

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI**  
**CRIMINAL SESSIONS CASE No. 0058 OF 2016**

**UGANDA** ..... **PROSECUTOR**

5 **VERSUS**

**OBULEJO GODFREY** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**SENTENCE AND REASONS FOR SENTENCE**

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When this case came up on 12<sup>th</sup> February, 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 21<sup>st</sup> February, 2018. On that day, there was one prosecution witness in attendance ready to testify but the prosecution applied for and was granted  
15 leave to amend the indictment to the offence of Manslaughter c/s 187 and 190 of *The Penal Code Act*, whereupon the accused pleaded guilty to the amended indictment. It was alleged that on 29<sup>th</sup> November, 2015 at Nterea North village, Dufule sub-county in Moyo District, the accused unlawfully caused the death of Anzoo Vivian.

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The learned Resident State Attorney, Ms. Bako Jacqueline then has narrated the following facts of the case; the accused and the mother of the victim had separated at the time of the incident. On 29<sup>th</sup> November, 2015 at about 10.00 am, the deceased's mother Dropoia Eliza came together with the deceased who was one year old back to the hone of the accused to see her daughter Akello Janet who was three years old by then suffering from malaria. She found her co-wife Lokua  
25 Rosemary whom she asked where the accused was and he told her he was not at home. Dropia Eliza decided to carry Janet on her back and she also carried the deceased on her shoulders and proceeded to Dufele Health Centre. On her way, the accused suddenly came out of his house, broke a branch of cashew nut tree and tried to hit Dropia Elizabeth. Dropia dodged the stick and instead it hit Janet she was carrying on her back. As he tried to hit her a second time, the stick  
30 instead hits the head of the deceased causing blood to ooze from her head. Dropia rushed the deceased to Dufele Health Centre since she was in critical condition but the deceased was

pronounced dead shortly thereafter. As Dropia was at the Health Centre, the accused never bothered to follow them, The body of the deceased was examined on Police Form 48 from Moyo Hospital on 30<sup>th</sup> November, 2015 and she was found to have sustained an external scalp wound with depression over the fontanel along the surgical sutures. The cause of the death was brain damage following traumatic blow by an object over the fontanel. There was also internal bleeding in the right cerebellum with conjunctiva bleeding and dilated pupil of the right eye. The death happened within three hours of the injury. The case was reported to Moyo Police station. The accused was arrested and charged with murder which has subsequently been amended to Manslaughter. The accused was examined on P.F 24 A by Dr. Kizza Francis, Senior Medical officer of Moyo General hospital. He was found to be 36 years old and mentally sound. Both police forms; P.F. 48C and P.F 24 A were tendered as part of the facts.

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 Manslaughter c/s 187 and 190 of *The Penal Code Act*. Submitting in aggravation of sentence, the learned Resident State Attorney stated that; although the convict has no previous conviction, the offence is rampant and he deserves a deterrent sentence. He had no justification for attacking his wife who had gone to take their daughter for medical treatment. She proposed that he should be sentenced to ten years' imprisonment to deter the re-occurrence of the offence.

In response, the learned defence counsel Mr. Lebu William prayed for a lenient sentence on grounds that; the convict is deeply remorseful for what has happened. This is a very unfortunate incident and consequence of domestic violence. The loss of the child is a loss to both parents and other members of the family. They equally share that loss out of the reckless act upon which he prayed that the court considers a lenient sentence because the incident will remain in his memory for life. The accused still has the duty of looking after the family and he had three other children who depend on him and another wife. It is important that he continues with his parental responsibility. It is a young family. He has requested for a chance to be able to return home. It is a universal principle of sentencing for rehabilitation to be considered. A long sentence will keep him away from the family. He has been on remand for more than two years. That is a long period of time. It should be taken into account and he therefore proposed that he be given one year.

In his *allocutus*, the convict prayed for forgiveness because it was not his intention to kill. Up to now he feels the pain of the loss of his daughter. He did not have a quarrel with the deceased. Her utterances annoyed him and he accidentally hit the deceased. The sentence should enable him to take care of the family. It was not his practice to beat her. On that day he arose from sleep  
5 and he had a pain in the head. He had no quarrel with her when she returned to her parents. She went in his absence and he was sending her upkeep. After accidentally hitting the child, he got confused and frightened and that is why he did not rush her to hospital but he did not run away.

In her victim impact statement, the mother of the deceased child stated that the convict ought to  
10 be treated leniently because he did not intend to kill the deceased. She had no problem with the accused. It is her co-wife who precipitated this. She was quarrelling with her co-wife when the convict intervened. That was not his usual behaviour. It was the work of the devil. The period he has spent in prison is enough. He has a seven year old child he has to take to school. She is facing hardship and she trust he will not be violent when he returns home. She has been visiting  
15 him in prison and they have discussed the loss of the child. He has the pain of the loss of the child and it is her who has been consoling him not to blame himself.

It is a cardinal principle of sentencing that the punishment must not only fit the crime but also the offender. Two dimensions of wrongdoing figure most prominently in its gravity: the magnitude  
20 of the harm or wrong inflicted or risked, and the culpability of the offender for bringing it about or risking it. The resultant principle of proportionality requires that a sentence should not exceed what is just and appropriate in light of the moral blameworthiness of the offender and the gravity of the offence.

25 The offence of Manslaughter is punishable by the maximum penalty of life imprisonment under section 190 of the *Penal Code Act*. However, this represents the maximum sentence which is usually reserved for the worst of such cases. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon. I have excluded the sentence of life imprisonment on that  
30 ground. The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the

Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 15 years' imprisonment.

The severity of punishment will then depend on the level of culpability of the convict.

5 Culpability is the measure of the degree to which the convict can be held morally or legally responsible for action or inaction. At this stage the court must judge the culpability of the act rather than the general attributes of the convict. In doing so, I have considered the four levels of culpability, (from highest to lowest): purposely, knowingly, recklessly, and negligently. A person acts purposely when he or she has a conscious object to cause the result. A person acts  
10 knowingly if he or she does not hope for the result but is practically certain that his or her conduct will cause it. A person acts recklessly if he or she is aware only of a substantial risk of causing the result but nevertheless runs it. It requires a person to consciously disregard a substantial risk. Criminal negligence on the other hand involves gross deviation from the standard of care that a reasonable person.

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Parents are primarily responsible for protecting their children. Where a parent, such as the convict was in this case, commits an act which results in the death of a child, the act may have been purposeful, knowing, reckless, negligent, or faultless. The parent may have performed the act because he desired to cause the child's death; or, he may not have desired to cause the death,  
20 but he may have been practically certain that his act would result in the death; or, he may have been aware only of a substantial risk; or, he may have been unaware of a substantial risk but should have been aware. Recklessness is considered the norm for criminal culpability, and in this case the convict acted in disregard of a specific risk, hence he was reckless. Accordingly, in light of that aggravating factor, I have adopted a starting point of seven years' imprisonment.

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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  
30 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  
5 convict has pleaded guilty, as one of the factors mitigating her sentence. I have granted the convict of the traditional discount of one third (two years) and hence reduce it to five years' imprisonment.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and  
10 thereby reduce the period to three years' 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 observe that the convict has been in custody since 2<sup>nd</sup> December, 2015, a period of two  
15 years and two months. I therefore sentence the convict to a term of imprisonment of ten (10) 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  
20 days.

Dated at Adjumani this 23<sup>rd</sup> day of February, 2018

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Stephen Mubiru  
Judge,  
23<sup>rd</sup> February, 2018.

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