

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HC CV CA NO. 002 OF 2010**

**KYOMUHENDO PASKALI :::APPELLANT**

**VERSUS**

**UGANDA:::RESPONDENT**

**BEFORE HON. MR. JUSTICE MIKE J. CHIBITA**

**JUDGMENT**

This is an appeal against the judgment and orders of the Chief Magistrate, Fort Portal, His Worship Boniface Wamala, delivered on 2<sup>nd</sup> September, 2010.

Two grounds of appeal were filed, to wit,

1. That the trial Magistrate erred in law when he sentenced the Appellant to twelve years imprisonment.
2. That the sentence of court was against the weight of evidence adduced in court.

The Appellant was represented by M/s Legal Aid Project while the Respondent was represented by the learned State Attorney Safina Bireke. They filed written submissions.

It would seem that both grounds of appeal are against sentence and will be treated as such. Learned Counsel for the Appellant put forward the following reasons in favour of a reduction in sentence.

She contended that the maximum penalty for the offence of attempted murder for which the Appellant was convicted is life imprisonment. Therefore sentencing him to twelve years was excessive.

Additionally, she submitted, since the Appellant and Complainant are siblings the sentence should be further reduced to promote reconciliation. Moreover, she added, there was no motive established against the Appellant for the commission of the offence.

In reply, the learned State Attorney averred that the maximum penalty for the offence is life imprisonment and that section 162 of the MCA gives the Chief Magistrate power to pass any sentence for manslaughter up to life imprisonment.

She further submitted that the sentence given was deterrent in nature and was aimed at reforming the convict. Moreover, she added, the trial Magistrate gave reasons why the sentence was twelve years.

She asked court to dismiss the appeal and uphold the sentence of the lower court.

As stated at the outset, the two grounds of appeal were against the sentence and not the conviction. I will therefore not spend any time on the conviction.

Regarding the sentence, I agree with the learned State Attorney that the MCA gives the trial Magistrate power to sentence a convict to any term up to life imprisonment.

By sentencing the Appellant to twelve years therefore, the trial Magistrate was well within his mandate. He did not err in law to hand down the sentence of twelve years.

Considering that the maximum sentence is life imprisonment, twelve years for a convict who most likely intended to kill the Complainant, but for divine intervention, is quite reasonable and bordering on lenient.

In the circumstances, I find that twelve years was not excessive and therefore uphold the conviction and sentence as handed down by the lower court.

The appeal is consequently dismissed and the imprisonment of the Appellant to twelve years' imprisonment is upheld.

Dated at Fort Portal this 5<sup>th</sup> day of December, 2012

**JUSTICE MIKE J. CHIBITA**

JUDGMENT READ AND DELIVERED BEFORE THE FOLLOWING:-

1. COUNSEL FOR APPELLANT:
2. COUNSEL FOR RESPONDENT
3. APPELLANT:
4. COURT CLERK/INTERPRETER: HERBERT MWESIGWA

MIKE J. CHIBITA

JUDGE