

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
CRIMINAL SESSIONS CASE No. 120 OF 2018

UGANDA **PROSECUTOR**

5 **VERSUS**

1. **O. P.** }
2. **O. PA.** } **JUVENILE OFFENDERS**
3. **O. J. G.** }

10 **Before: Hon Justice Stephen Mubiru**

DISPOSITION ORDER

The three juvenile offenders were jointly indicted with the offence of Murder c/s 188 and 189 of
15 *The Penal Code Act*. It was alleged that on 10th September, 2017 at Progali Trading Centre,
Latanya sub-county in Pader District, the three juvenile offenders murdered Nyeko David. Each
of the three juvenile offenders pleaded not guilty to the indictment. All three juveniles pleaded
not guilty to the indictment. When case up for trial today 24th August, 2018 there are three
prosecution witnesses in attendance but counsel for the juveniles has intimated to court that each
20 of them would like to change his plea. The indictment has accordingly been read to them and
each of them has pleaded guilty.

The learned Resident Senior State Attorney, Mr. Patrick Omia has then narrated the following
facts of the case; on 10th September, 2017 at around 1.00 am, at Progali Trading centre in Ayuwe
25 Parish Latanya sub-county, Pader District, the first juvenile offender O. P. attacked the deceased
Nyeko David. Together with the other two juveniles, they violently assaulted the deceased by
boxing and kicking him all over his body, especially the chest. They were restrained by a one
Richard Oyet who is in court. They turned and wanted to fight him. Oyet was later joined by a
one Kawanga John Paul who helped in restraining the three. By that time the deceased had fallen
30 unconscious. John Paul Kawanga carried the deceased to the house of Akello Grace from where
he died. They were arrested A1 first, A2 and A3 had escaped from the scene but they were later
arrested and forwarded to the police. On the same day at around 6.00 pm Dr. Jimmy Opei of

Pajule Health Centre IV performed an autopsy of the body of the deceased which had been brought at 3.00 pm. He found the deceased to be about 32 years. The body was well nourished but in rigor mortis. The body had a swelling with bleeding from the left side of the head. Internally; he found a fracture of the 11th and 12th ribs with splenic rupture. Fracture of the left
5 paleatal bone with scalp hematoma. Cause of death was internal haemorrhage secondary to splenic rupture, cranial damage and the ribs which were broken. He stamped the document and signed. On 22nd September, 2017 all three juveniles were examined by Dr. Alex Layor, a Senior medical officer attached to Pader Health Centre III. A1 was found to be aged about 17 years with no visible injuries and mentally sound. A2 was found to be aged about 17 years with no visible
10 injuries and mentally sound. A3 was found to be of the apparent age of 16 years with no visible injuries and mentally sound. All the police forms; P.F. 48B and P.F 24A have been tendered as part of the facts.

Upon ascertaining from each of the three juvenile offenders that the facts as stated are correct,
15 each of them has been adjudged responsible, on basis of their own respective pleas of guilty, for the offence of Murder c/s 188 and 189 of *The Penal Code Act*.

Submitting in aggravation of sentence, the learned State Attorney has stated that; the offence is serious. The life of an innocent person was lost violently in their hands. Their act was not
20 provoked in any way. At that time the deceased was with Oyet Richard spending time at the trading centre when he was violently attacked by the juveniles. The three of them by being active at 1.00 am at a trading centre shows they are out of touch with their parents. The parents are therefore unbothered and unable to control the children. They killed the deceased violently, breaking his ribs and fracturing his scalp. Being juveniles, the offence attracts a maximum period
25 of detention of three years. They have been on remand for close to 11 months since 28th September, 2017. He has prayed that they are ordered to be detained further for 2 years and six months from which the 11 months are to be deducted.

