

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL CASE No. 0026 OF 2017

5 **UGANDA** **PROSECUTOR**

VERSUS

10 **OKOT JUAKINO** **ACCUSED**

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

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This case came up on 10th January, 2018 in a special session for plea bargaining. The accused was indicted with the offence of Murder c/s 188 and 189 of the *Penal Code Act*. It was alleged that on 22nd April, 2016 at Onyom Kati village in Arua District, the accused murdered Drakara Fred.

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When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then invited the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Onencan Ronald. The court then went ahead to ascertain that the accused had 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 was 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 had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

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The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 20th April, 2016 around 11.00 pm the accused and

other people together with the deceased were passing time at a nearby market. The accused and the deceased developed a misunderstanding resulting in a fist fight and was joined by others. The Chairman stopped the fight and advised those fighting to leave and they complied. The deceased and his brother went home together but in the way they were by passed by a fast running accused and it forced the deceased and his brother to divert the route. On arrival at the home of the brother of the deceased, they were served with food and shortly after the accused came running with a bow and arrows. He asked for a one Somalia. When he saw the deceased, he shot him in his stomach with an arrow which remained stuck in his stomach. The deceased and the accused struggled briefly. His brother notified the neighbours. The police was notified and when they came the deceased was in critical condition and the accused had fled. The deceased was rushed on a boda-boda. The accused was arrested while admitted at Kuluva hospital. The post mortem was done at Arua hospital. The accused was found to be of normal mental status. In the post mortem; external injury was a deep perforating arrow and internally, five perforations and massive haemorrhage and the cause of death was haemorrhagic shock. The Post mortem was done on 24th April, 2016 and the accused was examined on 29th April 2016. The respective medical examination reports too were admitted 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 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 State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; this was a pre-meditated killing, the deceased left behind children who are now orphaned and the crime is rampant in the region. Learned defence counsel too adopted the mitigating factors outlined in the plea agreement, which briefly are that; the accused is a first offender who has readily pleaded guilty. He has spent one year and five months on remand and has one child now in primary seven. In his *allocutus*, the convict stated in addition that he also suffers from T.B.

I have reviewed the proposed sentence of twelve 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*
5 *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.*
10 *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'
15 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
20 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.

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Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent one year and eight months on remand, I hereby accept the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto, sentence the accused to a term of
30 imprisonment of twelve (12) 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.

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Dated at Arua this 10th day of January, 2018

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Stephen Mubiru
Judge,
10th January, 2018.

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