

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0204 OF 2015

UGANDA **PROSECUTOR**
VERSUS
ABALLA WALTER **ACCUSED**

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

The convict was indicted with one count of Manslaughter c/s 187 and 190 of the *Penal Code Act*. When he appeared for plea taking before this court on 14th August 2017, he readily pleaded guilty to the indictment. He was therefore convicted on his own plea of guilt after he confirmed the correctness of the facts as read to him. The facts were briefly as follows;

On 16th February 2015, at around 9.00 pm the accused came home and got his child crying without the mother. When he traced for the mother, he got an old man having sexual intercourse with her. He beat her with a stick dragging her towards home. Shortly after the wife died and he reported himself to the police at around 6.00 am the following morning for having assaulted the wife. The body of the deceased was taken for a post mortem and the cause of death was established as having been due to internal head injury and open head damage due to the injury. The accused was arrested and charged accordingly.

In his submissions in aggravation of sentence, the learned Resident State Attorney submitted that although the accused is a first offender, however no one has the right to take a life. Therefore the courts have to send out a message. The maximum punishment for the offence is life imprisonment and the convict should be sentenced to at least not below ten years' imprisonment. Submitting in mitigation of sentence, counsel for the convict on state brief Mr. Engwau George prayed for a lenient sentence on grounds that the convict is remorseful. He has been on remand for two years. He was provoked and acted in the heat of passion. In his allocutus, the convict stated that he is the only male at home who was looking after his mother and the children of his

late brother. He has four children of his own and six for his late brother and four siblings of his. Some are at school and have dropped out of school since he was imprisoned.

The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 190 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of such cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. I have for that reason discounted life imprisonment.

The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 15 years' imprisonment. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon. I have excluded the sentence of life imprisonment on that ground.

I have taken into account the current sentencing practices in relation to cases of this nature, I have considered the case of *Livingstone Kakooza v. Uganda, S.C. Crim. Appeal No. 17 of 1993*, where the Supreme Court considered a sentence of 18 years' imprisonment to have been excessive for a convict for the offence of manslaughter who had spent two years on remand. It reduced the sentence to 10 years' imprisonment. In another case of *Ainobushobozi v. Uganda, C.A. Crim. Appeal No. 242 of 2014*, the Court of Appeal considered a sentence of 18 years' imprisonment to have been excessive for a 21 year old convict for the offence of manslaughter who had spent three years on remand prior to his trial and conviction and was remorseful. It reduced the sentence to 12 years' imprisonment. Finally in the case of *Uganda v. Berustya Steven H.C. Crim. Sessions Case No. 46 of 2001*, where a sentence of 8 years' imprisonment was meted out to a 31 year old man convicted of manslaughter that had spent three years on remand. He hit the deceased with a piece of firewood on the head during a fight. I have considered the single aggravating factor in the case before me being that by his assault, the convict caused a severe head injury that caused the death. It is also a case of domestic violence. Accordingly, in light of that aggravating factor, I have adopted a starting point of twenty years' imprisonment.

From this, the convict is entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict readily pleaded guilty, as one of the factors mitigating his sentence.

As a general, though not inflexible, rule, a reduction of one third has been held to be an appropriate discount (see: *R v. Buffrey (1993) 14 Cr App R (S) 511*). Similarly in *R v. Buffrey 14 Cr. App. R (S) 511*). The Court of Appeal in England indicated that while there was no absolute rule as to what the discount should be, as general guidance the Court believed that something of the order of one-third would be an appropriate discount. In light of the convict's plea of guilty, and persuaded by the English practice, because the convict before me pleaded guilty, I propose at this point to reduce the sentence by one third from the starting point of twenty years to a period of thirteen years' imprisonment.

The seriousness of this offence is mitigated by a number of factors. I have further considered the fact that the convict is a first offender, a relatively young man at the age of 37 years with family responsibilities. A reformatory sentence would be appropriate in the circumstances. I for that reason regard the period of eight (8) years' imprisonment as suiting the purposes of a reformatory sentence in light of the mitigating factors. 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 19th February 2015 and been in custody since then. I hereby take into account and set off a period of two years and six months as the period the

convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of five (5) years and six (6) months, to be served starting today.

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

Dated at Moroto this 15th day of August, 2017.

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Stephen Mubiru
Judge.
15th August, 2017