

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0088 OF 2016

5 **UGANDA** **PROSECUTOR**

VERSUS

AGUDRA HERBERT **ACCUSED**

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Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 12th 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 25th January 2016 at Baribu village, in Arua District, the accused murdered Arumadri Stephen.

When the case was called, the learned State Attorney, Ms. Faidha Jamilar reported that she had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed
20 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 she narrated the following facts; on 25th January 2016, both the accused and the deceased went to a Trading centre for leisure. At about 3.00 the two developed a

misunderstanding over a drink the deceased had spilled. The accused beat him indiscriminately. The deceased fell down and the accused jumped on his stomach several times. The deceased died shortly thereafter. The accused surrendered to the police the following day. A post mortem was done. Severe anaemia was found to be the cause of death. The accused was examined on P.F
5 24A Arua Regional Referral Hospital and was found to be 22 years old with normal mental status. He was accordingly charged. 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
10 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 as follows;
- the offence attracts a maximum penalty of death, the offence is rampant in the region, life is sacred and should be respected by all. In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that; -
15 the accused has been on remand for slightly over one year (having been charged and remanded on 11th February 2016). He lost his father and was sole bread winner for his elderly mother. He is a young man at the age of 23 years who is capable of reform. In his *allocutus*, the convict stated that his father died and his mother is disabled. His brother is in school and he prayed for a lenient sentence to enable him support his brother in school. He pledged not to commit a crime of this
20 nature again. None 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
25 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 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. In *Sebuliba Siraji v. Uganda C.A. Cr. Appeal*
30 *No. 319 of 2009*, in its decision of 18th December 2014, the court of appeal confirmed a sentence 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 11th 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 pleaded guilty to an indictment of murder was on 7th November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head 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 17th 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. 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 24th 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.

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 and two months 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 ten (10) years' imprisonment to be served starting today. 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 19th day of April, 2017.

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Stephen Mubiru,
Judge.
19.04.2017.

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