act.**

**b) By inserting immediately after Subsection (3) the following :-**

**“(4) A child shall not be sentenced to death”**

In contrast to the submissions by all Counsel for the parties, Section 100 (1) and (2) of the Children Act, provides:-

- 1) **Where it appears to a Court other than a Family and Children Court, that person charged before it with an offence is a child, the Court shall remit the case to a Family and Children Court.**
- 2) **Subsection (1) does not apply where a child is charged with an offence punishable by death or the Child is jointly charged with an adult.”** In my considered view, under this Subsection, the child charged and tried alone by the High Court of an offence punishable by death, the High Court cannot remit the child to the family and children Court for any appropriate orders.

Also Section 104 (3) of the Children Act (Supra) provides:-

**“(3) In any proceedings before the High Court in which a Child is involved, the High Court shall have regard to the Child’s age and to provisions of the law relating to the procedure of trials involving Children.”** The procedures relating to the trial of children are found:-

1. Section 16 of the Children Act Cap. 59, which provides that:-

**“16. Procedure in family and Children Court.”**

- 1) **The procedure of the family and children Court in all matters shall be in accordance with rules of Court made by the Rules Committee for the purpose but subject to the following:-**
  - a. **The Court shall sit as often as necessary.**
  - b. **Proceedings shall be held in camera.**
  - c. **Proceedings shall be as informal as possible and by inquiry rather than by exposing the child to adversarial procedures.**
  - d. **Parents or guardians of the child shall be present whenever possible.**

- e. **The child shall have a right to legal representation.**
- f. **The right to appeal shall be explained to the child.**

**2) Apart from members and officers of the Court, only the following persons may at the discretion of the Court attend any sitting of a family and children Court:-**

- a) **Parties to the case before the Court, their advocates, witnesses and other persons directly concerned in the case.**
- b) **Parents or guardians of the child before the Court.**
- c) **A Probation and social welfare officer, and**
- d) **Any other person whom the Court authorizes to be present.**

2. The Children (Family and Children Court) Rules, Statutory Instrument No.59 -2 Rule 3 provides that:-

**“The procedure of the family and children Court as set out in these Rules is subject to Section 16 of the Act.”**

Rule 28 of the said Rules provides for the trial procedure in relation to children offenders is the same as well set out in Section 16 of the Children Act, Cap.59.

The procedure referred to in Section 104 (3) of the Children Act, Cap. 59 and as I have stated it above, does not take away the jurisdiction of the High Court to sentence children offenders who had been tried alone in the High Court. The jurisdiction of the High Court is enshrined in Article 139 (1) of the Constitution of the Republic of Uganda:

**“The High Court shall, subject to the provisions of this Constitution have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.”**

This Article 139 of the Constitution was operationalised by Section 14 of the Judicature Act, Cap. 13.

Therefore, the referred to Sections of the children Act, Cap. 59 by all Counsel by the parties do not and cannot take away the unlimited jurisdiction of the High Court in the sentencing of children offenders.

It is also important to note that the family and children court is a cpresided over by a Magistrate Grade 1. Also to note is the repealed Subsection 2 of Section 104 of the Parent Act, which provided that:-

**“Where a Child is tried jointly with an adult in the High Court, the Child shall be remitted to the Family and Children Court for an appropriate Order to be made if the offence is provided against the Child.”**

All the provisions of the law hereinabovestated shall be of great reference in this ruling. From the wording of Section 104 as amended by Section 23 of the Children (Amendment) Act (Supra) the Legislature never intended to create two separate sentencing regimes for Children Offenders charged with Capital offences. That is, the Children offenders charged and tried alone to be treated separately and/or differently from the same Children Offenders jointly charged with adult persons of the same Capital offences. It is,

therefore, my considered view that a child offender tried alone by the High Court and the child offender jointly tried with an adult person by the High Court ought to be dealt with by the High Court that tried the said Child Offender in their respective separate trials.

According to Section 104 (3) of the Children Act, Cap. 59, the High Court has powers to deal with the child offender with due regard to the child's age and to the provisions of the law relating to the procedure of trials involving Children. The Children (Amendment) Act, No. 9 of 2016, Section 23, introduces Subsection 4 to the Principal Act, which states that the Child shall not be sentenced by the High Court to a death sentence. The aforestated provision of the law by interpretation empowers the High Court to sentence a child to any legal sentence other than the death penalty.

Therefore, in my considered view, Sections 94 (1) (g) and 100 (3) of the Children Act, Cap. 59 do not strictly apply to the High Court, rather it applies to the Chief Magistrate's Court and other Courts which are higher than the Family and Children Court, for example, the Court Marshal.

The amendment of Section 104 of the Children Act, Cap. 59 by Section 23 of the Children (Amendment) Act, No.9 of 2016, as stated hereinabove gave the High Court powers to try and sentence the Children Offenders. The mischief in Section 104 of The Children Act Cap.59 was corrected by the said Amendment of the Children Act. The latter Act came operational on 1<sup>st</sup> June, 2016.

## 5. **Conclusion**

In closing and in consideration of the Submissions by Counsel for the parties, my evaluation and interpretation of the law as I have analyzed



hereinabove in this ruling, the legal issue at hand is answered in the affirmative. I therefore, hold that the High Court has jurisdiction to sentence a child offender who is tried alone on a Capital offence by the High Court as well as the child offender who is jointly tried with a person who is an adult.  
Dated at Kampala this 15<sup>th</sup> day of September, 2016.

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**JOSEPH MURANGIRA**

**JUDGE**

**THE REPUBLIC OF UGANDA**

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**VERSUS**

**BEDAYIKA NANCY :.....  
JUVENILE OFFENDER**

**REPRESENTATION**

Ms. Nakafeero Fatinah Senior State Attorney for the state.

Ms. Awero Sarah Asimwe and Ms. Adukule Winfred representing the Juvenile offenders.

Ms. Margaret Kakunguru, the Clerk is in Court.

**Court:** Ruling is delivered in open Court.

Right of Appeal is explained to the parties.

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**JOSEPH MURANGIRA**

**JUDGE**

**15.9.2016**