THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: ARACH-AMOKO, OPIO-AWERI, MWONDHA, MUGAMBA AND NSHIMYE; JJSC]

CRIMINAL APPEAL NO. 52 OF 2016

BETWEEN

1. BWEFUGYE PATRICK
2. NAMUMPA PATRICK }::::::::::::::::::::::::::::**APPELLANTS**

AND

UGANDA::**RESPONDENT**

(An appeal from the judgment of the Court of Appeal (Kakuru, Byabakama Mugenyi and Owiny-Dollo; JJA) dated 6th December, 2016 in Criminal Appeal No. 0268 of 2010.)

JUDGMENT OF THE COURT

The appellants were jointly indicted, tried and convicted by the High Court presided over by Gidudu J, for the murder of one Mishaki Rushoke. Each of them was sentenced to imprisonment for life on 13/10/2010. They appealed to the Court of Appeal against conviction and sentence. The Court of Appeal upheld the conviction but set aside the sentence of life imprisonment. Instead on 6/12/16 that court sentenced each of them to 30 years imprisonment. The sentence was to run from the date of conviction, 11/10/2010. Being dissatisfied with that decision, they separately appealed to this Court against both conviction and sentence.

According to the memorandum of appeal that was filed on behalf of the 1st appellant on the 30th January, 2018, the grounds of appeal are:

1. **That the learned Justices of Appeal erred in law and fact when they upheld the trial Judge's Conviction against the 1st appellant based on contradictions and speculation.**

2. **That the learned Justices of Appeal erred in law and fact when they upheld the trial Judge's conviction based on weak circumstantial evidence.**

In the alternative and without prejudice to the above;

3. **That the learned Justices of Appeal erred in law when they passed an illegal, harsh and excessive sentence of 30 years imprisonment which did not take into consideration the 1st appellant's period spent on remand.**

The memorandum of appeal filed on behalf of the 2nd appellant on the 19th January, 2018, raised four grounds of appeal, namely that:

1. **The learned Justices of Appeal erred in law and fact when they failed to properly re-evaluate the evidence before them as they convicted the 2nd appellant in the absence of any incriminating evidence.**

2. **The learned Justices of Appeal erred in law and fact when they convicted the 2nd appellant on evidence based on falsehoods and grave inconsistencies and contradictions.**

3. **The learned Justices of Appeal erred in law and fact when they found that the alibi was destroyed whereas not.**

4. **The learned Justices of Appeal erred in law and fact when they sentenced the 2nd appellant to 30 years which sentence is illegal, manifestly harsh and excessive in the circumstances of the case without taking into consideration the appellant's mitigation.**

Representation:

At the hearing, Ms.Wakabala Sylvia represented the 1st appellant on state brief. She informed court that she was also holding brief for Counsel for the 2nd appellant, Mr. Muwonge Emmanuel, who was absent. Principal State Attorney Ruth Tumuhaise appeared for the Respondent. Both Counsel adopted the written submissions that had been filed in court.

With respect to the 1st appellant's appeal, Ms. Wakabala argued grounds 1 and 2 together and then ground 3 alone.

Regarding the 2nd appellant's appeal, the submissions filed on his behalf by M/s Katende, Ssempebwa and Company Advocates addressed grounds 1, 2 and 3 together. They argued ground 4 separately.

In her response, learned Counsel for the respondent adopted the same order.

Submissions:

Grounds 1 and 2: weak circumstantial evidence and contradictions

Grounds 1 and 2 of the appeal of the 1st appellant criticized the learned Justices of the Court of Appeal for upholding the conviction that was based on weak circumstantial evidence marred with contradictions. They cited PW3 who stated that she met the 1st appellant in the farm belonging to Tumwine and being shocked to see her, took a different direction. She went on to state that she showed the 1st appellant and company to Matsiko (PW4) but he did not recognize them. In re-

examination, she insisted that PW4 did not see the 1st appellant and company. PW4 on the other hand, stated that he saw A1 and company when he was grazing cattle.

Counsel wondered at what point PW4 saw the 1st appellant. He noted that if it was before meeting with PW3, then he should have been able to recognize them again when PW3 showed them to him or at least told PW3 about the strange occurrence he too had witnessed of the people he had seen. Counsel said this does not seem to be the case. On the other hand, Counsel argued, if it was after PW3 had left, it would mean the 1st appellant was still hanging around in the farm. Counsel stated that this would contradict the evidence of PW3 that they were moving very fast.

