

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0036 OF 2017**

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

**VERSUS**

10 **MANZEDE STEPHEN** ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

15 This case came up on 10<sup>th</sup> 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 3<sup>rd</sup> December, 2016 at Oniba village in Arua District, the accused murdered Alio Sunday.

20 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  
25 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.

30 The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; the accused and the deceased were biological brothers who lived in the same compound. They had a long-standing land dispute which caused the accused to go to Congo for some time and upon returning on 3<sup>rd</sup> December 2016, the accused

found his brother the deceased at home where they picked up a quarrel and there was a fist fight. The accused used a pounding stick to hit the deceased on the head. The deceased collapsed and died instantly. The matter was reported to the police and the accused ran to Congo. He was later followed and arrested. The police came to the scene and took photo of the deceased with the  
5     pounding stick beside it. They took the body for post mortem. The victim was found to have fracture of the frontal cranium and internally there was blood which was oozing through the nose and eye. It was an open head injury. It was prepared on 4<sup>th</sup> December 2013. The accused was examined on 6<sup>th</sup> December, 2016 at Arua Regional hospital and was found to be of the apparent age of 30 years with normal mental status. The respective medical examination reports too were  
10    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 thirteen (13) years' imprisonment proposed in the plea agreement,  
15    the learned State Attorney adopted the aggravating factors outlined in the plea agreement, which are that; the offence is punishable by death, the deceased left widows and orphans and the offence 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 is HIV positive, has two children, a wife and seven dependants. He is  
20    remorseful and has spent one year on remand. In his *allocutus*, the convict stated he had nothing to add to what is in the plea agreement.

I have reviewed the proposed sentence of thirteen years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I  
25    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*  
30    *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.

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 on remand, I have formed the opinion that the proposed sentence is harsh considering the circumstances of the case. The accused was involved in a fist fight with the deceased. It appears the pestle was a weapon of opportunity used during the fight. There was no pre-meditation. I thus reject the plea agreement and instead sentence the accused to a term of imprisonment of eight (8) years imprisonment 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 Arua this 10<sup>th</sup> day of January, 2018

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Stephen Mubiru  
Judge,  
10<sup>th</sup> January, 2018.

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