

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**

**CRIMINAL CASE No. 0068 OF 2014**

**UGANDA .....**

**PROSECUTOR**

**VERSUS**

**AYIKO SIMON .....**

**ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**JUDGMENT**

The accused in this case is indicted with one count of Murder c/s 188 and 189 of the *Penal Code Act*. It is alleged that the accused on the 3<sup>rd</sup> day of November 2012 at Ondukani village in Arua murdered one Andabati Valentino.

The events leading to the prosecution of the accused as narrated by the prosecution witnesses are briefly that on 30<sup>th</sup> October 2012, during the late afternoon or early evening hours, the deceased, Andabati Valentino found a strange goat at his home and suspected his son Ayiko Samuel (the accused) to have stolen the goat. When he confronted the accused with his suspicion and accused him of theft, the accused grew furious and kicked the deceased several times in the chest and stomach region. He picked a stick (which the accused denies having used) and hit him with it in the stomach. That night, the deceased narrated the events to PW2 (Amayo Felix) his uncle with whom they shared accommodation. The following morning PW2 asked the accused why he had assaulted his father despite his previous vow never to assault his elders. The accused replied that it was out of anger but did not have money for taking his father to hospital. The deceased was at the time in a lot of pain.

On 2<sup>nd</sup> November 2012, PW3 (Daniel Drapari) the L.C1 Secretary for Defence of Ondukani village, was summoned and the deceased briefed him about the assault by the accused and the pain he was suffering. PW3 sent for a boda boda motorcycle and took the deceased to Katrini Sub-county police post from where he obtained Police Form 3 and proceeded to take the deceased to Oriajini hospital for treatment. Unfortunately, the deceased passed away on 3<sup>rd</sup> November. A post mortem examination of his body performed by PW1 (Dr. Apo Julius) revealed that the cause of death was massive internal bleeding due to a ruptured spleen. The report was tendered in evidence as exhibit P.E. 1. The accused was arrested and a charge and caution statement was recorded from him by PW4 (D/AIP Afema Alex) in which he admitted having assaulted his father because he had insulted him by calling him a thief. In his unsworn statement in his defence, the accused admitted having assaulted the deceased but denied having used a club. He said he was sorry for the act.

The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift and the accused can only be convicted on the strength of the prosecution case and not because of any weaknesses in his defence, (*See Ssekitoleko v. Uganda [1967] EA 531*). Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (*see Miller Vs Minister of Pensions [1947] 2 ALL ER 372*).

For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. Death of a human being occurred.
2. The death was caused by some unlawful act.
3. That the unlawful act was actuated by malice aforethought; and lastly
4. That it was the accused who caused the unlawful death.

The first ingredient requires the prosecution to prove the death of a human being. Death may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body of the deceased. In this case, the prosecution relied on a post mortem report prepared by PW1 (Dr. Apo Julius) which was

admitted at the commencement of the trial as Exhibit P.E.1. It is dated 3<sup>rd</sup> November 2012. This is a witness who saw the body of the deceased and conducted an autopsy. The deceased had been a patient at the hospital for a day. There is additional evidence of PW2 (Amayo Felix) the younger brother of the deceased who saw the body and attended the funeral. PW3 (Daniel Drapari) the L.C. I Secretary for Defence who took the deceased to hospital, saw his body and attended his burial. The accused himself, DW1 did not contest this in his defence. He only expressed regret about the event. In agreement with the assessors, I find that the evidence before court has proved beyond reasonable doubt that Andabati Valentino is dead.