Counsel further argued that, considering the fact that PW3 and PW4 met in the farm, they must have taken sometime together before she left and that this was sufficient time for men moving very fast to disappear.

Counsel noted also that, PW3 stated that there were no paths in the farm and that it was a bushy farm. PW4 on the other hand stated that:

> *"...they were hurrying so I never spoke with them... I noticed that they were moving very fast and Rwashande's gum boots were stained with blood near the knees... The boots were black in colour. I saw the blood because the farm was cleared and there were no bushes. I could see clearly 30 meters away."*

According to Counsel, it should be noted that both witnesses were talking about the same farm but giving different versions of what it looked like. He wondered therefore, whether it was a bush indeed as PW3 contended or it was clear as PW4 stated. In Counsel's view these contradictions were too glaring to be ignored as minor. Counsel submitted that had the Court of Appeal subjected the evidence to

fresh scrutiny, they would have come up with a contrary view to that of the learned trial Judge.

Counsel's other contention is that the evidence of PW6 quoted by the learned Justices of the Court of Appeal in their judgment is hearsay evidence and should not have been considered at all by the Court of Appeal. PW6 stated that:

> *"Bwefugye was seen by Kyankoragye running away from the scene with two other people. That they had tied their shirts at their waists and when they bumped into Kyankoragye, they were shocked and they ran away in the bush..."*

Counsel submitted that on the contrary, if the evidence of PW6 were to be admitted, it actually strengthens the defence case as to whether PW4 indeed saw the 1st appellant and company in so far as he states that only PW3 had seen the 1st appellant.

Counsel submitted that there was a further contradiction in the manner of arrest of the 1st appellant. PW7 stated that he was arrested at his home but PW9 stated that he was arrested at a witchdoctor's place. At the trial, the state conceded to the contradictions in the manner of arrest and asked the trial Judge to choose which version to believe. The trial Judge discredited the version of PW9 and gave reasons. Counsel faulted the trial Judge for rejecting the evidence of PW9 and invited Court to take judicial notice of the fact that a trained person in possession of a gun is not allowed to use it unless he or she must. Counsel noted that for the trial Judge to say that he could not believe that PW7 saw the 1st appellant run and did not use his gun, was a misdirection. PW9 was in the company of other people, and therefore his life was not in jeopardy and to make use of the gun would only

show his incompetence. According to Counsel, this contradiction too was grave as well and went to the root of the matter.

The other matter Counsel pointed out as a contradiction concerned the evidence by the prosecution witnesses where they stated that the 1st appellant and others had their shirts resting over their shoulders. According to Counsel, this evidence was not corroborated in any way. He noted that Police did not make effort to search the 1st appellant's house to establish if the blood stained shirt was in his house. That notwithstanding, Counsel wondered why the trial Judge stated that the shirt was thrown in the pit latrine when there was no evidence to support this assertion. Counsel stated that it was clear to him that the investigations done were too shallow.

On circumstantial evidence especially the land wrangle, Counsel submitted that, apart from mere assertions from prosecution witness, there was no concrete evidence produced in court to support its existence.

Regarding non-attendance at the deceased's burial, Counsel submitted that the 1st appellant gave a valid reason why he did not attend the burial. He stated that the 1st appellant had been informed by a colleague that he was suspected of killing the deceased and so he chose to stay away because at such a time, tempers could rise and even lead to loss of life if he had appeared at the burial, he being a prime suspect. Counsel contended that what the 1st appellant did with the information he had was what a reasonable man would have done.

Concerning the alleged disappearance from home, Counsel contended that it was mere hearsay borne of contradictions based on the evidence of PW6 who first stated that he went to the 1st appellant's home only later to change and state that it was Cpl. Nasasira who had gone to the 1st appellant's home and found him absent.

PW6 stated that:

> *"I picked interest and wanted to interrogate the accused but they were not in their homes for three days..."*

Then he later stated that:

> *"I did not physically go to A1's home. It is Cpl. Nasasira who had gone to A1's home and did not find him."*

Counsel noted that Cpl. Nasasira was not called upon to clarify on this and suggested that the evidence of PW6 should be taken as hearsay.

Counsel submitted that contrary to the above evidence, the evidence of PW7 was clear that the 1st appellant was arrested at his home and as such he was not in hiding.

Counsel submitted that had the Court of Appeal subjected the said evidence to fresh scrutiny, they would have found that the circumstantial evidence was too weak to secure a conviction since it was marred with contradictions. Counsel invited Court to allow ground 1 and ground 2, quash the conviction and set aside the sentence.

