

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0030 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **BANDUNI BEN** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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This case came up on 10th January, 2018 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 15th August, 2016 at Ayiko village in Arua District, the accused murdered Aliku Remijo.

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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 invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Onencan Ronald. 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 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.

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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, whereupon he narrated the following facts; the deceased and some of his family members were suspected of practicing witchcraft and on 13th August, 2016 at about 6.00pm a meeting was

organised to discuss witchcraft at Oguwa Trading Centre and the accused and many other attended. On 15th August, 2016, at about 6.00 pm the accused and many other people attacked the home of the deceased, burnt down several houses, then the mob went to his shop and beat him to death. They ran away. The accused was arrested and examined on P.F 24A. and was found to be
5 of sound mental status and of the apparent age of 40 years. The post mortem was done in Arua where they found that there was severe head injury with blunt force trauma. The examination was done on 15th August 2015. The respective medical examination reports too were admitted as part of the facts.

10 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 learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; the offence is punishable by death, it was a pre-meditated killing, the deceased left orphans
15 and widows who are now vulnerable and mob justice is on the rise in the region. Learned defence counsel too adopted the mitigating factors outlined in the plea agreement, which briefly are that; the accused is a first offender who has readily pleaded guilty. He has two children, a wife and seven dependants. His participation was minimal. He is remorseful and has spent one year on remand. In his *allocutus*, the convict stated that he lost his parents and he was taking of
20 his siblings. His wife has typhoid and she cannot work so long under the sun.

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
25 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 No. 319 of 2009*, in its decision of 18th December 2014, the court of appeal confirmed a sentence
30 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 plead 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, and the fact that the convict has already spent one year and four 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 a term of imprisonment of ten (10) years, 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 10th day of January, 2018

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Stephen Mubiru
Judge,
10th January, 2018.

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