

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0048 OF 2016**

5 **UGANDA** ..... **PROSECUTOR**

**VERSUS**

10 **FAROUK JAKODA** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

This case came up on 13<sup>th</sup> 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  
15 on 21<sup>st</sup> December 2014 at Club Cell in Arua District, the accused murdered Obile Bulenia Afako Charles.

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  
20 allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Okello Oyarmoi. 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  
25 Court being satisfied that there was a factual basis for the plea, and having made the finding that 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.

30 The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the accused and the victim were good friends and lived together. On 21<sup>st</sup> December 2014, the two were seen together at the drinking joint. They

had a brief quarrel over drinks and he was heard promising to kill the deceased. The following day the accused was seen by Angutoko standing restlessly at the door of the deceased's house where they both slept. He was peeping inside the house. When he saw Angutoko, he proceeded to ask for a vodka which Angutoko was holding. He drank and peeped a little in the house before  
5 he disappeared and did not say where he was going. He was putting on a blood stained pair of trousers and a T-shirt turned inside out. The victim was not seen that morning. At around 9.00 am on the 22<sup>nd</sup> December, the deceased was found dead in his house laying on a papyrus mat facing downwards with his trouser in a pool of blood the head was soiled with blood. The matter was reported to CPS Arua and the SOCO went to the scene, took photos and the body was taken for a  
10 post mortem. It was found that the body had a deep cut wound about 4 cm long and 3 – 3.5 cm at the back of the head. The whole body was covered in blood. The cause of death was established as severe anaemia. The accused was examined on PF 24 he was found to be normal mentally. Both police forms and the photograph taken at the scene of crime were received as part of the facts.

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Considering that the facts revealed a pre-meditated killing, the court cautioned the accused of the possibility of enhancement of the proposed sentence of ten (10) years' imprisonment stipulated in the plea agreement. 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  
20 correct.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his 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  
25 learned State Attorney adopted the aggravating factors outlined in the plea agreement as follows;  
- the offence attracts a maximum penalty of death, life is sacred and should be respected by all, the deceased left orphans and relatives who were traumatized by his death. In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused is a first offender and is remorseful. He has been on  
30 remand for two years and three months. He is a young man and capable of reform. In his *allocutus*, the convict stated that he is the only male child of his mother who separated from his

father a long time ago. His father has married another wife and has left their place. He lives with his paternal auntie and has three children, he therefore prayed for lenience. He will never commit such an offence again. The deceased picked a stool and hit him with it on the nose. He boxed him and he hit his head on a bench in the bar only to find him dead the following morning. None  
5 of the members of the family of the deceased was available to make a victim impact statement.

I have reviewed the proposed sentence of ten years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have  
10 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 *Sebuliba Siraji v. Uganda C.A. Cr. Appeal No. 319 of 2009*, in its decision of 18<sup>th</sup> December 2014, the court of appeal confirmed a sentence  
15 of life imprisonment. In that case, the victim was a businessman and the accused was his casual labourer. On the fateful day, the accused waited for the deceased with a panga hidden in a kavera (polythene bag) and when the deceased opened his vehicle, the appellant attacked him and cut him with a panga on his head, neck and hand. In *Uganda v. Businge Kugonza H.C. Cr. Sess. Case No. 162 of 2012* the accused was convicted of murder after a full trial and was on 11<sup>th</sup>  
20 September 2013 sentenced to 20 years' imprisonment. The convict in that case had dug hole in the wall of the victim's house and cut him to death with a panga while he slept in his bed. In *Uganda v. Ocitti Alex and another, H.C. Cr Sessions Case No. 0428 of 2014*, an accused who plead guilty to an indictment of murder was on 7<sup>th</sup> November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head  
25 multiple times. In *Uganda v. Mutebi Muhamed and another, H.C. Cr Sessions Case No. 038 of 2011*, one of the accused who pleaded guilty to the offence of murder was on 17<sup>th</sup> January 2014 sentenced to 25 years' imprisonment while the other convicted after a full trial was sentenced to 30 years' imprisonment. The two convicts had killed the deceased by stabbing repeatedly on vulnerable parts of the body such as the head, the chest and near the breast during a robbery.  
30 Lastly, the case of *Tom Sazi Sande alias Hussein Saddam v. Uganda C.A Cr Appeal No. 127 of 2009*, where in its decision of 24<sup>th</sup> March 2014, the Court of Appeal upheld a sentence of 18

years' imprisonment for an accused who pleaded guilty to an indictment of murder. He had been on remand for 2 years and 3 months.

5 Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, the aggravating and mitigating factors outlined above and the fact that the convict has already spent two years and three months on remand (having been charged on 5<sup>th</sup> January 2015), 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, and instead sentence the accused to twenty (20) years' imprisonment to be served starting today.

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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.

15 Dated at Arua this 19<sup>th</sup> day of April, 2017.

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Stephen Mubiru  
Judge.  
19.04.2017.