Ground 3: sentence

Regarding ground 3 of the 1st appellant's appeal, counsel submitted that the learned Justices of Appeal erred in passing the sentence of 30 years when they did not take into consideration the constitutional requirement of the period spent on remand.

In her submissions, Counsel for the appellants referred to the record where the Court of Appeal Justices in passing sentence stated thus:

"Taking into account all the circumstances of this case, we set aside the sentence of life imprisonment and impose on each of the appellants a sentence of 30 years imprisonment. The sentence commences on the 11th October, 2010 when they were convicted."

Counsel submitted that it was evident from the foregoing statement that the learned Justices of the Court of Appeal did not take into consideration the constitutional requirement relating to the period spent on remand. Counsel relied on the decision of this Court in the case of **Rwabugande Moses vs. Uganda, SCCA No. 25 of 2014** where the Court held that taking into account the period spent on remand by a Court is arithmetic. Counsel prayed that the Court substitutes the 30 years sentence with a more lenient sentence of 18 years after taking into consideration the remand period of 11 years and 6months.

Counsel for the respondent had no specific response to these submissions. She explained that she had only received the submissions in respect of the 1st appellant the day before the hearing, so she was unable to file a reply thereto. However, she stated that the reply she had filed in response to the submissions in respect to the 2nd appellant covers the 1st appellant as well. Be that as it may, we have perused the said submissions and find that they were specific to the 2nd appellant. They do not address the appeal by the 1st appellant at all.

We shall, in the premises proceed to determine the appeal by the 1st appellant in the absence of any reply thereto from Counsel for the respondent.

Consideration of the appeal by the 1st appellant by the Court:

Grounds 1 and 2: weak circumstantial evidence and contradictions

We have meticulously perused the record and the Judgment of the Court of Appeal. We find that the Court properly executed its duty as a first appellate Court. As a second appellate Court, we can only interfere with the concurrent findings of the two lower Courts where this Court considers that there was not enough evidence to support the findings of fact. This Court will not on second appeal, interfere with the concurrent findings of fact, if there is evidence to support them. **(see: Nyanzi vs. Uganda [1999] E.A 228** and **Okale v R [1965] E.A 555).**

The record shows that the issues of contradictory evidence and weak circumstantial evidence were raised before the Court of Appeal as grounds 1 to 4. The record further shows that the learned Justices of Appeal, after summarizing the submissions of Counsel, reminded themselves of their duty as a first appellate Court namely, to re-appraise the evidence and to make their own inferences on all issues as per Rule 30(1) of the Court of Appeal Rules and the decision of this Court in **Bogere Moses vs. Uganda, SCCA No. 1 of 1997.** The learned Justices of Appeal then re-evaluated the evidence and found that the learned trial Judge had correctly set out the law relating to circumstantial evidence, inconsistencies in evidence and alibi in his judgment.

The learned Justices then raised the question as to whether the learned trial Judge had applied the law to the specific facts of the case. They found that the ingredients of murder were undisputed except for the participation of the appellants. The Court then went on to re-evaluate the evidence adduced by the prosecution regarding participation beginning with PW1, PW2, PW3, PW4 and PW6.

The learned Justices then made findings of fact. On identification, they found that all the factors were conducive to positive identification. Both appellants were positively identified running or hurrying away from the place where the deceased's

body was found. It was broad day light. Both appellants and the witnesses lived in the same village and were very well known to each other. They were positively identified as the distance between each of the witnesses and the appellants was short. In the premises they agreed with the findings of the learned trial Judge that the appellants were correctly identified.

The learned Justices rightly observed that having been identified as running away from the scene of crime was not sufficient to sustain a conviction of murder. The prosecution had to prove the participation of each of the appellants in the crime.

The learned Justices then re-evaluated the evidence of the prosecution witnesses particularly PW1, PW2, PW3 and PW4 in light of the appellant's defence of alibi.

The learned Justices took note of the evidence of the conduct of the appellants both before and after their arrest as well as the existence of a long held grudge over land as clearly set out by the learned trial Judge. They found that it bolstered an already strong prosecution case.

The learned Justices also noticed that there was no direct evidence produced by the prosecution as to the circumstances that led to the death of the deceased and what exactly happened at that time. They however found that the circumstantial evidence had proved beyond reasonable doubt that both appellants participated in the homicide. They also agreed with the trial Judge's finding that the appellants had formed a common intention to kill the deceased and in conjunction with one another, prosecuted it. The learned Justices in conclusion found no reason to fault the learned trial Judge's findings and upheld the conviction. We are in agreement with the conclusion of the learned Justices of the Court of Appeal.