The second ingredient requires the prosecution to prove that the death was caused unlawfully. A human death is a homicide if the dead person was once alive and is now dead because of the act of another human being. Homicides may be justifiable, excusable or criminal, depending upon the circumstances of the killing and the state of mind of the killer. Some homicides are authorized by law (hence justifiable homicides), for example; the killing of an enemy soldier in combat by another soldier, the execution of condemned prisoners and killing in self defence or defence of property. Some homicides, although not authorized by law, are nonetheless killings for which the law does not punish the offender. Such killings are termed excusable homicides. Typically, excusable homicides are killings which result from accident or inadvertence, or killings committed by persons who lack the capacity to commit crimes (such as very young children or persons who are legally insane). The law is that any homicide is presumed to have been caused unlawfully unless it was accidental or otherwise legally justified (see *Gusambizi s/o Wesonga v R. (1948) 15 E.A.C.A 63*). In the instant case, PW1 (Dr. Apo Julius) who conducted the autopsy established the cause of death to have been excessive internal bleeding as a result of a ruptured spleen. Exhibit P.E.1 dated 3<sup>rd</sup> November 2012 contains the details of the findings.

There is no eyewitness account of how those injuries were inflicted. The prosecution relied on the dying declaration of the deceased as narrated to PW2 and PW3. Evidence of a dying declaration is admissible under section 30 (a) of the *Evidence Act* which permits a court to receive and rely on statements made by a person as to the cause of his or her death, or as to any circumstances of the transaction which resulted in his or her death, in cases in which the cause of that person's death comes into question, where the person is dead. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under

expectation of death, and, whatever may be the nature of the proceedings in which the cause of his or her death comes into question. However, court is required to proceed with caution in respect of dying declarations. The Supreme Court in *Mibulo Edward v Uganda S.C. Cr. Appeal No.17 of 1995* had this to say;

The law is that evidence of dying declaration must be received with caution because the test of cross examination may be wholly wanting; and particulars of violence may have occurred under circumstances of confusion and surprise, the deceased may have stated his inference from facts concerning which he may have omitted important particulars for not having his attention called to them. Particular caution must be exercised when an attack takes place in the darkness when identification of the assailant is usually more difficult than in daylight. The fact that the deceased told different persons that the appellant was the assailant is no guarantee of accuracy. It is not a rule of law that in order to support conviction, there must be corroboration of a dying declaration as there may be circumstances which go to show that the deceased could not have been mistaken. But it is generally speaking very unsafe to base conviction solely on the dying declaration of a deceased person made in the absence of the accused and not subjected to cross examination unless there is satisfactory corroboration

I have considered the circumstances in which the deceased was attacked as recounted to PW2 and PW3. The attack on the deceased took place during day time and although the deceased is said to have been drunk, he could not have been mistaken about the fact that the assault was a deliberate attack on him and not an accident. His dying declaration is corroborated by the admission of the accused both in his charge and caution statement, Prosecution Exhibits P.E.2A and 2B, and in his unsworn statement during his defence. In his charge and caution statement he said "I got annoyed and kicked the deceased twice from (sic) his ribs." This was a deliberate assault on the deceased. I have not found any lawful excuse for such an assault in the evidence before me. In agreement with the assessors, I find that the evidence before court has proved beyond reasonable doubt that the death of Andabati Valentino was unlawfully caused.

The third ingredient required in proving this case is that the unlawful killing of the deceased was caused with malice aforethought. Malice aforethought is defined by section 191 of the *Penal*

*Code Act* as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death.

Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider the weapon used, the manner in which it was used, and the part of the body of the victim that was targeted (see *R v Tubere s/o Ochen (1945) 12 E.A.C.A. 63*. If the weapon used to inflict the injuries from which the deceased died are lethal or deadly weapons, or if the injuries are fatal or life threatening and inflicted on vital or vulnerable parts of the body malice aforethought will readily be inferred (see *Uganda v Manuela Awacango and Another H.C. Criminal Session Case No 16 of 2006*)

In the case before me, it was said in the dying declaration that the deceased was kicked and also hit with a club during the assault. The accused denies having assaulted the deceased with a club. This aspect of the dying declaration is not corroborated by any independent event thereby creating a reasonable doubt whether any weapon was used during the attack. I have decided to resolve this doubt in favour of the accused and find that it has not been proved beyond reasonable doubt that any weapon was used in attacking the deceased. In that case, it is not possible to determine the presence or absence of malice aforethought in this case on basis of the nature of the weapon used and the manner in which it was used.

