

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT-PORTAL
CRIMINAL APPEAL NO. 006 OF 2022
(ARISING FROM KJJO-21-CR-CO-387-2021

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BEFORE HON. JUSTICE VINCENT WAGONA
JUDGMENT

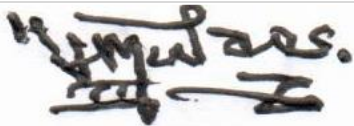
Introduction

This is an appeal against the decision of Her Worship Ociba Gloria, Chief Magistrate
10 of Kyenjojo, delivered on 27th September 2022 where the appellant was sentenced
to 15 years' imprisonment following her own plea of *guilty* on a charge of attempted
murder c/s 204 of the Penal Code Act.

It was alleged that the appellant on the 18th day of October 2021 at Mirambi Village
15 in the Kyenjojo District attempted to cause the death of Birungi Stephen.

Brief Facts

The brief facts were that disagreements arose between the complainant and the
appellant who were husband and wife. The appellant wanted to have the agreement
20 relating to one of their houses where they lived, to guarantee her ownership and
occupation thereof, in case of death of the complainant, but the complainant refused.
On the night of 18.10.2021 while the complainant was asleep, the appellant cut him
using a *panga* before she run away, but was later apprehended and charged with this
offence. The complainant sustained cut wounds on the face and left hand. On



27.09.2022 following her plea of *guilty*, the appellant was sentenced to “**15 years imprisonment minus the period on remand**”.

Ground of appeal

- 5 The appeal was against sentence only, stating in the memorandum of appeal that: The learned trial Chief Magistrate erred in law and fact when she passed a manifestly harsh and excessive sentence without due consideration of the mitigating factors.

Representation

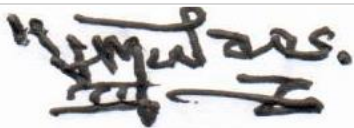
- 10 The appellant was represented by the Legal Aid Project of the Uganda Law Society, Kabarole Office who filed written submissions to which the Office of the Director of Public Prosecutions did not respond.

Submissions of the Appellant

- 15 It was submitted that the trial Chief Magistrate considering that the appellant had pleaded guilty and saved court’s time, that she was a first offender, and a mother of 5 young children, should have given the appellant a lenient sentence.

- 20 Counsel for the appellant cited cases of murder where the appellants’ sentences were reduced to below 15 years. That for example in **John Kasimbazi & Ors v. Uganda, SCCA No. 167/2013** a sentence of life imprisonment was reduced to 12 years in a case of murder.

CONSIDERATION BY COURT:



Prior to her plea of *guilty*, the appellant told court that she had spent 1 year in prison and her child lacked food in prison except posho. Following her plea of guilty, in mitigation, it was pointed out that the appellant had pleaded guilty and saved court's time; that she was remorseful and regretted what she did; that she was a mother of 5 children and a wife of the complainant and that the children needed to grow up with both parents; that she had been on remand since 27/10/2021. In allocutus, the appellant requested for pardon and stated that she was remorseful. The aggravating factors that were cited by the prosecution were that that the appellant should not have resorted to domestic violence to address her grievances; that she used a panga on her helpless victim who was asleep and cut him several times, leaving him for dead.

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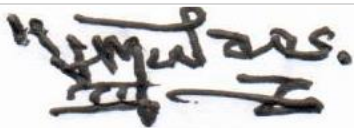
The sentencing guidelines have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial (see **Ninsiima v. Uganda Crim. C.A Criminal Appeal No. 180 of 2010**).

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The maximum sentence for attempted murder is life imprisonment. The Sentencing Guidelines do not provide for attempted murder. Other offences whose maximum sentence is life imprisonment have a sentencing starting range of 15 years and a range of 3 years up to life imprisonment. The case law practice of the Court of Appeal and Supreme Court has been to reduce sentences going significantly above the sentencing starting range. Such sentences have frequently been reduced to a sentence lower than the sentencing starting range.

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Under Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, the



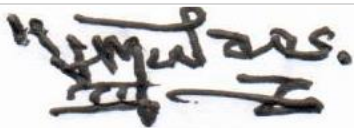
court should take into account the period spent on remand when sentencing the convict.

In **Byagonza v Uganda (Criminal Appeal No. of 1999) [2000] UGSC 3 (7 April 2000)** the appellant, Christopher Byagonza, was tried and convicted by the High Court on an indictment which charged him with the offences of murder, attempted murder and aggravated robbery. He was sentenced to death in respect of the offences of murder and aggravated robbery and seven years imprisonment for the attempted murder. The Supreme Court upheld the sentences.

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Each case must be treated on its own merits. After considering the aggravating and mitigating circumstances already stated, I additionally find as a mitigating factor, that the injuries as stated in the medical report consisted of 2 closed cut wounds, one on the face and the other on the left hand, and the nature of the injuries was not all that grave to warrant the sentence of 15 years' imprisonment. An xray of the injured left hand revealed normal bones. There were no repeated injuries or harm to the victim. According to the charge sheet, the appellant was aged 35 years when she committed the offence in October 2021; she is a youthful housewife who can reform and become a better wife and mother. Further, the complainant contributed to appellant's anger leading to the offence by being untransparent in the handling of the concerns of the appellant regarding the house agreements. The complainant must have exhibited this negative attitude towards the appellant's concern because of her status of being a woman, ignoring her having been a wife of 12 years and a mother of 5 children.

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After considering all the aggravating and mitigating factors as well as the allocutus of the appellant, I find that the sentence of **“15 years imprisonment minus the period on remand”** was harsh and excessive in the circumstances of this case and I hereby set it aside.

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I instead find a sentence of 3 years’ imprisonment to be appropriate in the circumstances of this case. The appellant had been on remand since 27/10/2021 at the time of conviction and sentence on 27/09/2022, a period of 11 months.

10 After considering the period of 11 months that the appellant had spent on remand, **the appellant will now serve a sentence of imprisonment of 2 years and 1 month that runs from the date of conviction (that is, from 27/09/2022).** It is so ordered.

Dated at High Court Fort-portal this 31st day of May 2023.



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31.05.2023

Vincent Wagana

High Court Judge

FORT-PORTAL

