

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 0265 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

ATIM AGNES **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

10 When this case came up on 6th August, 2018 the accused was indicted with the offence of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that on 9th January, 2018 at Orabim Ward, Tye Parish in Pader District, the accused murdered Essana Rooney. She pleaded not guilty to the indictment and the case for fixed for commencement of hearing on 20th August, 2018.

15 When the case was called, the learned State Attorney, Mr. Patrick Omia intimated to court that he had successfully negotiated a plea bargain with the accused and her 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, Ms. Harriet Otto. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the
20 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 she had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record.

25 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; on 9th January, 2018 at Orabim in Pader District, the accused set ablaze a house which belonged to Collins Aryemo at around 8.00 pm. In that house
30 the deceased Essana Rooney was sleeping. It was a grass thatched house and as a result he was

burnt to death. The accused is a co-wife with the mother of the deceased. She was arrested and indicted. the body was examined on 10th January, 2018 by Dr. Alex Layor the District Health Officer of Pader District who found that the body had severe burns that exposed the bones. The cause of death was severe burns of all vital organs such as the heart lung, brain leading to instant
5 death. The accused was examined by a Senior Medical Officer at Pader Health Centre III on 15th January, 2018 and he found that the accused was of the apparent age of 30 years with no physical injuries and mentally normal. The two medical examination reports 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 fifteen (15) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; the accused set fire to a grass thatched house at 8.00 pm with intention to kill the
15 occupants of the house as indeed she did. It arose from a conflict between co-wives. She was a co-wife to the mother of the child. Murder is rampant within the jurisdiction of the court for which a severe sentence should be meted out.

Learned defence counsel too adopted the mitigating factors outlined in the plea agreement, which
20 briefly are that; the convict is a first offender with no previous criminal record. She is remorseful. She has spent seven months on remand. She is HIV positive. She prayed for lenience. In her *allocutus*, the convict prayed for forgiveness and pledged never repeat the act.

The maximum penalty for the offence murder as prescribed by section 189 of the *Penal Code Act*
25 is death. This represents the maximum sentence and is reserved for the worst of the worst cases of murder. Murder is one of the most serious and most severely punished of all commonly committed crimes. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence especially where the offence involved use of deadly weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of
30 consequences, and a mind regardless of the sanctity of life. This maximum sentence is therefore usually reserved for the most egregious cases of Murder committed in a brutal, gruesome, callous

manner. This case is not in the category of the most egregious cases of murder committed in a brutal, callous manner, but it is very close to that category because of its callous nature and disregard for the sanctity of life. I have for those reasons discounted the death sentence.

- 5 Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment.
- 10 I have taken into account the current sentencing practices in relation to cases of this nature, 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. Similarly in *Sunday v. Uganda C.A Crim.*
- 15 *Appeal No. 103 of 2006*, the Court of Appeal upheld a sentence of life imprisonment for a 35 year old convict who was part of a mob which, armed with pangas, spears and sticks, attacked a defenceless elderly woman until they killed her. In *Byaruhanga v. Uganda, C.A Crim. Appeal No. 144 of 2007*, where in its judgment of 18th December 2014, the Court of Appeal considered a sentence of 20 years' imprisonment reformatory for a 29 year old convict who drowned his
- 20 seven months old baby. The convict had failed to live up to his responsibility as a father to the deceased who was victimized for the broken relationship between him and the mother of the deceased.

Where the killing is deliberate and pre-meditated, courts are inclined to impose a sentence of life

25 imprisonment. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I accept the proposed sentence of fifteen (15) years' imprisonment proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions,*

30 *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

has been in custody since 9th January, 2018 and I hereby take into account and set off seven months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of fourteen (14) years and five (5) months to be served starting today.

- 5 Having been convicted and sentenced on her own plea of guilty, the convict is advised that she have a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Gulu this 20th day of August, 2018

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Stephen Mubiru
Judge,
20th August, 2018.

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