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**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT GULU  
CRIMINAL APPEAL NO. 172 OF 2013**

(CORAM: Kenneth Kakuru JA, F.M.S Egonda-Ntende JA and Hellen Obura, JA.)

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**KIA ERIN:.....APPELLANT**

**VERSUS**

**UGANDA:.....RESPONDENT**

*(Appeal from the decision of Hon. Justice Lawrence Gidudu holden at Anti-Corruption Court  
Kampala Criminal Session No. 268 of 2013 delivered on 10/12/2013)*

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**JUDGMENT OF THE COURT**

**Introduction**

The appellant was on 10<sup>th</sup> December, 2013 re-sentenced to life imprisonment by Hon. Justice Lawrence Gidudu for the offence of murder contrary to sections 188 and 189 of the Penal Code Act. She now appeals against sentence only.

**Background to the Appeal**

The facts giving rise to this appeal as far as we could ascertain from the court record are that on 15/10/2007 at 7.00 a.m PW1 Achola Santa left Ogwang, her 3 year old child, now deceased with her step mother Kia Erin, the appellant, while she went to work in the garden. She was joined by the appellant at around 8:00 a.m. Later PW4 went and picked them from the garden and upon returning home, the deceased was not there. The appellant advised PW1 to look for the deceased which she did but in vain. She later, together with her father and the appellant, proceeded to the home of the LC1 Chairman who then escorted them to

5 the police post to file a complaint. The appellant was arrested on 17/10/2007 and upon  
interrogation, she revealed to the Police that she had buried the deceased in a swamp at  
Awogodelo Village which is about 150 meters away from the home where she lived with PW1.  
The police recovered the body of the deceased and a post mortem was performed by PW3,  
10 Doctor Yine Henry which revealed that the cause of death was severe asphyxia caused by  
drowning making it impossible for the lungs to function. The appellant was indicted, tried and  
convicted of the offence of murder and sentenced to death which was a mandatory penalty  
for murder at the time.

Following the Supreme Court decision in **Attorney General vs Susan Kigula and 417  
others, Constitutional Application No. 03 of 2006**, which abolished the mandatory death  
15 sentence, the case file was remitted to the High Court for mitigation hearing and re-  
sentencing. Having heard the submissions of both counsel, the learned re-sentencing Judge  
sentenced the appellant to life imprisonment.

Being dissatisfied with the decision of the re-sentencing Judge, the appellant appealed to this  
Court against sentence only on one ground that:

20 *The learned re-sentencing Judge erred in law and fact when he passed a manifestly  
harsh and excessive sentence of life imprisonment against the appellant."*

### **Representations**

At the hearing of this appeal, Ms. Akello Alice Latigo represented the appellant on state brief  
while Ms. Rose Tumuhaise, Principal State Attorney from the Office of the Director Public  
25 Prosecutions represented the respondent.

5 **Submissions for the Appellant**

At the commencement of the hearing, the appellant was granted leave to appeal against sentence only. This Court pointed out to counsel that the trial court appeared not to have taken into account the period the appellant had spent on pre-trial detention while passing the sentence of life imprisonment. This being a point of law, counsel was allowed to submit on it  
10 despite the fact that it was not set out as a ground of appeal.

Counsel then submitted that the re-sentencing judge should have addressed his mind to Article 23 (8) of the Constitution and taken into account the period of 1 year the appellant had spent in lawful custody. She further submitted that the re-sentencing Judge did not consider the fact that the appellant could as well reform at the age of 67 years. She quoted him at page  
15 14 of the court record where he stated;

*"I saw the convict as an old woman and expected her to love children but there is evidence that she had asked another child to kill the deceased. That kind of hatred cannot be explained due to her advanced age, I do not find room for her to reform, she is a very old cruel woman who has no place in society."*

20 Counsel prayed that this Court declares this sentence a nullity for contravening Article 23 (8) of the Constitution.

Counsel argued the ground that was set out in the Memorandum of Appeal in the alternative. She submitted that the sentence of life imprisonment is harsh and excessive given the age of the appellant and her remorsefulness. Further, that according to the records from Prisons,  
25 there is no date when the appellant will be released and that means that she will spend the rest of her natural life in prison. Counsel prayed that the sentence be revised to 18 years. She relied on the decision of this Court in **Jamada Nzabakuize vs Uganda, Court of Appeal Criminal Appeal No. 4 of 2014** where the sentence of life imprisonment was substituted with a sentence of 20 years imprisonment.

- 5 Counsel further submitted that this Court is vested with the jurisdiction to vary the orders of the lower court. She relied on section 132 (1) (d) & (e) of the Trial on Indictments Act. She proposed a sentence of 19 years from which the period of 1 year the appellant had spent in lawful custody should be deducted.

#### **Submissions for the Respondent**

- 10 Counsel opposed the appeal on the ground that the sentence was not illegal. She argued that the sentence of life imprisonment was defined in the Supreme Court decision in ***Tigo Stephen vs Uganda, SCCA No. 8 of 2009*** to mean imprisonment for the natural life term of the convict. According to counsel that decision is still good law until overruled.

