

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL CASE No. 0130 OF 2014

UGANDA

PROSECUTOR

VERSUS

1. BIDONG ZENONE }

2. ORUIBENGU FRANCIS }.....

ACCUSED

3. OKURMU RICHARD }

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

The convicts were all jointly indicted with one count of murder c/s 188 and 189 of the *Penal Code Act*. When they appeared for plea taking before this court on 15th July 2016, they all pleaded not guilty to the indictment. The case was adjourned to 8th August 2016 for the commencement of the hearing. On that day, A1 and A3 changed their plea and pleaded guilty. The two accused were subsequently convicted on their plea of guilty. The learned State Attorney made submissions in aggravation of sentence and their case was adjourned to 9th August 2016 for the court to hear submissions in mitigation of their sentence.

In the meantime, hearing of the case against A2 started with the admission of the postmortem report during the preliminary hearing, and the testimony of three other witnesses. Further hearing of the case was then adjourned to 9th August 2016. On that day, before the court could hear submissions in mitigation of sentence in respect of A1 and A3, A2 decided to change his plea as well, to a plea of guilty. The court proceeded to subsequently convict him on his own plea of guilty. All accused at the respective stages mentioned before were convicted on their respective pleas of guilty after they had confirmed the correctness of the facts as read to them. The facts were briefly as follows;

On 5th February 2012 between 8.00 am and 9.00 am, the deceased was in his compound with some of his children, as they prepared to go to church for an early morning service. He was giving them instructions to spread out his coffee in the sun upon their return from church since he planned to attend a mid morning service himself. On the same day, a son of his brother A1 had died and people had gathered at the home of A1 to pay their last respects. There were allegations that the deceased was responsible for the death of A1's son through witchcraft.

At around 9.00, the three accused, together with two other relatives of theirs at large, armed with bows, arrows, pangas and sticks, stormed the home of the deceased. They immediately grabbed the deceased, began beating him randomly and threw him to the ground. Both A1 and A2 cut the deceased on the head and neck, while A3 and the two other men at large held his feet and arms. They slit his throat with a panga. He died instantly. They were seen licking the deceased's blood off the pangas they had used to cut his neck. A1 fled from the scene and handed himself over to the police. The LC1 Chairman of the village reported the case to the police whereupon A2 and A3 were arrested. A post mortem examination of the body of the deceased was done at the scene of crime and the post mortem report was admitted as part of these facts. It was established that the cause of death was due to hemorrhagic shock (excessive bleeding) and compromised air way. All there accused persons were medically examined and found to have been of sound mind at the time of the offence. Their respective medical examination reports too were admitted as part of the facts. All there were charged with the offence of murder c/s 188 and 189 of the penal code.

In her submissions on sentencing, the learned Senior Resident State attorney prayed for a deterrent sentence on the following grounds; the maximum penalty for the offence is death. The circumstances in which the offence was committed were very gruesome. The deceased was practically slaughtered in the presence of members of his family. The family will forever be traumatized by that experience. Life is sacred and must be respected yet the convicts took the law into their hands whereas they could have reported their suspicions to the relevant authorities.

Counsel on state brief for the accused, Ms. Ederu Olive prayed for a lenient custodial sentence for each of the convicts on the following grounds; A1 is of advanced age at 60 years, A2 is a relatively young man at the age of 40 years while A3 is a young man at the age of 26 years, all

convicts are first offenders who have readily admitted their guilt, each of them has a family that is suffering since they were remanded on 8th August 2012, a period of four years and they are all remorseful for the offence they committed. They have learnt their lesson and should be able to serve a custodial sentence that will enable them to return as useful members of society.

In their respective *allocutus*, each of the convicts prayed for lenience on account of their expressed remorsefulness for having caused the death, it was their first time to commit an offence and they will never do it again and that they would like to heal the broken relations, since the deceased was a close member of their family and his bereaved children their cousins and nephews. A2 and A3 are now born again and preaching the Gospel in prison.

Considering that this was a crime where the victims and the perpetrators of the offence were close members of the same family, I gave one of the sons of the victims, Binenga Elias, an opportunity to make a victim impact statement. In his statement, he prayed that the court should never release the convicts since the entire local community was traumatized and is terrified by the prospect of the convicts returning to live among them. He opined that imprisoning them for one hundred years would be a befitting punishment.

I have considered all the mitigating factors mentioned above and especially the fact that the accused pleaded guilty and expressed remorsefulness. I must say that there are offences where even all the mitigating factors I have reproduced above coupled with a plea of guilty can hardly mitigate the punishment due to the gruesome manner in which the offence was committed. I have for example considered *Mugabe v Uganda C.A. Cr. Appeal No. 412 of 2009*, where the Court of Appeal in its decision of 18th December 2014, confirmed the death sentence for a thirty year old convict who following an allegation of rape against him, was heard threatening that he would kill a member of the deceased's family. The deceased was aged twelve years and on the fateful day he was sent by his father to sell milk at a nearby Trading Centre. He never returned home. The relatives made a search for him and his body was discovered in a house in a banana plantation. The appellant had been seen coming out of a house near that plantation. On examination of the body of the deceased, it was revealed that the stomach had been cut open and the heart and lungs had been removed. His private parts had also been cut off and were missing from his body. The

cause of death was severe hemorrhage due to cut wounds and the body parts removed. The accused pleaded guilty on arraignment. He was sentenced to death despite his plea of guilty.

If ever there was an extremely gruesome death this is one of them where the deceased was practically slaughtered in the presence of his family. The immediate family of the deceased acted honourably in preventing mob justice to be meted out on the convicts. This was a clear sign of the confidence they had that the law would exact retribution on their behalf. I know a life can never be adequately compensated, not even with another life but the death penalty remains one of the lawful sentences for this type of crime. The court should not balk out of the duty entrusted to it to express public indignation towards some of the extreme modes of perpetration of crime.

The maximum penalty for the offence murder as prescribed by section 189 of the *Penal Code Act* is death. This represents the maximum sentence and is reserved for the worst of the worst cases of murder. The convicts before me committed the offence in the worst of the worst of manners. It was a horrific, brutal, callous, calculated, well planned and pre-meditated, senseless killing. It is an offence, which even a plea of guilty coupled with the factors the convicts and their counsel have advanced, will not mitigate. It is one that deserves the death sentence if only to exact retribution for the undignified, brutal and horrendous manner in which the deceased was killed and also to deter other would be offenders.

I therefore sentence each of the accused to death. Each of the accused is to be hanged until he is dead. I so order.

Having been convicted and sentenced on their own plea of guilty, the convicts are advised that they have a right of appeal against the legality and severity of this sentence, within a period of fourteen days

Dated at Arua this 10th day of August, 2016.

Stephen Mubiru
Judge.