

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0100 OF 2017

UGANDA **PROSECUTOR**

VERSUS

NAYOLO VERONICA **ACCUSED**

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

When this case came up for plea taking, the accused was indicted with the offence of Murder c/s 188 and 189 of The *Penal Code Act*. It was alleged that on 11th December 2016 at Lobunet village in Nakapiripirit Town Council, the accused murdered her four year old son, Imalany Lokut. The accused entered a plea of guilty to the indictment.

The court then invited the learned Resident State Attorney to present the facts of the case, whereupon he narrated the following facts; on 11th December 2016, the accused had gone to do some labour in the village at the home of one Chela Margaret who refused to pay her. She returned home with her two children including the deceased and another whereby she decided to kill herself and the two children. She hanged the two children and herself. However by the time people came to their rescue, the deceased had died and the second child was rescued. As for the accused, her rope had broken and she had fallen down onto the ground. She was arrested by the mob and handed over to the police. The deceased was taken for medical examination where it was found the cause of death was by hanging. The examination was done by Dr. Lokwang Peter. The accused was examined by a nursing Officer and found to be of sound mind. The two medical examination reports were admitted as part of the facts. The accused having confirmed the facts to be correct, she was convicted n her own plea of guilty for the offence of Murder c/s 188 and 189 of The *Penal Code Act*.

In his submissions on sentencing, the learned Resident State attorney prayed for a deterrent sentence on the following grounds; although the convict is a first offender, the victim was only

four years old and very vulnerable and the only person who could give her care and protection is the mother. The convict is suicidal though she is normal. He prayed for a custodial sentence.

Counsel on state brief for the accused, prayed for a lenient custodial sentence on the following grounds; the convict is a first offender. She is very remorseful and regrets committing the offence. She suffers episodes of mental relapse occasionally and is a mother of several children who are entirely dependent on her. Having her detained would mean that the children will fend for themselves on their own.

In her *allocutus*, the convict prayed for lenience on grounds that; she regrets what she did. She knows that she committed a sin even in heaven. She needs to take care of the child who survived. She had never committed such an offence before. She did it without knowing. It is Satan who sent her to do it but God rescued her. She will go back to church and will never forget about it. She is HIV positive and that is why she committed the offence. She prayed to court to be lenient because she is sorry that she committed the offence.

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. This is not one of such cases. 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. I have taken into account the 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 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. Similarly in *Sunday v Uganda C.A Crim. Appeal No. 103 of 2006*, the Court of Appeal upheld a sentence of life imprisonment for a 35 year old convict who was part of a mob which, armed with pangas, spears and sticks, attacked a

defenseless elderly woman until they killed her. In *Byaruhanga v Uganda*, C.A Crim. Appeal No. 144 of 2007, where in its judgment of 18th December 2014, the Court of Appeal considered a sentence of 20 years' imprisonment reformatory for a 29 year old convict who drowned his seven months old baby. The convict had failed to live up to his responsibility as a father to the deceased who was victimized for the broken relationship between him and the mother of the deceased.

Where there is a deliberate, pre-meditated killing of a victim, courts are inclined to impose life imprisonment especially where the offence involved use of deadly weapons in committing the offence. In this case, the convict did not use any deadly weapon. I have thus excluded the sentence of life imprisonment. I have nevertheless considered the more prominent aggravating factor in this case being that the convict killed her own child of such a tender age, who was entirely dependent on her. She violated the trust and dependency of her own child in the most gross manner, by taking his life. Accordingly, in light of that aggravating factor, I have adopted a starting point of thirty 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 her sentence.

The sentencing guidelines leave discretion to the Judge to determine the degree to which a sentence will be discounted by a plea of guilty. 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 thirty years to a period of twenty years' imprisonment.

I have considered the fact that the convict is a first offender, suffers from deep emotional instability manifested by her suicidal tendencies. She is a person more in need of a rehabilitative as opposed to a retributive punishment. I for that reason deem a period of nine (9) years' and nine (9) months' imprisonment to be an appropriate rehabilitative sentence in light of the mitigating factors in her favour. 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 13th December 2016 and been in custody since then. I hereby take into account and set off a period of nine months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of nine (9) years to be served starting today.

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

Dated at Moroto this 29th day of September, 2017.

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Stephen Mubiru,
Judge.
29th September, 2017