Grounds 1 and 2 accordingly fail.

Ground 3: sentence

The former Court of Appeal for East Africa had observed in **Ogalo S/o Owuora vs. R (1954) 21 EACA 270** that:

> ***"An appellate court will only alter a sentence imposed by the trial court if there is evidence that it has acted on a wrong principle or overlooked some material factors or if the sentence is manifestly excessive in view of the circumstances of the case."***

The decision has been followed in the case of **Kiwalabye Bernard vs. Uganda, SCCA No. 142 of 2001** and **Kizito Senkula vs. Uganda, SCCA No. 24 of 2001** relied on by Counsel for the appellants. Counsel wisely abandoned the complaint that the sentence of 30 years was manifestly harsh and excessive. This would not be entertained by this Court by dint of section 6(3) of the Judicature Act which restricts appeals to this Court on matters of law only. Nonetheless, we find that the sentence of 30 years is not harsh and excessive. In the case of **Obote William vs. Uganda, SCCA No. 12 of 2014,** this Court upheld a sentence of 30 years imprisonment. The maximum sentence for the offence of murder is death. The trial Judge had imposed a sentence of life imprisonment on the appellants. The Court of Appeal set that sentence aside and replaced it with a sentence of 30 years imprisonment after taking into consideration all the factors and circumstances of this case.

Counsel instead addressed us on the main complaint that the learned Justices of Appeal did not take into consideration the period spent on remand as mandated by Article 23(8) of the Constitution and that as such the sentence is illegal. This is correct. The paragraph referred to by the learned Counsel for the appellants is clear. While passing sentence on the appellants the Learned Justices stated:

" In this case both the appellants are first offenders, they spent some time on remand and the murder was not coupled with any other offence, neither was it a ritual sacrifice.

Taking into account all the circumstances of this case, we set aside the sentence of life imprisonment and impose a sentence of 30 years imprisonment. The sentence commences on the 11th October 2010 when they were convicted."(Emphasis added)

This statement was vague in that it did not specify the period spent on remand. In **Rwabugande** (supra), this Court guided that the period spent on remand by a convict or appellant must be specified and must be deducted from the sentence imposed by a court. It is insufficient for a judge to state that the period spent on remand has been taken into consideration without specifying it.

We find that the learned Justices of the Court of Appeal erred when they did not specify the time spent on remand by the appellants before arriving at the sentence of 30 years imprisonment. This ground therefore succeeds partly and the sentence imposed by the Court of Appeal is hereby set aside.

From the *allocutus*, the 1st appellant stated that he had spent 4 years and 2 months on remand. The first appellant should in the premises serve 30 years less the 4 years and 2 months he had spent on remand before his conviction by the trial Judge the 11th October 2010. He is to serve 25 years and 10 months imprisonment.

The appeal by the 2nd Appellant:

Grounds 1, 2 and 3 of the 2nd appellant's appeal

The complaints under these three grounds are that the Court of Appeal Justices did not properly re-evaluate the evidence regarding the 2nd appellant's participation in

the commission of the crime. Counsel contended that the Justices of the Court of Appeal, like the trial Judge, made wrong findings when they held that the evidence of the prosecution witnesses had placed the 2nd appellant at the scene of crime. She referred to the testimony of PW2 where he stated that he met the 2nd appellant who was running through the bush on that day. He reportedly asked the 2nd appellant why he was running but the latter never answered. According to Counsel, that evidence alone does not place the 2nd appellant at the scene of crime. Counsel said the 2nd appellant must have been running for some other reasons and not from the scene of crime.

Counsel further referred to the statement of PW6 that he got information that the 2nd appellant had been seen walking up and down two hours before the deceased was found dead and that the 2nd appellant was observing the deceased from an ant hill. Counsel submitted that the above information was too remote to place the 2nd appellant at the scene of crime. She contended that the 2nd appellant was a resident of the area who could have been conducting any business other than to harm the deceased.

Counsel also submitted that the learned Justices of the Court of Appeal had dealt with the two accused persons in an omnibus way, yet each of the appellants had different circumstances. Counsel noted that no witness testified to have seen that he had seen the two accused persons running together. Counsel contended that although the 2nd appellant was seen on that day before the death of the deceased, he was never identified at the scene of crime. Counsel said the learned Justices of the Court of Appeal were therefore wrong to state that they found that the evidence was sufficient to place the 2nd appellant at the scene of crime when it was insufficient and was riddled with grave contradictions and inconsistencies.

