

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0033 OF 2017**

UGANDA PROSECUTOR

5

VERSUS

OJOK JOEL ACCUSED

10 **Before: Hon Justice Stephen Mubiru.**

SENTENCE AND REASONS FOR SENTENCE

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15 This case has come up today 20th November, 2018 in a special session for plea bargaining. The accused is indicted with the offence of Manslaughter C/s 187 and 190 of *The Penal Code Act*. It is alleged that on 14th October, 2016 at Gulu, the accused unlawfully killed.....

20 When the case was called, the learned State Resident Attorney, Ms. Catherine Nakaggwa has reported that she successfully negotiated a plea bargain with the accused and his counsel. The court has invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Walter Ladwar Okidi. The court has ascertained that the accused has 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
25 Court being satisfied that there is 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 has executed a confirmation of the agreement, has gone ahead to receive the agreement to form part of the record. The accused has then been allowed to take plea whereupon a plea of guilty has been entered.

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The court has invited the learned Resident State Attorney to narrate the factual basis for the guilty plea, whereupon she has narrated the following facts; on 14th October, 2016 the accused came to the home of the deceased at around 10.00 pm. He had an quarrel with deceased and he boxed the deceased on the chest. He was rushed to a health centre where he died. The case was reported to Omoro Police Station. He was examined and found to be aged 18 and mentally sound. A post mortem was done and the cause of death was a lacerated lung. It was caused by blunt force trauma. The respective medical examination reports too have been admitted as part of the facts.

Upon ascertaining from the accused that the facts as stated are correct, he has been convicted on his own plea of guilty for the offence of Manslaughter C/s 187 and 190 of *The Penal Code Act*. In justification of the sentence of seven (7) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; he hit the deceased on the chest, a sensitive part. He abused the trust of a friend when he fought him. Learned defence counsel has stated the key mitigating factors considered to have been that; both were friends and the accused was only 18 years old at the time and a first offender. He has been remorseful since arrest. The accused had nothing to add by way of *allocutus*.

I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. 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.

5 A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I consider the sentence proposed in the plea agreement entered into by the accused, his counsel, and the State Attorney to be appropriate. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of*
10 *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 has been in custody since 18th October, 2016 and I hereby take into account and set off two years and one month as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of four (4) years and eleven
15 (11) months 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.

20 Dated at Gulu this 20th day of November, 2018

Stephen Mubiru

Judge,

20th November, 2018.