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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT GULU**  
**CRIMINAL APPEAL NO. 0773 OF 2014**

**ECANG JIMMY**

**ERACH JULIUS ..... APPELLANTS**

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**VERSUS**

**UGANDA.....RESPONDENT**

*(An appeal from the decision of the High Court at Gulu before  
Her Lordship Hon. Lady Justice Elizabeth Jane Alivida dated  
30<sup>th</sup> July, 2014 in Criminal Case No.0221 of 2014)*

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**CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA**  
**HON. MR. JUSTICE F.M.S EGONDA NTENDE, JA**  
**HON. LADY JUSTICE HELLEN OBURA, JA**

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**JUDGMENT OF THE COURT**

This appeal arises from the decision of Her Lordship Elizabeth Jane Alivida J, in the High Court Criminal Session Case No. 0221 Of 2014 delivered on 30<sup>th</sup> July, 2014 in which the 1<sup>st</sup> appellant was re-sentenced to 36 years imprisonment and the 2<sup>nd</sup> appellant to 39 years imprisonment for the offence of murder contrary to Sections 188 and 189 of the Penal Code Act (CAP 120).

Both appellants had been convicted of murder on 24<sup>th</sup> of September 2008 and sentenced to suffer death, which sentence was at the time the only one prescribed by the law. Following the abolishment of the mandatory death sentence by the Supreme Court in *Suzan Kigula and Others Vs Attorney General, Constitutional Appeal No. 03 of 2006*. The appellants file was sent back to the High Court for mitigation proceeding and sentence only.

5 Being dissatisfied with the decision both appellants appealed to this Court against Sentence only.

At the hearing of this appeal, learned Counsel *Mr. Moses Oyet* appeared for the appellant, while *Mr. Martin Rukundo* learned Principal State Attorney appeared for the respondent. The appellant was in Court.

10 Court was served with a Medical Certificate of Death in respect of the 2<sup>nd</sup> appellant. His appeal therefore abated under Rule 71 of the Rules of this Court. This appeal therefore is in respect of the 1<sup>st</sup> appellant.

**Appellant's case.**

15 Mr. Oyet, brought to the attention of Court the fact that, the record of appeal was incomplete as the sentencing proceedings were missing from the Court record.

The Court considered the submissions of both Counsel on this matter and made the following decision:-

In respect of the above submission Court ruled as follows;-

20 *"We have listened to the submissions of Counsel for the appellant, it is indeed true that, the sentencing order is missing from the Court file. Our efforts to find that record have not yielded any positive result. The only record on this file relating to the sentencing order is the committal warrant signed by the sentencing judge Lady Justice Elizabeth Jane Alivida on 30<sup>th</sup> July 2014, which indicates that the appellant had been*  
25 *sentenced to 36 years imprisonment.*

*Ordinarily whenever the original Court record is missing this Court would order a re-trial, however in this case only the sentencing order is missing all the proceedings in respect of the sentence are on record including*

5            *submissions on aggravating and mitigating factors. The only part that is*  
              *missing is the pronouncement of the actual sentence in which case we now*  
              *invoke the powers of this Court granted by Section 11 of the Judicature Act*  
              *to consider imposing a sentence of our own as if we were sitting as the*  
              *trial Court, the parties may proceed to address us on the appropriate*  
10            *sentence they propose this Court to consider giving their reasons why."*

**Appellant's submissions**

Learned Counsel Mr. Oyet, thereafter, proposed a sentence of 20 years imprisonment. He asked Court to take into account 2 years and 1 month the period the appellant spent on remand. For this proposition he relied on  
15 *Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014.*  
*(unreported).*

**Respondent's reply**

He asked Court to consider both the mitigating and aggravating factors of this case and proposed a sentence of 35 years imprisonment. He relied on  
20 *Ssemanda Christopher and Another Vs Uganda, Court of Appeal Criminal Appeal*  
*No. 77 of 2010. (Unreported).*

**The decision of the Court**

The appellant killed the victim in a brutal and gruesome manner. He pierced the deceased several times with a panga and knife. The deceased was killed in  
25 the presence of his wife. The killing was intentional. These are serious  
aggravating factors.

However, there are mitigating factors in favour of the appellant. He was relatively young, aged 35 years at the time of the commission of the offence.

5 He was remorseful and a family man with responsibilities. He was a first offender. He had spent 2 years and 1 month on remand.

In *Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014*, the appellant was convicted of the offence of murder and sentenced to 35 years imprisonment. On appeal, this Court upheld the sentence. On further  
10 appeal, the Supreme Court reduced the sentence to 21 years after deducting the period of 1 year the appellant had spent on remand.

In *Byamukama Herbert Vs Uganda, Court of Appeal Criminal Appeal No. 194 of 2013*, the appellant was convicted of the offence of murder and sentenced to 30 years imprisonment. On appeal, this Court reduced the sentence to 25  
15 years imprisonment.


In *Tumwesigye Anthony Vs Uganda, Court of Appeal Criminal Appeal No. 46 of 2012*, this Court reduced a sentence of 32 years imprisonment for murder to 20 years imprisonment.

In *Turyahika Joseph Vs Uganda, Court of Appeal Criminal Appeal No. 0327 of 2014*, this Court reduced a sentence of 36 years imprisonment to 26 years  
20 imprisonment for the offence of murder.

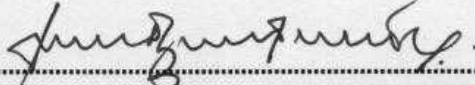
Taking into account all the aggravating and mitigating factors of this case and the above cited cases of this Court and those of the Supreme Court. We find that a sentence of 20 years imprisonment would meet the ends of justice. We  
25 now deduct 1 year and 1 month the appellant had spent on pre-trial detention and the appellant still serve a sentence of 18 years and 11 months from the 24<sup>th</sup> September, 2008 when he was convicted.

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

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**HON. JUSTICE KENNETH KAKURU**  
**JUSTICE OF APPEAL**

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**HON. JUSTICE F.M.S EGONDA NTENDE**  
**JUSTICE OF APPEAL**

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**HON. LADY JUSTICE HELLEN OBURA**  
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