

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT ARUA  
CRIMINAL CASE No. 0138 OF 2018**

**UGANDA ..... PROSECUTOR**

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**VERSUS**

**ODONG KOFI ..... ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

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**SENTENCE AND REASONS FOR SENTENCE**

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This case has come up today 23<sup>rd</sup> November, 2018 in a special session for plea bargaining. The accused is indicted with the offence of Murder c/s 188 and 189 of *The Penal Code Act*. It is alleged that on 26<sup>th</sup> January, 2018 at Lacor Trading Centre in Gulu District, the accused murdered Tumamegi Patrick.

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 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 26<sup>th</sup> January, 2018 at around half past midnight at Lacor Centre, the deceased went with two others at the home of Amono Jennifer who made an alarm and the accused was one of the people to respond. He chased the deceased together with others and they beat him to death. The matter was reported at Gulu CPS and the body of the deceased was found in a trench. The accused was arrested and found to be 21 years old. The post mortem indicated many open wounds on the limbs and the head. Cause of death was severe closed head injuries due to severe blunt force trauma. The accused was charged. 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 Murder c/s 188 and 189 of *The Penal Code Act*. In justification of the sentence of twelve (12) years' imprisonment proposed in the plea agreement, the learned Resident State Attorney has stated that; the multiple injuries caused to the deceased as a result of severe beating especially on the head. It is a mob justice case. Learned defence counsel has stated the key mitigating factors considered to have been that; the convict was young at 21 years head no prior motive but participated in the mob justice. He has pleaded guilty and he can reform since he is remorseful. By way of *allocutus*, the accused has stated that; he has nothing to add.

I have reviewed the proposed sentence in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Bukenya v. Uganda C.A Crim. Appeal No. 51 of 2007*, where in its judgment of 22<sup>nd</sup> 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. In *Sebuliba Siraji v. Uganda C.A. Cr. Appeal No. 319 of 2009*, in its decision of 18<sup>th</sup> December 2014, the court of appeal confirmed a sentence of life imprisonment. In that case, the victim was a businessman and the accused was his casual labourer. On the fateful day, the accused waited for the deceased with a panga hidden in a kavera (polythene bag) and when the deceased opened his vehicle, the appellant attacked him and cut him with a panga on his head,

neck and hand. In *Uganda v. Businge Kugonza H.C. Cr. Sess. Case No. 162 of 2012* the accused was convicted of murder after a full trial and was on 11<sup>th</sup> September 2013 sentenced to 20 years' imprisonment. The convict in that case had dug hole in the wall of the victim's house and cut him to death with a panga while he slept in his bed. In *Uganda v. Ocitti Alex and another, H.C. Cr Sessions Case No. 0428 of 2014*, an accused who plead guilty to an indictment of murder was on 7<sup>th</sup> November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head multiple times. In *Uganda v. Mutebi Muhamed and another, H.C. Cr Sessions Case No. 038 of 2011*, one of the accused who pleaded guilty to the offence of murder was on 17<sup>th</sup> January 2014 sentenced to 25 years' imprisonment while the other convicted after a full trial was sentenced to 30 years' imprisonment. The two convicts had killed the deceased by stabbing repeatedly on vulnerable parts of the body such as the head, the chest and near the breast during a robbery. Lastly, the case of *Tom Sazi Sande alias Hussein Saddam v. Uganda C.A Cr Appeal No. 127 of 2009*, where in its decision of 24<sup>th</sup> March 2014, the Court of Appeal upheld a sentence of 18 years' imprisonment for an accused who pleaded guilty to an indictment of murder. He had been on remand for 2 years and 3 months.

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 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 9<sup>th</sup> February, 2018 and I hereby take into account and set off nine months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of eleven (11) years and three (3) 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.

Dated at Gulu this 23<sup>rd</sup> day of November, 2018

Stephen Mubiru

Judge,

23<sup>rd</sup> November, 2018.