In situations where no weapon is used, for a court to infer that an accused killed with malice aforethought, it must consider if death was a natural consequence of the act that caused the death and whether the accused foresaw death as a natural consequence of the act. The court should consider; (i) whether the relevant consequence which must be proved (death), was a natural consequence of the accused's voluntary act and (ii) whether the accused foresaw that it would be a natural consequence of his act, and if so, then it is proper for court to draw the inference that the accused intended that consequence (see *R v Moloney [1985] 1 All ER 1025; Nanyonjo Harriet and Another v Uganda S.C. Cr. Appeal No.24 of 2002*). In this case therefore, court had to determine whether death is a natural consequence of ferocious kicks to the ribs and whether the accused foresaw that death would be a natural consequence of his act.

The stomach and chest region is a vulnerable part of the body. This area of the human body contains some of the most vital internal organs. Death is in my view a natural consequence of any serious injury to these organs even where such injury is inflicted externally. Any person who inflicts considerable force to this part of the body, penetrative or otherwise, must foresee that death is a likely consequence of his or her act. That considerable force was used in this instance is evident from the content of Exhibits P.E.2A and 2B, where the accused stated that, "I...kicked the deceased twice from (sic) his ribs.... The deceased fell down unconscious." For two kicks to the ribs to have caused the victim to fall down unconscious instantly, they must have been delivered with considerable ferocity.

Secondly, kicks to this part of the body are not commonly reflex action kicks but rather deliberate ones. In order to be able to deliver kicks to this part of another person's body, one ordinarily must make some effort to raise one's foot to a considerable height above one's waist, except if the victim is an abnormally short person or is in a sitting, squatting, bent over, prostrate or in such similar position or the assailant is at an elevated level in comparison with the victim. The dying declaration reveals that the accused was attacked immediately he opened the door to his house to find out who had knocked at the door. There is nothing to suggest that the deceased was an abnormally short person or was sitting, squatting, bent over, was lying prostrate or in such similar position at the time he was attacked nor that the assailant was at an elevated level in comparison with the deceased.

However, this ingredient brings into focus the degree of culpability of the accused in causing the death of the deceased. The court is required to take into account any possible defences even though they were not duly raised by the accused, for as long as there is some evidence before the court to suggest such a defence (See *Okello Okidi v Uganda S. C. Cr. Appeal No. 3 of 1995*). This is most importantly so in cases of murder. In *Didasi Kebengi v Uganda [1978] HCB 216*, it was stated that;

It is the duty of the trial court to deal with all the alternative defences, if any, if they emerge from all the evidence as fit for consideration notwithstanding that they are not put forward or raised by the defence, for every man on trial for murder is entitled to have the issue of manslaughter left to the assessors if there is evidence on which

such a verdict can be given, to deprive him of his constitutes a grave miscarriage of justice.

I therefore proceed to determine whether from the evidence on record, there is any defence available to the accused that would justify or excuse the killing or negate the inference of malice aforethought. On basis of the evidence on record, the only viable defence available to the accused may be found in his charge and caution statement tendered by the prosecution as Exhibits P.E.2A and 2B, where he stated that “the deceased started to embarrass and abuse me that I’m a thief. I got annoyed and kicked the deceased twice from (sic) his ribs and also slapped him.” The accused repeated this in his unsworn statement while making his defence. This would suggest that he acted out of provocation. In the case of provocation, the "intent" to kill is the product of rage producing a non-rational state of mind. Since the intent to kill necessary to prove malice aforethought for murder is a cool, deliberate intent, a successful defence of provocation will reduce the degree of culpability of an accused to the level of the minor and cognate offence of Manslaughter c/s.187 of the *Penal Code Act*. Usually Murder is reduced to Manslaughter when the prosecution fails to prove the element of malice aforethought but proves all other ingredients of the offence.

According to section 192 of the Penal Code Act, when a person who unlawfully kills another under circumstances which, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his or her passion to cool, he or she commits manslaughter only. Therefore, for an act or insult to constitute provocation in the legal sense, it must have been of a nature capable of causing temporary loss of self control and the reaction must have been in the heat of passion without any lapse of a period sufficient enough to allow the accused to regain his self control.

