

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0123 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

ACHORA NANCY **ACCUSED**

Before: Hon Justice Stephen Mubiru.

10 **SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 6th August, 2018 for plea taking at the beginning of the criminal session, the accused was indicted with the offence of Murder c/s 188 and 189 of *The Penal Code Act*. However, on 6th August, 2018 the indictment was amended to Manslaughter c/s 187 and 190
15 of *The Penal Code Act*. In the amended indictment, it was alleged that the accused on 1st December, 2017 at Teluk village, Lawiyadul Parish, Atanga Sub-county in Pader District, unlawfully caused the death of Anywar Maxwell. She pleaded guilty to the amended indictment.

The learned Resident Senior State Attorney, Mr. Patrick Omia has narrated the following facts of
20 the case; on 1st December, 2017 at around 6.00 pm the deceased Anywar Maxwell who was the elder brother of the accused returned from a drinking joint and picked a quarrel with the accused as the accused blamed him for picking her phone and answering her phone calls. When she demanded for an explanation from him, he insulted her that she was a prostitute in the presence of her elder child. The two quarrelled whereupon the deceased threatened to go and damage the
25 bricks of the accused. When the accused followed him at the place where the bricks were heaped, the quarrel continued and degenerated into a fight. The accused then used a piece of wood to hit the deceased and also cut him on the leg using a spade which was at the scene. The deceased bled profusely and attempts to take him for treatment were futile until around 10.00 pm when a motorcycle was found to take him to a nearby health centre for treatment from where he died at
30 around 3.00 am. Medical personnel at the centre conducted a post mortem examination on 2nd December, 2017 at around 10.00 am and noted that the deceased was of the apparent age of 35

years. There was a deep cut wound on the anterior left ankle joint measuring about 16 cms in length and 2 cms deep. He had multiple bruises on the right upper leg with blood clots and dried blood all over the body. There was no evidence of internal injury. The cause of death was haemorrhagic shock due to excessive bleeding externally. The accused herself accompanied the brother to the clinic up to the time he died. She was not medically examined. Police form; P.F. 48B was tendered as part of the facts.

Upon ascertaining from the juvenile offender that the facts as stated were correct, he was on basis of his own plea of guilty found responsible for the offence of Manslaughter c/s. 187 and 190 of *The Penal Code Act*.

In his submissions on sentencing, the learned Senior Resident State attorney prayed for a deterrent sentence on the following grounds; the act of the convict was reckless. She should not have assaulted the brother. The cut with a spade that led to the injury and excessive bleeding. The offence is serious and attracts imprisonment for life. She has been on remand for seven months and two weeks, since 21st December, 2017. He prayed for an appropriate sentence.

Counsel for the convict Ms. Alice Latigo prayed for a lenient custodial sentence the following grounds; the convict has been remorseful, she pleaded guilty and has not wasted court's time. She is 30 years old and a single mother having separated with her husband. It was a quarrel between a sister and brother that degenerated resulting into death. She still mourns the death of her brother. It was a quarrel and fight with a drunken person. The deceased had hit her with the stick on the right leg and there is a scar. It was at that point that she struggled with the brother, got hold of the stick on the right hand and the brother fell cutting her leg on the spade. She struggled to find a boda-boda until 10 00 pm when together with a sister she carried her to the health centre. Her brother died in her hands. The parents of the deceased are in court. She prayed that while sentencing her, lenience is exercised. She proposed one years' imprisonment so that she can go back home and look after her children and those of the deceased. The mother is at a double loss. The accused is a first offender.

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In her *allocutus*, the convict prayed for forgiveness. She stated that she knows what she did was wrong. This is a lesson to her that fighting is wrong and bad. She thanked her parents for coming to court today and prayed that she is forgiven. She did not intend to kill him. She struggled to get a boda-boda but it was too late. In her victim impact statement, Ms. Akello Hellen the mother of both the deceased and the convict prayed that the convict be forgiven since she has a child of one and half years and a teenage son present in court. She has admitted the offence she committed. She therefore pleaded that the convict is forgiven as she has spoken the truth. She prayed that she is released to go back home and take care of her children.

The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 190 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of such cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. I have for that reason discounted life imprisonment.

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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, which are; those factors reflecting on the moral blameworthiness, as opposed to the legal culpability of the convict. It is for that reason that the principle of proportionality operates to prohibit punishment that exceeds the seriousness of the offending behaviour for which the offender is being sentenced. It requires that the punishment must fit both the crime and the offender and operates as a restraint on excessive punishment as well as a prohibition against punishment that is too lenient. The principle of parsimony on the other hand requires that the court should select the least severe sentencing option available to achieve the purpose or purposes of sentencing for which the sentence is imposed in the particular case before the court.

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. Courts are inclined to impose life imprisonment where a deadly weapon

was used in committing the offence. In this case, although the convict was attacked by the deceased first following a quarrel over invasion of her privacy and after the deceased threatened to destroy her bricks. The circumstances were extenuating and I have excluded the sentence of life imprisonment on that ground.

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I have 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 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 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. I have considered the aggravating factors in the case before me and in light of those aggravating factors, I have adopted a starting point of five years' imprisonment.

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The court had the opportunity to observe the convict and formed an opinion as an indication of the degree of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of the sanctity of life manifested by him. She came across as a person who deeply regrets the result of her actions. She acted in a fit of rage and at one point, self defence. She readily pleaded guilty and does not seem to a person who is naturally violent. I have considered the fact that the convict is a first offender, a young woman at the age of 30 years. In light of the mitigating factors, the proposed term ought to be reduced to a period of one (1) years' imprisonment. 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

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has been in custody since 21st December, 2017, a period of seven months. Having taken into account and set off that period, I therefore sentence her to “time served” and she should be set free upon the rising of this court unless she is being held for other lawful reason.

- 5 The convict is advised that he has a right of appeal against both conviction and sentence within a period of fourteen days.

Dated at Gulu this 10th day of August, 2017.

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Stephen Mubiru
Judge.
10th August, 2018.

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