

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0142 OF 2015

UGANDA

PROSECUTOR

5 **VERSUS**

MUKASA BENEDICTO KIGOZI ACCUSED

Before Hon. Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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When this case came up on 3rd January, 2018, for plea, the accused was indicted with the offence of Murder c/s 188 and 189 of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 19th January, 2018. Today, there are five prosecution witnesses in attendance ready to testify but the accused has chosen instead to change his plea. It is alleged
15 that on 19th August, 2014 at Segalye village in Nakaseke District, the accused murdered a one Mukasa Stacio by hitting him with a hoe. When the indictment was read afresh to the accused, he pleaded guilty.

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The court then invited the learned Resident State Attorney Mr. Ntaro Nasur to narrate the facts which he stated as follows; the accused was resident at a neighbouring village. On the material day during the evening one Balanza Christopher who was a neighbour to the deceased heard an alarm from the deceased and when he responded he found the accused person hitting the deceased with a hoe to the head. He also made an alarm while fearing to rescue the deceased but the accused began chasing him as well. He raised an alarm the more, calling upon other
25 neighbours to close their doors because the accused had become wild. Later many people gathered and called the police and the accused person was arrested. They examined the deceased but he was in a pool of blood bleeding profusely. He was later taken to hospital but he died there. The post mortem report indicated bruises around the head, deep fractures on the head and other

parts of the body and that a blunt object was used to kill him. The accused too was examined and he was found with some bruises around the body and he had some mental abnormalities because of bhang smoking. The respective medical examination reports too were admitted as part of the facts. Upon the accused confirming these facts to be true, he had been accordingly 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 ten (10) years' imprisonment proposed in his submissions, the learned State Attorney relied on the fact that the accused killed a 75 year old man as the outstanding aggravating factor. Learned defence counsel Mr. Gastone Kamugisha in mitigation submitted that the accused has not wasted court's time, he is remorseful and reformed. He is 27 years. In his *allocutus*, the convict stated that he attacked the deceased because he (the convict) was mentally unstable. He was walking through the courtyard of the deceased when the deceased tried to grab him by the collar. He wrestled the accused down and then the accused picked an object nearby and hit the deceased with it and walked away. That is when he was arrested and taken to the police. He knew that what he did was likely to cause death but it was a sudden reaction. He prayed for lenience. In his victim impact statement, one of the neighbours of the deceased stated that he did not know the accused before the fateful day. He however prayed for twenty years' imprisonment because the accused killed an innocent person, and 10 years; imprisonment would be too light. The deceased had children but he only knew one of his sons personally and he is an adult. The community would wish that the accused is kept in custody for a long time.

Murder is one of the most serious and most severely punished of all commonly committed crimes. The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the *Penal Code Act*. 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 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 or callous manner. However, failed defences at trial are relevant to finding extenuating circumstances and for that reason murders involving ordinary provocation

not amounting to legal provocation, self induced intoxication, mental disorder or medical unsoundness of mind not amounting to legal insanity, emotional disturbance, and accomplice liability may reduce moral blameworthiness and provide grounds for not imposing a death sentence .

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This case is not in the category of the most egregious cases of murder committed in a brutal, callous manner. The medical report, exhibit P. Ex.1, the convict was found to be oriented in space and person but not time. Under section 11 of *The Penal Code Act*, a person is not criminally responsible for an act or omission if at the time of doing the act or making the
10 omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in that section in reference to that act or omission. To constitute
15 legal rather than medical insanity, it must be proved on the balance of probabilities that at the time he committed the offence, the accused either did not know what he was doing, or did not know that what he was doing was legally wrong (see *Liundi v. Republic [1976–1985] 1 EA 251*). The medical report does not support the defence of insanity and it was clear from the *allocutus* of the convict that his unsoundness of mind did not impair his cognitive faculty to that extent. The
20 defence is therefore not available to him coupled with the fact that he used more force than was necessary for the defence of self defence to be availed to him. His mental condition and the fact that the deceased attacked him first provide only an extenuating circumstance for which reasons I have discounted the death sentence.

25 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.

30 I have reviewed the proposed sentence of ten years' imprisonment 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 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. In *Sebuliba Siraji v. Uganda C.A. Cr. Appeal No. 319 of 2009*, in its decision of 18th 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 11th 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 7th 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 17th 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 24th 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.

In light of the fact that the convict fatally assaulted an elderly unarmed man in his own home with a hoe, I consider a starting point of thirty years and five months' imprisonment. Against this, I have considered the fact that the convict has 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 convict has pleaded guilty, as one of the factors mitigating his sentence but because it has come on a day fixed for hearing and not at the earliest opportunity, I will not grant the convict the traditional discount of one third (ten years) but only a quarter (eight years), hence reduce it to twenty two years and five months.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to eighteen years and five months' 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 note that the convict has been in custody since 21st August 2014. I hereby take into account and set off a period of three years and five months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of fifteen (15) years, 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 Luwero this 19th day of January, 2018

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Stephen Mubiru

Judge,

19th January, 2018.