

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT JINJA

5

CRIMINAL APPEAL NO.281 OF 2011

(Arising from Jinja High Court Criminal Session Case No. 013 of 2010)

10 **KAWERE JOHN ::: APPELLANT**

VERSUS

UGANDA ::: RESPONDENT

CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA

15 **HON. JUSTICE STEPHEN MUSOTA, JA**

HON. LADY JUSTICE NIGHT PERCY TUHAISE, JA

JUDGMENT OF COURT

20 The appellant was indicted, tried and convicted of Murder contrary to sections 188 and 189 of the Penal Code Act and sentenced to 25 years imprisonment.

The appellant was dissatisfied with the sentence passed by the trial court and with leave of court, filed this appeal against sentence only on a sole ground that;

- 25 1. The learned trial Judge erred in law and fact when she failed to take into account essential mitigating factors and thus passed a sentence that is manifestly harsh.

Background

On the 24th day of April 2009 at about 1: 00am an alarm and cries of children was heard by the residents of Buwala village, Butagaya Sub-county Jinja District. When residents came out of their houses, they realised that Kibalya Micheal's house was on fire and the cries were from the house. The residents then rushed to the scene, tried to put out the fire and also broke the door but unfortunately all the six housemates therein had already died and their bodies were pulled out and placed in the court yard. Among those who rushed to the scene was Mirab, the appellant's sister who was relentlessly and from time to time receiving and making calls on her phone which prompted the residents to become suspicious and informed the area L.C's who seized Mirab's phone and listened to the incoming calls in which the appellant was inquiring to know the situation and developments at the scène; and also mentioned that at the material time, the appellant was calling from his uncle Kibalya's resident at Kiira Road in Jinja Town.

Upon realizing that; the angry mob wanted to lynch Mirab, the L.C'S phoned police who whisked Mirab away and in the course, Mirab led police to Kilabya's residence wherefrom the appellant was arrested. Upon arrest the appellant admitted committing the offence before IP Zikusoka and D/CPL Mugeni who later led the appellant to Her Worship Bakulinya Margaret the Grade Two Magistrate, before whom the appellant confessed committing the offence; and an extra judicial statement was recorded.

Representation

At the hearing of the appeal, Mr. Osillo Jacob appeared for the appellant while Ms. Namatovu Josephine (Assistant DPP) appeared for the respondent.

Appellant's arguments

Counsel for the appellant submitted that that the 25 years handed to the appellant by the trial court was on the higher side. Counsel relied on the case of **Okello Alfred and others vs. Uganda C.O.A Criminal Appeal No. 28 of 2016** in which a sentence of 45 years for murder was substituted with a 20 years sentence. In addition, that the appellant at the time of conviction was aged 25 years and a long custodial sentence would deny him chance to reform or come out as a useful person to serve his country. Counsel thus prayed for a sentence of 20 years being appropriate in the circumstances.

Respondent's reply

Counsel for the respondent opposed the appeal and submitted that the manner in which the lives of 6 people were taken away warranted the sentence of 25 years. The appellant was related to the deceased family head, being his nephew, they are close neighbours and because of a grudge of land he chose to put his house on fire which resulted into the death of the six deceased. That the trial Judge considered the mitigating and aggravating factors before arriving at the 25 year sentence.

Counsel relied on the case of **Imere Deo vs. Uganda, Criminal Appeal No. 0065 of 2012** where this court relied on the decision of **Kiwalabye Bernard vs. Uganda S.C.C.A No. 143 of 2001** which held that the only instances when court can interfere with the sentence of the trial court is where the sentence imposed is manifestly excessive or too low to amount to a miscarriage of justice. Counsel prayed that the 25 year sentence be upheld.

Consideration of the appeal

Whereas this appeal is against sentence only, as a first appellate court, we have a duty to re-evaluate the evidence and come to an independent conclusion on the facts and the law taking into account that we did not see and hear the witnesses (**See Pandya v. R [1957]**)

EA 336; Okeno v R [1972] EA 32; Charles Bitwire v. Uganda SC Cr. App No. 23 of 1985 and Kifamunte Henry v Uganda SC Cr. App No. 10 of 1997. See also R. 30 of the Court of Appeal Rules.)

Review of sentence

5 It is well settled law that an appellate court should not interfere with the discretion of a trial court in the determination of a sentence imposed by that trial court unless that court acted on a wrong principle or overlooked a material factor or the sentence is illegal or manifestly excessive. (See **Kyalimpa Edward v. Uganda SCCA No. 10 of 1995 and Kyewalabye Bernard v. Uganda Criminal Appeal No. 143 of 2001(S.C).**

We note from the record of proceedings that the learned trial Judge considered aggravating and mitigating circumstances before he sentenced the appellant. He particularly considered that the
15 appellant was a first offender, who had been on remand for 2 years and 6 months. He noted that the appellant was a young man who prayed for leniency. On the aggravating side, he considered that the appellant committed a serious offence. He set a house on fire with 6 people who slowly burnt to death. Such behavior was wanton and
20 full of hatred and found that the appellant deserved no leniency.

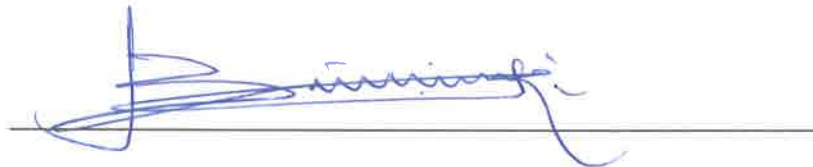
From the above, we find that the trial Judge took into account both the mitigating and aggravating factors of the case. The appellant murdered 6 people by burning them to death. This court in
25 **Katureebe John alias Kongo Vs Uganda Criminal Appeal No. 189 of 2012**, upheld a sentence of 30 years imprisonment on the appellant for a conviction of murder. We do not find the 25 year sentence harsh or excessive whatsoever. The fact that the appellant killed six people falls well within the **Sentencing Guidelines comprised in Legal Notice No. 8 of 2013**. The aggravating factors
30 therein for a murder conviction include; “*Degree of premeditation, use and nature of weapon, vulnerability of victim, gratuitous degradation of victim, or other factors the court deems relevant.*” (Emphasis ours).

The appellant set the deceased's house on fire and had his sister at the scene of the crime to monitor the developments on his behalf. This was clearly a premeditated murder.

In the result, this appeal fails and is hereby dismissed. The lenient sentence of 25 years imprisonment imposed upon the appellant by the sentencing Judge is upheld.

Dated this 17th day of July 2019

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Hon. Justice Cheborion Barishaki, JA

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Hon. Justice Stephen Musota, JA

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Hon. Lady Justice Night Percy Tuhaise, JA

17/7/19

Appellant present
for the year of the day.
for the purpose of the appeal.
Hosoba: clear.
CWA: subject delivered in the presence of the
adv. ~~DA~~ DA 17-7-19