On the alternative ground, counsel submitted that the sentence is not harsh and excessive as contended by counsel for the appellant since the re-sentencing Judge took into  
15 consideration both the aggravating and mitigating factors. She argued that in ***Rwabugande Moses vs Uganda, Criminal Appeal No. 25 of 2014 (SC) (unreported)*** the Supreme Court imposed a sentence of 21 years for the offence of murder after deducting the 1 year the appellant had spent on remand. She also cited the Supreme Court in ***Obote William vs***  
20 ***Uganda, SCCA No. 12 of 2014*** in which it upheld a sentence of life imprisonment for the offence of murder. Counsel submitted that the aggravating factors in this case are that the victim was a child of only 3 years who was left in the custody of the appellant as a grandmother and she was supposed to take care of him but she instead drowned him in the muddy waters near their home.

- 25 In rejoinder, counsel for the appellant submitted that where a statute is clear on the position of the law the statutory law takes precedence over decided cases. She added that section 47 (6) of the Prisons Act defines life imprisonment to mean 20 years for the purpose of calculating remission of sentence.

5 **Decision of Court**

We have heard the submissions of both counsel and considered the authorities cited to us. We have also carefully perused the court record especially the sentencing proceedings.

On the issue of illegality, Article 23 (8) of the Constitution which is alleged not to have been complied with provides as follows;

10 *"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."*

Our understanding of the above constitutional provision, is that it applies to all terms of imprisonment which among others include life imprisonment or imprisonment for life. Section 15 47 (6) of the Prisons Act, Cap 304 provides as follows:

*"For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years imprisonment."*

In dealing with the issue of life sentence pursuant to the above section, the Supreme Court 20 in ***Livingstone Kakooza vs Uganda, SCCA No. 17 of 1993 (unreported)*** stated as follows;

*"...the appellant had been on remand in custody for two years and the learned judge took into account this factor in passing sentence. In effect the appellant received a life sentence which is twenty years according to section 49 (7) of the prisons Act, Cap 313, which provides.*

25 *"(7) For the purpose of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years imprisonment."*

5. This Court observed in ***Kisembo Patrick vs Uganda, CACA No. 411 of 2014 (unreported)*** that the intention of the legislature was very clear that a sentence of life imprisonment was to be defined, in law, as a sentence of 20 years imprisonment. We take note of the position in ***Tigo Stephen vs Uganda (supra)*** a case relied upon by counsel for the respondent where the Supreme Court interpreted life imprisonment to mean imprisonment for the natural life term of a convict. However, as this Court observed in ***Kisembo Patrick vs Patrick (supra)*** the intention of the legislature is that life imprisonment should be defined as a sentence of 20 years imprisonment. As a result, we find that the sentence of life imprisonment imposed upon the appellant in the instant appeal is interpreted to mean 20 years imprisonment as defined by section 47 (6) of the Prisons Act and correctly interpreted by the Supreme Court in ***Livingstone Kakooza vs Uganda (supra)***.

We note that while passing the sentence, the sentencing Judge did not take into account the period the appellant spent in lawful custody and deduct it from the sentence she imposed which contravened Article 23 (8) of the Constitution. The Supreme Court in ***Rwabugande Moses vs Uganda (supra)*** held;

20 "A sentence arrived at without taking into consideration the period spent on remand is illegal for failure to comply with a mandatory constitutional provision."

We therefore set aside the sentence of life imprisonment imposed upon the appellant for being illegal and invoke section 11 of the Judicature Act which gives this Court the powers, authority and jurisdiction as that of the trial court to impose a sentence of its own.

25 To arrive at an appropriate sentence, we have considered the aggravating factors presented during the sentencing that; the appellant intended to kill an innocent boy of 3 years who could have been useful to society had he lived, life is precious and God given and no one has a right to take it away, the offence of murder is rampant in the region and court has a duty to protect society from murderers The offence of murder carries a maximum penalty of death.

5 The mitigating factors in favour of the appellant which we have considered are that; the appellant is a first offender, she was 62 years old at the time of commission of the offence and was ailing, as an elderly person sentencing her to a lengthy term of imprisonment would be detrimental, she is very remorseful and she has a lot of responsibilities as she separated with her husband who left her with 9 children, her first born died of HIV Aids.

10 We have also considered the need for parity of sentences by looking at the range of sentences confirmed or imposed by this Court in similar offences.

In *Epuat Richard vs Uganda, CACA No. 0199 of 2011*, the appellant was convicted of murder and sentenced to 30 years. On appeal, this Court set aside the sentence and substituted it with 15 years imprisonment.

15 In *Ariko Francis vs Uganda, CACA No. 241 of 2011* where the appellant was convicted of murder and sentenced to 17 years imprisonment. On appeal, this Court confirmed the sentence and dismissed the appeal.

In *Anguyo Robert vs Uganda, CACA No. 048 of 2009*, the appellant was convicted of murder and sentenced 20 years imprisonment. On appeal to this Court, the sentence was set  
20 aside and substituted it with 18 years imprisonment.

Considering the circumstances of this case, we are of the view that a sentence of 18 years imprisonment will meet the ends of justice. We now deduct the period of 11 months and 8 days the appellant spent in lawful custody and order that the appellant serves a sentence of 17 years and 22 days imprisonment from the date of conviction, which is 25/09/2008.

25 We so order.

Dated at Gulu this 7<sup>th</sup> day of November .....2017

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Hon. Mr. Justice Kenneth Kakuru

**JUSTICE OF APPEAL**

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Hon. Mr. Justice F.M.S Egonda-Ntende

**JUSTICE OF APPEAL**

Hon. Lady Justice Hellen Obura

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**JUSTICE OF APPEAL**