THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 264 OF 2009

(Appeal from Criminal Session of the High Court presided over by Hon. Justice Paul K. Mugamba dated 12th May 2009 in Criminal Session Case NO. 145 of 2005)

BEFEHO IDDI :::APPELLANT

VERSUS

UGANDA:::RESPONDENT

Coram: Hon Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Byabakama Mugenyi Simon, JA Hon. Mr. Justice Alfonse C. Owiny-Dollo, JA

JUDGMENT OF THE COURT

The appellant was convicted of murder contrary to **Sections 188 and 189 of the Penal Code Act** and sentenced to life imprisonment by the High Court on 12.5.2004.

Having abandoned the ground of appeal that challenged his conviction, and with leave of this Court, the appellant is appealing only on one ground that the sentence of life imprisonment was harsh and manifestly excessive. He prays that the same be set aside and substituted with a reduced sentence.

At the hearing of the appeal, the appellant was represented by Mr. Kabagambe Peter while Mr. Kalinaki Brian, Principal State Attorney, appeared for the respondent.

The facts as set out by the trial Judge were that, the appellant developed love interest in the deceased Bakundane Noridah and wanted to marry her. The deceased, however, declined stating that she wanted to continue with her studies. As he pursued her, he gave her some gifts which he demanded back later on, after realising the deceased was still adamant. He threatened to kill her if she did not return his things whereupon the deceased returned a blouse and skirt, leaving another blouse and skirt unreturned.

On the 31-8-2005, the appellant attacked the deceased and stabbed her repeatedly with a knife

killing her instantly. The following day, he surrendered himself to Bushenyi police station where he was placed under arrest. He was subsequently charged with murder of the deceased, tried, convicted and sentenced to life imprisonment by the High Court sitting at Bushenyi.

It was submitted for the appellant that the sentence of life imprisonment was harsh and manifestly excessive in the circumstances of this case. Counsel contended that the learned trial Judge did not consider the mitigating factors. These included; the appellant is a first offender, had spent 3 years 7 months on remand, was remorseful and had children under the care of his mother who had passed on by the time of sentencing. Learned counsel prayed Court to set aside the sentence of life imprisonment and have it substituted with a sentence of 20 to 25 years' imprisonment.

In reply, Mr. Kalinaki for the respondent opposed the appeal and supported the sentence of life imprisonment. He submitted that the aggravating factors outweighed the mitigating factors. He argued that the appellant acted with impunity when he murdered a defenceless young girl who had turned down his marriage offer. He prayed Court to confirm the sentence of life imprisonment.

This Court can only interfere with the sentence of the trial Court if that sentence is illegal and being based on a wrong principle or the Court has overlooked a material factor, or the sentence is manifestly excessive or so low as to amount to a miscarriage of justice - see **James Vs Republic [1950] 18 EACA 147; Ogalo S/O Owora Vs Republic [1954] 21 EACA 270** and **Kizito Senkula Vs Uganda Cr. Appeal No. 24/2001 (SC).**

The trial Judge, in sentencing the appellant in the instant matter, had this to say;

> ***"I have heard the State Attorney, Counsel for the accused as well as the convict regarding possible sentence. The offence which was committed by the convict is serious. Therefore I sentence the convict to life imprisonment.***

Our understanding of the above passage is that the learned trial Judge was mindful of the mitigating and aggravating factors, although he did not specifically state so. We note that the maximum sentence for the offence of murder is death. The offence of murder is a serious one as rightly observed by the trial Judge. The appellant murdered the deceased on account of her refusal to marry him because she desired to pursue her studies instead. As it were, her dreams were utterly snuffed out by the heinous act of the appellant. We are satisfied that the circumstances of this case called for a sentence commensurate to the gravity of the offence.

In the exercise of his discretion, the trial Judge considered such sentence to be life imprisonment.

We also take the view that there is need to have consistency in sentencing in cases with similar circumstances. In **Suzan Kigula Vs Uganda, Supreme Court Criminal Appeal No. 1 of 2004,** the appellant was convicted of the murder of her husband and sentenced to death. By that time, the death penalty was a mandatory sentence upon conviction for murder. When the mandatory death sentence was subsequently declared unconstitutional by the Supreme Court, Kigula's sentence was reduced to 20 years imprisonment after her case was returned to the High Court for mitigation of sentence.

In **Kyaterekera George William Vs Uganda Criminal Appeal No. 0113 of 2010,** this Court confirmed a sentence of 30 years imprisonment imposed by the trial Judge. In that case the appellant was convicted of murder by stabbing the deceased on the chest with a knife.

In **Kisitu Mujaidini Vs Uganda, Criminal Appeal No. 128 of 2010,** the appellant was convicted of murder of his own mother and sentenced 30 years imprisonment. This Court confirmed the said sentence.

In **Ayikanying Charles Vs Uganda, Criminal Appeal No. 08 of 2012,** this Court confirmed the sentence of 25 years imprisonment. The appellant had been convicted of murder whereby he stabbed the deceased over a land dispute.

In **Akbar Hussein Godi Vs Uganda, Supreme Court Criminal Appeal No. 03 of 2013,** the appellant murdered his wife with a gun and the Supreme Court confirmed a sentence of 25 years imprisonment.

In **Mbunya Godfrey Vs Uganda, Supreme Court Criminal Appeal No. 04 of 2011,** the appellant had been sentenced to death for the murder of his wife. The Supreme Court observed that;

> ***"We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing"***

In that case the sentence of death was set aside and substituted with a sentence of 25 years imprisonment.

In the instant appeal, the appellant is a first offender and was aged 30 years at the time of conviction. At that age, he deserved to be given an opportunity to reform and rejoin his community as a transformed person. We also note that he spent 3 years, and 7 months on remand a factor not considered by the trial Judge as required by the law.

From the proven facts, the appellant surrendered to the authorities the day after the commission

of the offence. This was an indication of being remorseful.

Given the circumstances of this case, and in line with the authorities cited above, we set aside the sentence of life imprisonment and substitute it with a term of 30 years imprisonment. The sentence is to run from 12th May 2009, the day he was convicted by the High Court.

Dated at Mbarara this 6th day of December 2016

HON.JUSTICE KENNETH KAKURU

JUSTICE OF APPEAL

HON.JUSTICE BYABAKAMA MUGENYI SIMON

JUSTICE OF APPEAL

HON.JUSTICE ALFONSE C. OWINY -DOLLO

JUSTICE OF APPEAL