According to *Sowed Ndosire v Uganda S. C. Criminal Appeal No. 28 of 1989*, the defence of provocation requires the satisfaction of the following elements;

- i. A wrongful act or insult sufficient to enrage an ordinary person of the class to which the accused belongs;
- ii. The accused, because of the wrongful act or insult, attained a mental state referred to as a sudden heat of passion,

- iii. The killing of the victim was sudden with no cooling off; and
- iv. There was a causal connection between the provocation, the heat of passion, and the killing.

The wrongful act or insult by the victim should be one that was capable of depriving an ordinary person, such as the accused, of the power of self-control and to induce him to commit an assault of the kind which the accused committed upon the person by whom the act or insult is done or offered. Under section 193 (1) of the *Penal Code Act*, the standard for judging the capability of an act or insult to cause sudden heat of passion is that of an ordinary person. Any individual idiosyncrasy, for instance such as the accused being a person who is more readily provoked to passion than the ordinary person, is of no avail. The facts relied upon as provocation though need not be strictly proved so long as there is evidence to raise a reasonable probability that they exist. The onus is on the prosecution to prove beyond reasonable doubt that provocation does not apply. There is no burden on the accused to satisfy court that he was provoked.

The provocative insult in this case was the fact that the deceased called him a thief. The question here is whether an accusation of criminal conduct, specifically that of being called a thief, is sufficient to deprive an ordinary person of the class to which the accused belongs, the power of self control. This is a two stage determination, firstly, the court has to determine whether the particular act or insult was such as to deprive the ordinary person of the power of self-control, and then secondly, to decide from the view point of this particular accused if he was in fact deprived of the power of self-control.

I construe insults to be grossly annoying words. Some insults are so crude that they have been found by courts to have had the capacity of depriving an accused of self control. For example in *Ainobushobozi v Uganda, C. A. Cr. Appeal No. 242 of 2014*, the victim insulted the accused with the words, 'Kuma nyoko'. The accused was acquitted of murder and instead was convicted of manslaughter on account of provocation. Would a person with reasonable powers of self-control have lost his or her self-control when called a thief? The prosecution did not lead evidence regarding the social status and environment of the accused and the habits and customs of the community to which he belongs. The court was however furnished with evidence of the context in which the words were uttered which can be deduced from the dying declaration and the charge and caution statement of the accused. These words must be construed in the context of the



relationship between the deceased and the accused. In that context, they should not have carried any meaning other than being a gesture of reprimand that the deceased directed towards his son. In my view, although annoying, being called a thief in that context is not that grossly slighting or crude an insult. The deceased uttered words unaccompanied by any physical act. If the accused reacted violently, which he did, he could not, under these circumstances plead provocation. I am not persuaded to believe that such an insult is capable of depriving an ordinary person of the class to which the accused belongs, of self control.

If it did in this case, it would appear to me to have been the result of the accused being a short tempered person. According to PW2, the accused had at one time during the past vowed never to assault his elders. Such a vow can only be made by a person with a propensity for violence. That he had such a propensity or such factors peculiar to him as a person with an exceptionally excitable temperament, is a subjective attribute yet the issue has to be determined using the objective test of “an ordinary person.” The objective element of the test exists to ensure that the criminal law encourages reasonable and responsible behavior.

In respect of such idiosyncrasies as being short tempered when considering the defense of provocation, it was held in *R v Miller (2007) 177 A Crim R 528*, that the attributes or characteristics of the particular accused are irrelevant to an assessment of the content and extent of the provocation involved in the relevant conduct. The High Court of Australia in *Stingel v R (1990) 171 CLR 312 at 332*, commented;

The fact that the particular accused lacks the power of self-control of an ordinary person by reason of some attribute or characteristic which must be taken into account in identifying the content or gravity of the particular wrongful act or insult will not affect the reference point of the objective test, namely, the power of self-control of a hypothetical ‘ordinary person’.

