

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0097 OF 2016**

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

**VERSUS**

10 **ORYEMA PASTORE** ..... **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 6<sup>th</sup> March 2016 at Andibo Central village in Nebbi District, the accused murdered Kumakech John.

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. 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  
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 deceased was a nephew of the accused and had in the recent past been living with him. On 6<sup>th</sup> March 2016 at around 7.00 am, the accused had a

disagreement with the accused and he cut him with a panga and then reported to the LC1 Chairperson and subsequently was handed over to the police. A post-mortem exam was done and it was found there was a high velocity sharp instrument used causing a lethal spinal injury. The accused was examined on P.F 24A and was found to be 75 years old with soft tissue burn  
5 wounds but was of normal mental status. Both police forms were received as part of the facts.

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 a five (5) years' suspended sentence of imprisonment proposed in  
10 the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement as follows; - the offence attracts a maximum penalty of death, and the victim of the offence was a nephew of the accused. The learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; - the accused is a person of advanced age, he is remorseful and has readily pleaded guilty, he has two wives and eight children all of whom  
15 depend on him and has been on remand for two years (having been charged and remanded on 6<sup>th</sup> April 2016). In his *allocutus*, the convict prayed for lenience. He stated that he was born in 1933. The court should take into account the fact that he was attacked in his home at night with a panga and it is the same panga that he used to kill his nephew, the attacker. He had nothing else to do. He reported to the LC who referred him to the police. The people followed him on my way to the  
20 police and burnt me with petrol (he has visible pink scars that cover almost two thirds of his head and most of his upper torso). I have four children all of whom are studying and the area Members of Parliament took over their tuition. People want to take over his land so that those children do not find any land when they return from their studies. He is almost as good as dead. His only wish is to give his children my last words and to die from home. If given the chance, he  
25 will tell them to be kind. None of the members of the family of the deceased was available to make a victim impact statement.

I have reviewed the proposed five years' suspended sentence of imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I  
30 have also reviewed current sentencing practices for offences of this nature. In this regard, I have 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  
5 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>  
10 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  
15 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.  
20 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.

25 Despite the natural judicial tendency to treat the older person with mercy and leniency, this tendency has to be balanced against the seriousness of the offence, the risk of re-offending and the previous criminal record of the convict. In my view, physically infirm older offenders, like the one before me, do not represent a very serious threat to society; older offenders released from prison are less likely to reoffend than younger offenders. Recidivism rates among adults tend to  
30 be lower in each succeeding age group, and the older someone is at his or her first offence, the less likely that person is to commit repeat offences. I have also considered Regulation 9 (4) (a) of

*The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013,* which provides that; “The court may not sentence an offender to a custodial sentence where the offender, is of advanced age.” Advanced age for purposes of the guidelines is 75 years. It is a principle in penology that a court must not impose a sentence that is more severe than is necessary to achieve the purposes of sentencing.

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 one year on remand, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to five (5) years’ imprisonment. The convict is to immediately serve part of the term imposed by remaining in prison custody until “the rising of this court.” He is to be set free thereafter unless he is being held for other lawful reason. The rest of his sentence is suspended for a period of one year with knowledge of the convict that when he is released into the community, he risks having the rest of the five year term of imprisonment restored if he commits any offence punishable by a term of imprisonment, during the one-year period (‘the operational period’).

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.

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

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Stephen Mubiru,  
Judge.  
19.04.2017.

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