Counsel also submitted that the principles of common intention were not conclusively laid before the two Courts since there was nowhere the prosecution brought evidence linking the 1st and 2nd appellants in the commission of the offence.

Counsel further referred to an observation made by the learned Justices of the Court of Appeal that common intention was also inferred from the failure of any of the appellants to disassociate himself from the crime. She submitted that the burden of proof in criminal matters never shifts to the accused. Counsel argued that the above observations by Court are therefore wrong in all contexts. Counsel cited **Woolmington vs DPP [1935] AC. 44** and **Sekitoleko vs. Uganda [1967] EA 531.**

According to Counsel, the prosecution evidence was littered with grave contradictions and inconsistencies as regards the participation of the 2nd appellant. She said that the Justices of the Court of Appeal were therefore wrong to hold otherwise. She urged this court to quash the conviction and set aside the sentence against the 2nd appellant.

Counsel for the respondent disagreed with the appellant's submissions and contended that the prosecution had adduced all the necessary evidence and proved all the ingredients of the offence against the 2nd appellant. Counsel stated that the conviction of the appellant was therefore well deserved.

She submitted that the learned Justices of the Court of Appeal noted in their judgment that they had a duty to re-evaluate the evidence as a first appellate Court and correctly stated the law, that is, Rule 30 of the Court of Appeal Rules and the case of **Bogere Moses vs. Uganda** (Supra). She observed that the Justices went ahead and re-evaluated the evidence on record before reaching their decision. In this respect, Counsel referred specifically to the evidence of PW1, PW2 and PW6.

Counsel further contended that although Counsel for the 2nd appellant complained about inconsistencies and contradictions, she did not point them out. Counsel prayed that this Court finds that there were no inconsistencies and contradictions in the prosecution evidence and that even if they were there, they were so minor that they did not go to the root of the case.

She prayed that the Court finds no merit in this appeal and should dismiss it.

Ground 4: sentence

Regarding ground 4 of the 2nd appellant's appeal, counsel submitted that the trial Judge overlooked some material factors during the sentencing of the 2nd appellant, namely, his age, the fact that he was a first offender, a family man, and the period he had spent on remand. Counsel submitted that this same mistake was repeated by the Court of Appeal which reduced the life sentence and imposed a sentence of 30 years imprisonment without taking into account the mitigating factors and the fact that the 2nd appellant had been on remand for 4 years and 3 months. Counsel submitted that the sentence was therefore illegal, manifestly harsh and excessive in the circumstances and should be set aside. Counsel referred to Article 23(8) of the Constitution and to **Rwabugande** (supra).

In response Counsel for the respondent submitted first that S.5 (3) of the Judicature Act does not allow the appellant to appeal against severity of sentence to the Supreme Court except on the legality of sentence.

Counsel went on to submit that the above notwithstanding, the principle of law on sentences as established in the cases of **Kiwalabye Bernard vs. Uganda, SCCA No. 142 of 2001** and **Kizito Senkula vs. Uganda, SCCA No.24 of 2001** is that an appellate court is not to interfere with sentence imposed by a trial court which has

exercised its discretion on sentences unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive.

According to Counsel, the appellant's complaints do not meet any of the set standards above in that the Court of Appeal Justices re-considered the aggravating and mitigating factors when they said:

> ***" In this case both the appellants are first offenders, they spent some time on remand and the murder was not coupled with any other offence, neither was it a ritual sacrifice. Taking into account all the circumstances of this case, we set aside the sentence of life imprisonment and impose a sentence of 30 years imprisonment"***

Counsel further contended that the sentence is not manifestly harsh and excessive in the circumstances of the case, stating that in the case of **Obote William vs. Uganda, SCCA No. 12 of 2014,** the Supreme Court upheld the sentence of life imprisonment imposed on the appellant who was convicted of the murder of his wife by shooting. Counsel added that the appellant's complaint that the learned Justices of the Court of Appeal failed to exercise their power to reconsider the sentence is unfounded and should be dismissed.