In *R. v Lesbini [1961] 3 K.B. 1116*, it was held that “the test to be applied in order to determine whether homicide would either be murder or manslaughter by reason of provocation is whether the provocation was sufficient to deprive a reasonable man of his self-control not whether it was sufficient to deprive a particular person charged with murder of his self-control.” The same

principle has been applied in Uganda in the case of *Sowed Ndosire v Uganda S. C. Criminal Appeal No. 28 of 1989*.

On the other hand, for the defence of provocation to succeed, the assault must occur in the heat of passion before the accused had had time to cool down (See *Ikuku alias Maina Nyaga v Republic [1965] EA 496*). The evidence before court shows that in his dying declaration as recounted by PW3 the deceased after rebuking the accused for bringing a suspected stolen goat into his home "...entered the house to sleep since he was drunk. Later the accused knocked at the door. When he opened the door, the accused began kicking him in the chest and the stomach." If this piece of evidence is believed, it would imply that the assault did not take place immediately after the insult but after an interval during which the accused entered his house and closed the door as he went to sleep. If this version is believed, then if there was any provocation it was not sudden because the accused went deliberately in search of the deceased after an interval. He had time to cool and was not acting in the heat of passion. I am inclined to believe this considering that the accused in his charge and caution statement claimed that the accused was embarrassing him by those accusations yet he does not say that there was anyone around when the deceased questioned him about the goat. The only context in which this claimed embarrassment would bear meaning is therefore the fact that the deceased had reported to the L.C.I Chairman of the village.

In his charge and caution statement, Exhibits P.E.2A and 2B, the accused stated that "on 30<sup>th</sup> day of October 2012, my late father Andabati reported to the L.C.I Chairman of our village called Drapari about the stolen goat. The deceased came to me and asked me as to where I got the goat from..... the deceased started to abuse and embarrass me that I'm a thief. I got annoyed and kicked the deceased twice..." This piece of evidence dispels the claim that the accused acted upon sudden provocation. The deceased had made the allegation accusing the accused of being a thief to the L.C.I Chairman, before he later questioned the accused about the court. The accused was aware of this allegation before his father confronted him with it. It was not a sudden revelation that could have sparked off a heat of passion.

In his charge and caution statement, tendered by the prosecution as Exhibits P.E.2A and 2B, the accused stated that "It is true that the deceased died of the injury that I inflicted on him but I had

no intention of causing his death.”The evidence before court is to the contrary. The injuries that were inflicted were fatal and having been inflicted on vital or vulnerable parts of the body in a deliberate manner, I find that when he kicked him, the accused must have made a deliberate effort to target this vulnerable part of his body and considering the amount of force with which the kicks were delivered, it was done with reckless disregard for the probability of death ensuing there from. He therefore had malice aforethought.

Under section 191 of the *Penal Code Act*, the voluntary performance of any act, with reasonable foresight that it is likely to cause death, but with such a reckless disregard for the probability of the death of another human being ensuing, is the equivalent of an expressed intent to kill. It does not matter that the perpetrator denies having had such intent. In law, he is deemed to have acted with malice aforethought. This definition of malice aforethought under section 191 of the *Penal Code Act* covers situations where the accused contends that he did not really mean to kill the victim. The state of mind of the accused is still one of malice aforethought. In disagreement with the assessors, I find that this ingredient too has been proved beyond reasonable doubt.

The last ingredient required is to prove that it is the accused who committed the unlawful act that caused the death of the deceased. Evidence in support of this ingredient includes the dying declaration of the deceased as recounted by PW1 and PW2. The reliability of this declaration has been addressed earlier in this judgment. In that declaration, the deceased named the accused as his assailant. This is corroborated by prosecution Exhibits P.E.2A and 2B, in which the accused, as well as in his unsworn statement during his defence, admits having assaulted the deceased. In his charge and caution statement he stated; “I got annoyed and kicked the deceased twice from (sic) his ribs and also slapped him.” In agreement with the assessors, I find that the evidence before court has proved beyond reasonable doubt that the death of Andabati Valentino was caused by the accused.

In the final result, I find that the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt and I hereby convict the accused for the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

Dated at Arua this 10<sup>th</sup> day of August, 2016.

Stephen Mubiru

Judge.

