

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0003 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **ACEMA ROBERT** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 13th April 2017, in a special session for plea bargaining. The accused was indicted with the offence of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that on 15 12th September 2015 at Dradru village in Arua District, the accused murdered Allionzi Derrick.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact 20 from defence counsel on state brief, Mr. Samuel Ondoma. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused’s consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made the finding that 25 the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, 30 whereupon she narrated the following facts; the deceased and the accused were living together having married the mother of the deceased. The deceased at the time was aged 2 years, and born out of his mother’s previous relationship. On 12th September 2015 at around 8.00 am, the

deceased mother went to the garden leaving behind the deceased and the accused was left at home to take care of the deceased. He called the deceased into the house and later come out leaving the deceased inside. The mother found his body later but the accused was nowhere. The matter was reported to the LC and the accused was found five days later hiding in the bush. A
5 post mortem was done and the cause of death was fracture of vertebrae with trans-section of the nerves and blood vessels. The accused was examined on P.F 24A and found to be of sound mind. He admitted having committed the offence in his charge and caution statement recorded by Afyemya Charles. Their respective medical examination reports too were admitted as part of the facts.

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Considering the victim was only two and a half years old and was killed for a very bizarre reason, the court cautioned the accused of the possibility of enhancement of the proposed sentence of ten (10) years' imprisonment stipulated in the plea agreement. The charge and caution statement of the accused revealed that the killing was pre-mediated. He said he killed the
15 child because he used to soil their bed thereby preventing him from having sex with his wife, the kid's mother. After the accused confirmed that despite that possibility he was still willing to go ahead with the plea bargain, he was asked whether the facts as narrated were correct.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his
20 own plea of guilty for the offence of Murder c/s 188 and 189 of the *Penal Code Act*. In justification of the sentence of ten (10) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; he abused a position of trust and confidence reposed in him by the victim and his mother, life is irreplaceable and the maximum punishment of the offence is death. Learned defence
25 counsel too adopted the mitigating factors outlined in the plea agreement, which briefly are that; the accused is only twenty six years old, he is married and has three children of his own for whom he is the sole bread winner, he is a first offender, remorseful and has been on remand for two years now (having been charged and remanded in September 2015). In his *allocutus*, the convict stated that his father died in the year 2007. He is the only one at home. He has three
30 children who are in school. He left those children with his mother and she is weak. She cannot

take good care of them. He prayed for lenience since he wants to go back and help his children. He suffers from typhoid.

I have considered all the mitigating factors mentioned above and especially the fact that the
5 accused pleaded guilty and expressed remorsefulness. I must say that there are offences where
even such mitigating factors can only barely mitigate the punishment due to the outrageous
circumstances 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
10 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
15 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 haemorrhage 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.

20 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. Murder is one of the most serious and most severely punished of all commonly
committed crimes. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to
impose the death sentence especially where the offence involved use of deadly weapons, used in
25 a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of
consequences, and a mind regardless of the sanctity of life. This maximum sentence is therefore
usually reserved for the most egregious cases of Murder committed in a brutal, gruesome, callous
manner. This case is not in the category of the most egregious cases of murder committed in a
brutal, callous manner, only because no weapon appears to have been used, but it is very close to
30 that category because of its callous nature and disregard for the sanctity of life. I have for those
reasons 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.

5 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 defenceless 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
10 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.
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Having considered the sentencing guidelines and the current sentencing practice in relation to
20 offences of this nature, I reject the sentence of ten (10) years' imprisonment proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney. Where the killing is deliberate and pre-meditated, courts are inclined to impose a sentence of life imprisonment. This case involved the selfish and senseless killing of a defenceless toddler who looked up to the accused for protection. It was outrageously sadistic for the accused to kill the
25 child as a gateway to undisturbed sexual pleasure with the child's mother. Such conduct is only heard of in the animal kingdom. The accused debased himself to that level. Accordingly, in light of those aggravating factors, the convict deserves to spend the rest of his natural life in prison. The convict is hereby sentenced to Life imprisonment.

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

5 Dated at Arua this 19th day of April, 2017.

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Stephen Mubiru
Judge.
19.04.2017.