Consideration of the 2nd appellant's appeal by Court

Grounds 1, 2 and 3: weak circumstantial evidence and contradictions:

We shall apply the principles in respect to the duty of a second appellate Court we related to earlier in this Judgment to the appeal by the 2nd appellant as well. Upon perusing the record and reading the Judgment of the Court of Appeal, we find that the Court did re-evaluate the evidence on record as expected of a 1st appellate Court before reaching their decision.

We find also that their concurrent findings were supported by evidence adduced by the prosecution. We agree that there were contradictions and inconsistencies but those were minor and did not go to the root of the case. The evidence of PW2 actually pinned down the 2nd appellant. He stated as follows:

> ***"Mishaki Rushoke was my father who died in 2005 on Monday 27th June. He was murdered at about 1.00pm on that day. I was with the deceased. I was grazing my goats and the deceased was grazing cows. This was about 2:00pm. My father took the cows to drink water. I continued grazing goats. I then saw A2 called Namumpa on an anti-hill. He was observing us. He would stand and squat. He was about 5metres high. The anti-hill was in my father's land. He stayed there for about 20 minutes. I left him on alone and continued grazing my goats. I did not talk to A2. While still my son called Daniel Mugisha came and informed me that my father had been killed. He was crying. Mugisha had gone to relieve the deceased by taking over the grazing when he found him dead. I rushed to the scene and on my way I met Namumpa A2 running away from where I was going. He had an earth spear and a hammer. A2 was running through the bush. I asked him why he was running but he never answered"***

In cross examination he stated as follows:

> ***I saw A2 with a stick, earth spear, hammer and he was running fast with a blood stained shirt. I asked him why he was running. By that time I had been told by my son that my father is dead. I raised an alarm and told people who were around that I had seen A2 running with those items. I told people like Sekibobo, Gwoyaka, Kato, my mother Nyamatezi Edinansi***

when the police came I told them about A2 at about 3:00pm. I told the police these words at the scene at the well before I made statement."

PW2 was not shaken in cross examination. There was no mistake of identity because the witness knew the 2nd appellant very well since he was a relative. The deceased was his uncle. When all the evidence is considered together, we agree with the findings of the two Courts that the 2nd appellant was part of a group of criminals who murdered the deceased.

For the foregoing reasons, we find no reason to fault the trial Judge and the learned Justices of the Court of Appeal.

Grounds 1, 2 and 3 of the 2nd appellant's appeal must fail.

Ground 4: sentence

In this ground, we find that the general complaint by the 2nd appellant that the learned Justices of the Court of Appeal never took into account the mitigating factors is incorrect. The learned Justices stated as follows:

" ***In this case both the appellants are first offenders, they spent some time on remand and the murder was not coupled with any other offence, neither was it a ritual sacrifice. Taking into account all the circumstances of this case, we set aside the sentence of life imprisonment and impose a sentence of 30 years imprisonment***"

However, we find that the learned Justices of the Court of Appeal did not specifically deduct the period spent on remand. This was an error. For that reason we set aside the sentence imposed by the Court of Appeal. We find from the allocutus that the 2nd appellant had spent 2 years and 2 months on remand at the time he was convicted. When this period is deducted from the 30 years imposed by

the Court of Appeal, the appropriate sentence should be 27 years and 10 months. We accordingly sentence the 2nd appellant to serve 27 years and 10 months imprisonment effective from the date he was convicted.

Conclusion:

In conclusion, we have no doubt that the evidence upon which each of the appellants was convicted was sound and was carefully re-evaluated by the Court of Appeal. The appeal against conviction has no merit and is hereby dismissed.

On the other hand, the appeal against sentence partly succeeds. The 1st appellant shall serve 25 years and 10 months imprisonment and the 2nd appellant shall serve 27 years and 10 months imprisonment. The sentences to run from the date of conviction that is the 11th October, 2010.

Dated this 28th day of SEPTEMBER 2018

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HON. JUSTICE ARACH-AMOKO,
JUSTICE OF THE SUPREME COURT

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HON. JUSTICE OPIO-AWERI
JUSTICE OF THE SUPREME COURT

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HON. JUSTICE MWONDHA

JUSTICE OF THE SUPREME COURT

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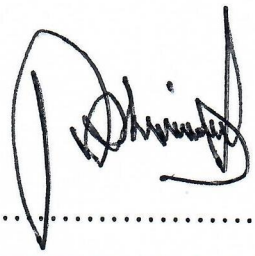
HON. JUSTICE MUGAMBA

JUSTICE OF THE SUPREME COURT



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HON. JUSTICE NSHIMYE

Ag. **JUSTICE OF THE SUPREME COURT**