11<sup>th</sup> August 2016

9.45 am

Attendance

Ms. Andicia Meka, Court Clerk.

Ms. Harriet Adubango, Senior Resident State Attorney, for the prosecution.

Mr. Ben Ikilai for the convict on State Brief.

The convict is present in Court.

**SENTENCE AND REASONS FOR SENTENCE**

The convict was found guilty of the offence of murder c/s 188 and 189 of the *Penal Code Act* after a full trial. In his submissions on sentencing, the learned State attorney prayed for a deterrent sentence on the following grounds; the convict assaulted his biological father when he should have respected and protected him. He reacted violently when his father was reprimanding him to be a good person. He therefore deserves a deterrent sentence for him and other members of society to learn that parents are to be respected.

Counsel for the convict prayed for a lenient custodial sentence the following grounds; the convict is a first offender and a young man at the age of 28 years. He has a family of two children who were abandoned by their mother and are now suffering since he was remand on 21<sup>st</sup> November 2012, a period of three years and nine months. He is remorseful, has learnt his lesson and deserves a lenient sentence will enable him return as useful member of society. In his *allocutus*, the convict prayed for lenience on account remorse for having caused the death of his father and the fact that he was looking after his siblings who have now dropped out of school.

The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. I do not consider this to be a case falling in the category of the most extreme cases of murder. I have not been presented with any of the extremely grave circumstances specified in Regulation 20 of The *Constitution (Sentencing*

*Guidelines for Courts of Judicature) (Practice) Directions, 2013* that would justify the imposition of the death penalty and I have for that reason discounted the death sentence.

Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. According to *Ninsiima v Uganda Crim. Appeal No. 180 of 2010*, these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. A Judge can in some circumstances depart from the sentencing guidelines but is under a duty to explain reasons for doing so.

Since in sentencing the convict, I must take into account and seek guidance from current sentencing practices in relation to cases of this nature, I have considered the case of *Bukenya v Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22<sup>nd</sup> 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 *Byaruhanga v Uganda, C.A Crim. Appeal No. 144 of 2007*, in its judgment of 18<sup>th</sup> December 2014, the Court of Appeal reduced the sentence from a term of imprisonment of 22 years to 20 years in respect of a convict who had drowned his seven month old baby in a swamp. The convict was the father of the child and he decided to kill his own child because he did not see any reason for being disturbed by the child who had been left to him by the child's mother who got married nearby. The reduction in sentence was on account of the convict having spent almost five years on remand

Both involved the deliberate, pre-meditated killing of victims closely related to the perpetrators. In the first case, life imprisonment was in my view imposed due to the use of deadly weapons in committing the offence. In the second case, the Court of Appeal was of the view that the weight of the punishment should also take into account the element of reform especially when the offender is relatively young as in that case.

In the case before me, I have discounted imposition of life imprisonment on account of the fact that the convict did not use any weapon. It also is not an offence that was committed with pre-

meditation but seems rather to have been the outcome of reckless disregard of the life and safety of the victim by a short tempered and irresponsible son. I have nevertheless considered the aggravating factors in this case being; the degree of injury inflicted on the victim since upon examination he was found to have a ruptured spleen, the victim was the father of the convict and he died at the hands of his own son in exercise of his parental responsibilities of guiding the convict. The convict should be taught a lesson at temper management by the imposition of some deterrence in an otherwise reformatory sentence. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty years' imprisonment.

I have as well considered the fact that the convict was remorseful right from the time of arrest as can be seen in his charge and caution statement and in his *allocutus*. He is also a young person at the age of 28 years. I have further considered the fact that he is a first offender. For those reasons, I consider a reformatory sentence to be appropriate in the circumstances. I for that reason consider the period of sixteen (16) years imprisonment to be an appropriate reformatory term of imprisonment.

In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict was charged on 21<sup>st</sup> November 2012 and been in custody since then. I hereby take into account and set off three years and nine months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of twelve (12) years and three (3) months, to be served starting from today.

The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Arua this 11<sup>th</sup> day of August, 2016.

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Stephen Mubiru  
Judge.