

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT GULU**  
**CRIMINAL SESSIONS CASE No. 0159 OF 2017**

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

5 **VERSUS**

**ADONG JENNETH** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru**

10 **SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 6<sup>th</sup> August, 2018, for plea, the accused was indicted with the offence of Murder c/s 188 and 189 of *The Penal Code Act*. She pleaded not guilty and the case was fixed for commencement of hearing today 9<sup>th</sup> August, 2018. The learned Resident Senior State  
15 Attorney prosecuting the case Mr. Patrick Omia, sought leave to amend the indictment which has been granted, and he has amended it to one of Manslaughter c/s 187 and 190 of *The Penal Code Act*. It is alleged that on 26<sup>th</sup> March, 2017 at Kal Central village, Kal Parish, Ongako sub-county in Omoro District, the accused unlawfully caused the death of Odong William Latek. When the amended indictment was read to the accused, she pleaded guilty.

20 The learned Resident State Attorney then narrated the following facts of the case; on 26<sup>th</sup> March, 2017 at Kal Central village, Kal parish Ongako sub-county, Omoro district the accused who was operating a bar at Ongako Trading Centre returned home at around 11.00 pm. He was followed by the deceased with whom she was cohabiting who returned at around 1.00 am. She demanded  
25 for some money that Odong had picked from her earlier on the day. Odong told her he had spent the money buying alcohol at another bar. A quarrel ensued between them when Odong picked a handle of an axe but the accused disarmed him. She used the same weapon to beat the deceased intending to disable him. This was witnessed by her son Okeny Stephen who restrained her from beating the deceased further. this took place inside the house where all three resided. Okeny  
30 disarmed the accused but the deceased was by then crying and complaining that he was feeling thirsty. The next day the deceased died in the house at around 3.00 pm. the body was examined

on 27<sup>th</sup> March, 2017 by Dr, Olweronen a Principal Medical Officer based in Gulu who found that the body had bruise on the head and a penetrating wound on the left leg. Upon performing an autopsy he found the there was subdural hemorrhage, swollen brain tissue. The cause of death was severe head injuries due to severe blunt force head trauma with intra-cranial hemorrhage and  
5 raise intracranial pressure leading to cerebral pressure. He suggested the weapon was a wooden club / handle of an axe. He stamped the document and signed it. the accused too was examined on 28<sup>th</sup> March, 2017 by a Medical Clinical officer. He found that the accused was of the apparent age of 48 years with no injuries and she was mentally normal. She was examined from Lalogi Health Centre IV. Police Forms 48C and 24A were submitted as part of the facts. The accused  
10 having confirmed those facts to be correct, She has been convicted on her own plea of guilty for the offence of Manslaughter c/s 187 and 190 of *The Penal Code Act*.

In his submissions on sentencing, the learned Resident State attorney has prayed for a deterrent sentence on the following grounds; the convict used excessive force on the deceased who  
15 appeared to be drunk at 1.00 am and returned from the bar. She also attacked the head as one of the most vulnerable part of the body using an axe causing the death of the deceased. She did not bother to take the deceased for treatment up to 3.00 am when he died. She did not care about the result of her action. The maximum is imprisonment for life. She has been on remand for one year and four months. He proposed a sentence of six years imprisonment from which the period she  
20 has been on remand should be deducted.

On her part, counsel for the convict Ms. Harriet Otto, prayed for a lenient custodial sentence on the following grounds; the convict has been remorseful and pleaded guilty this not wasting court's time. She is a first offender. She has been one year on remand. She is HIV positive, sickly  
25 and needs a good diet if she is to live longer. The deceased was her husband and they had lived together for one year without a fight. Both were drunk that fateful night and she had no intention of killing him. She is 48 years now. She prayed that the convict is given a light sentence so that she can go back and look after her children. She proposed three years' imprisonment at most taking into account the period she had been on remand.

In her *allocutus*, the convict prayed for lenience on grounds that; it was an accident and she also is sickly with a young child suffering from sickle cells. A sort term of imprisonment will enable her go home and look after the children.

5 Under section 190 of *The Penal Code Act*, the offence of manslaughter is punishable with the maximum penalty of life imprisonment. However, this represents the maximum sentence which is usually reserved for the worst of such cases or situations in which the manner in which the offence was committed indicates that the convict is a danger to society if released from custody. Courts are further inclined to impose the sentence of life imprisonment where a deadly weapon  
10 was used in committing the offence. I do not consider this to be a case falling within the bracket of the most extreme cases of manslaughter nor have I been presented with evidence to show that the convict generally poses a danger to society. I have for that reason discounted the sentence of life imprisonment.

15 The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 15 years' imprisonment. The sentencing guidelines however have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial  
20 (see *Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010*).

I have for that reason taken into account the current sentencing practices in relation to cases of this nature. I have considered the case of *Livingstone Kakooza v. Uganda, S.C. Crim. Appeal No. 17 of 1993*, where the Supreme Court considered a sentence of 18 years' imprisonment to have  
25 been excessive for a convict for the offence of manslaughter who had spent two years on remand. It reduced the sentence to 10 years' imprisonment. In another case of *Ainobushobozi v. Uganda, C.A. Crim. Appeal No. 242 of 2014*, the Court of Appeal considered a sentence of 18 years' imprisonment to have been excessive for a 21 year old convict for the offence of manslaughter who had spent three years on remand prior to his trial and conviction and was  
30 remorseful. It reduced the sentence to 12 years' imprisonment. Finally in the case of *Uganda v. Berustya Steven, H.C. Crim. Sessions Case No. 46 of 2001*, where a sentence of 8 years'

imprisonment was meted out to a 31 year old man convicted of manslaughter that had spent three years on remand. He hit the deceased with a piece of firewood on the head during a fight.

At sentencing, the court should look beyond the cognitive dimensions of the convict's culpability and should consider the affective and volitional dimension as well. It may as a result consider extenuating circumstances. For that reason homicides involving ordinary provocation not amounting to legal provocation, self induced intoxication, mental disorder, emotional disturbance, medical insanity not amounting to legal insanity, self defence where excessive force is used and accomplice liability may reduce moral blameworthiness and provide grounds for not imposing a lenient sentence. Accordingly, in light of the fact that the violence was preceded by an attack on the convict, a quarrel over money by persons in an intimate relationship, one of whom was intoxicated, I have adopted a starting point of ten years' imprisonment.

I have considered the fact that the convict is a first offender, in visibly poor health with family responsibilities. A reformatory sentence would be appropriate in the circumstances. I consider a period of five (5) years' imprisonment as suiting the purposes of a reformatory sentence in light of the mitigating factors. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict was charged on 27<sup>th</sup> March, 2017 and been in custody since then. I hereby take into account and set off a period of one year and four months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of three (3) years and six (8) months, to be served starting today.

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

Dated at Gulu this 9<sup>th</sup> day of August, 2018.

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.....  
Stephen Mubiru  
Judge.  
8<sup>th</sup> August, 2018.