In response, the learned defence counsel Ms. Harriet Otto has prayed for lenient disposition
30 orders on grounds that; A1 is remorseful as indicated by his plea of guilt. He is first offender. He has spent 11 months on remand. At the time of his arrest he was in P.6 at Pororugali Primary

School. He has been out of school for nearly a year now. The deceased was drunk and he made utterances that provoked him. A2 too has pleaded guilty and is remorseful. At the time of arrest he too was in P.6 at the same school. He has been on remand for 11 months. He is a young person and if given opportunity he can reform. I pray for lenience and under s. 94 (1) he should be bound to be of good conduct for six months and probation of 6 months. A3 too pleaded guilty and is remorseful. He has spent the same time on remand. He was in P.7 at the same school at the time of arrest. They were all in the same school and acted as a group because of that provocative utterance. She has prayed for lenience under s. 94 (1) of *The Children Act* and that they should be bound to be of good conduct for six months and probation of 6 months.

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In their respective *allocutus*, A1 has asked court to be lenient. He has prayed for forgiveness promising never repeat it again. He has prayed for an opportunity to go home and continue with his studies. He has appealed to the family of the bereaved to forgive him as he will never to it again. He has promised his parents that when he returns he will be very obedient. He lost his father but his mother is still alive. The mother re-married. A2 has appealed to the court to forgive him saying he is sorry to the complainants and he will not do it again. He has apologised to his parents again and promised them not to do it again. A3 has requested the court for mercy and to enable him go back home and continue with his studies. To the complainant he has requested for forgiveness promising that he will not repeat this. To his parents he has apologised undertaking never walk at night again.

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The mother of A3 Ms. Ajok Aida has appealed to court to forgive him. He watched football that day at the trading centre which ended at midnight. It was not his habit to go out. The father is sick at home and could not come to court today. A1 is treated as their son. They are related but his mother has re-married. He has his elder brothers at home. She undertook to take him back to his step-brothers. Mr. Okot John Otto, the father of A2 has prayed that since his son has spent 11 months on remand, he should be released to go back home.

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In his victim impact statement, Mr. Kawanga John Paul, a resident of the village has stated that they all come from the same home with the juveniles and the deceased. All the juveniles used to relate very well with the deceased. The deceased was drunk and these boys too could have been

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drunk. Since they have asked for forgiveness, they deserve lenience. They were well behaved children at home. This was a one off incident that happened. Blood compensation has not been paid yet and the clan head of the deceased was arrested when he led a raid to the home of the juveniles to collect blood compensation. The place is still hostile. Although the clan of A1 and A3 has agreed on the terms of compensation with the family of the deceased, that of A2's family is talking of revenge and is the one that initiated criminal proceedings against the head of the family of the deceased, which proceedings are still pending in the magistrate's court at Kitgum. There is still bad blood between that families.

Contributing to the disposition hearing, Ms. Lamwaka Susan Christine, the Assistant Welfare and probation Officer, Gulu attached to the remand home where the juvenile offenders have been in custody while on remand has stated that A1 lost his father at a tender age. The mother is with another man on a different village. He is related to the victim. He was a pupil in P.4 at Porogali P.7 School. At the time he came to the remand home he appeared very sad, kept to himself and was silent and traumatised by the offence he committed. He went through a lot of counselling. He later picked and became one of the leaders at the remand home. He admits he had joined bad groups at the time as it was holiday time. This caused him to fight. With his background of not growing up with a father, at adolescence he went astray. During the time he has spent on remand he has undergone counselling, he promises never to fight with anybody again as it can cause death. She has recommend that he is bound over for 8 months under s. 94 (1) (b) of *The Children Act* and that he is also placed on probation for 6 months under s. 94 (1) (f) of *The Children Act*. During their interview, it appeared the community lets children to move around in public places to watch football and to drink alcohol. The community be asked to send back the message to protect children in the community lest similar offences occur.

As for A2, he has both parents who are responsible. He is an adolescent. He is remorseful and he too was sad being at the remand home. With excitement he went to watch football at the centre. He too has been counselled and guided. He promises never to go to such places again. She has recommend that he is bound over for 8 month sunder s. 94 (1) (d) of *The Children Act* and placed on probation for 6 months. A3 has both parents alive and was a pupil at Porogali in P.7 he admitted the offence and is very sorry. He was counselled and promises never to appear in such

places again. He has promised to go back and help other children in the community. He too has been one of the leaders. She has recommend that he is bound over for 8 months too under section 94 (1) (b) of *The Children Act* and placed on probation for 6 months.

- 5 The offence for which the juveniles have been adjudged responsible is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. However, according to section 104 (A) (1) of *The Children Act*, a death sentence is not to be pronounced on or recorded against a person convicted of an offence punishable by death, if it appears to the court that at the time when the offence was committed the convicted person was below the age of
10 eighteen years. The alternative is provided for by section 94 (1) (g) of *The Children Act*, which states that in such instances the maximum period of detention is to be three years.

On account of children's diminished culpability and heightened capacity for reform, by statute children are different from adults for sentencing purposes. Sentencing a juvenile offender to
15 three years in a children detention facility is the most severe criminal penalty available. Whereas the maximum punishment for a juvenile offender found responsible for an offence punishable by death is three years' detention, section 94 (1) (g) of *The Children Act* provides that detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the
20 order.

In arriving at an appropriate disposition order, the court will take into account the aggravating and mitigating factors relevant to the offence charged, the character of the offender, including but not limited to the facts and circumstances of the crime, the criminal history of the offender,
25 the offender's level of family support, social history, the offender's record while on remand, the offender's ability to appreciate the risks and consequences of the conduct, the degree of criminal sophistication exhibited by the offender, the degree of responsibility the offender was capable of exercising, the offender's chances of being rehabilitated, the physical, psychological and economic impact of the offense on the victim and the community, and such other factors as the
30 court may deem relevant. Orders imposing the maximum period of detention should normally be reserved for the worst offenders and the worst cases.

Orders of that kind may be justified where the offence was committed with brutality, or where the prospects of the juvenile offender reforming through non-custodial interventions are negligible, or where the court assesses the risk posed by the juvenile offender and decides that he or she will probably re-offend and be a danger to the public for a considerable time to come. In such cases, maximum incapacitation is desirable. In cases of a grave nature but where the court forms the opinion that they were only the consequence of unfortunate yet transient immaturity of youth, from that maximum point the sentence should be graduated and proportional to the offender and the gravity of the offence, with a view to strike a balance between the need for public safety and that of rehabilitating the juvenile offender. A distinction must be made between the juvenile offender whose crime reflects unfortunate yet transient immaturity of youth from the rare juvenile offender whose crime reflects a deep-seated depravity. In the instant case, the juvenile offenders murdered for which reason the gravity of the offence warrants an order of detention and I thus consider two (2) years and five (5) months' period of detention to be appropriate for these offenders.

Against this, I have considered the fact that each of the three the juvenile offenders pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the juvenile offender has pleaded guilty, as one of the factors mitigating his sentence, hence reducing it by one third to one year (1) and eight (8) months.

I have considered further the submissions made in mitigation of sentence and in their respective *allocutus* and thereby reduce the period to one years' detention. Although it was proposed that the juveniles offenders should not be subjected to a custodial order, and section 94 (1) (g) of *The*

Children Act provides that detention shall be a matter of last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order, I find that detention is unavoidable in the circumstances of this case.

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The juveniles come from a community that has a practice of exacting some form of retaliation against the family from which the perpetrator of a murder comes. From what has been stated during the disposition hearing, those practices are prone to turning violent. It is evident that the passions are still high and the security and safety of these juveniles cannot be guaranteed if they are released back to the community at this point in time. Their parents cannot be trusted to have the capacity at this time to guarantee the safety of these juveniles. They are safer serving a punishment of detention, although this may be reviewed before expiry of that period if the circumstances are proved to have improved. In that case they may be released on probation to serve what may be left of the period of detention.

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In the meantime, in accordance with section 94 (3) of *The Children Act*, to the effect that where a child has been remanded in custody prior to an order of detention being made in respect of the child, the period spent on remand shall be taken into consideration when making the order, I note that the convict has been in custody since 28th September, 2017. I hereby take into account and set off eleven months as the period each of the juvenile offenders has already spent on remand. Having taken into account that period, I therefore impose an order of eight (8) months' detention, to be served by each of the juvenile offenders, starting today.

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Having been found responsible and the disposition order made on basis of their own respective pleas of guilty, the juvenile offenders are advised that they have a right of appeal against the legality and severity of that order, within a period of fourteen days.

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Dated at Gulu this 24th day of August, 2018

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Stephen Mubiru
Judge,
24th August, 2018.