

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
**[CORAM: KATUREEBE; C.J., KISAAKYE; ARACH-AMOKO; OPIO-AWERI; &TIBATEMWA-
EKIRIKUBINZA; JJ.S.C.]**

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CRIMINAL APPEAL NO 24 OF 2014

BETWEEN

SSEKAWOYA BLASIO:.....] APPELLANT

AND

10 **UGANDA :.....] RESPONDENT**

[Appeal from the decision of the Court of Appeal at Kampala (Nshimye, Mwondha, & Kakuru, JJA) dated 20th November 2014 in Criminal Appeal No. 107 of 2009]

JUDGMENT OF THE COURT

15 Ssekawoya Blasio (hereinafter referred to as the appellant) was indicted with three counts of murder of three children in Manyangwa ‘B’ Cell in Kabubu Parish, Nangabo Sub County, Kyadondo County, Wakiso District on 9th December 2004. The slain children were his biological son Tulirabirawo Jakana who was 12 years old, Nakalema Joanita who was 10 years old and Nakimuli Nuulu, who was 8 years old. At the time of their killing, the appellant was living with the children together with his female partner Aisha Nakitto, who was also the older sister to Nakimuli. The Record of Appeal is silent
20 whether and how the appellant was related to Nakalema.

On 15th April 2009, Mwangusya, J. (as he then was) convicted the appellant of murder of the three children and sentenced him concurrently to life imprisonment terms on each count.

The Court of Appeal dismissed his appeal against both conviction and sentence. Dissatisfied with the decision of the Court of Appeal, the appellant lodged a second appeal to this Court on the following two
25 grounds of appeal:

1. The learned Justices of Appeal erred in law and fact when they confirmed the conviction of the appellant which was based on insufficient, uncorroborated and incredible circumstantial evidence.

2. In the alternative and without prejudice to the above ground, the learned Justices of Appeal erred in law when they held that the appellant who was sentenced to life imprisonment in 2009 was to spend the whole of his natural life in prison, yet at the time the decision in *Tigo Stephen v. Uganda, Supreme Court Criminal Appeal No. 08 of 2009* had not yet been delivered.

5 The appellant prayed that this Court allows his appeal wholly or in part. He was represented by Henry Kunya on State Brief. Jacquelyn Okui, Senior State Attorney represented the respondent.

At the commencement of the hearing, the appellant abandoned ground 1 of appeal and maintained only ground 2. Having abandoned ground 1 of his appeal, the appellant's appeal turned into an appeal against sentence only.

10 We note that the appellant is not appealing against the severity of the sentence but rather is challenging the interpretation by the Court of Appeal that the sentence of imprisonment for life imposed on him by Mwangusya, J. (as he then was) meant imprisonment for the rest of his natural life. This, in our view, qualifies this appeal as one against sentence on a matter of law.

Parties' Submissions on Ground 2 of Appeal

15 Counsel for the appellant submitted that having been sentenced to imprisonment for life on the 15th April 2009 before this Court's decision in ***Criminal Appeal No. 08 of 2009: Tigo Stephen v. Uganda***, the appellant's sentence ought to be taken to be a sentence of 20 years imprisonment and not imprisonment for the whole of his natural life.

Counsel submitted that this Court having held on the 10th May 2011 in ***Tigo (supra)*** that '*life imprisonment means imprisonment for the natural life term of a convict, though the actual period may stand reduced on account of remission earned*', it meant that all convicts sentenced to life
20 imprisonment after 10th May 2011 were to serve the sentence for the whole of their lives in prison. The appellant's counsel further argued that convicts that had been sentenced to life imprisonment before ***Tigo*** have to serve a sentence of 20 years imprisonment as had been the practice.

25 Counsel for the appellant further contended that the Court of Appeal was aware of this. By way of example, he cited the Court of Appeal decision of ***Kansiime Brazio & Kibarikola Molly v. Uganda, Criminal Appeal Nos. 12 of 2008 & 39 of 2009***, wherein the Court of Appeal in upholding the sentence of life imprisonment, observed that before ***Tigo*** the thinking and belief at the time was that imprisonment for life meant 20 years and that therefore the trial Judge had in mind 20 years in prison
30 and not imprisonment for the rest of their lives.

He further relied on the Court of Appeal decision of *Kamugisha Amon v. Uganda, Criminal Appeal No. 250 of 2009* to support his contention.

5 Counsel for the appellant concluded his submissions by contending that since the appellant was sentenced before *Tigo*, his sentence should be interpreted to be a sentence of 20 years imprisonment and not for the whole of his natural life.

Respondent's submissions

Counsel for the respondent submitted that the learned Justices of the Court of Appeal did not err in law when they held that the appellant who was sentenced to life imprisonment in 2009 was to spend the rest of his natural life in prison.

10 Counsel for the respondent refuted the appellant's submissions and supported the Court of Appeal's interpretation of the sentence imposed on the appellant. Counsel for the respondent further argued that in deciding that the appellant's sentence of life imprisonment meant imprisonment for the rest of his life, the learned Justices of the Court of Appeal also considered other factors like the intention of the sentencing Judge when he sentenced the appellant to life imprisonment and the circumstances of the
15 case.

Regarding the intention of the sentencing Judge, counsel for the respondent submitted that the learned Justices of the Court of Appeal considered the words used by the sentencing Judge when he sentenced the appellant and concluded that the intention of the sentencing Judge was that the sentence of life imprisonment meted out to the appellant meant imprisonment for the rest of his life.

20 Counsel for the respondent submitted that the sentencing Judge highlighted the grave circumstances of the case before he meted out the sentence of life imprisonment to the appellant. These, according to the respondent's counsel were that the appellant killed three young children in the most brutal manner. Further, that the sentencing Judge even noted that the Court would show no mercy to the appellant.

In the respondent's view, what was implicit in the words of the sentencing Judge was that the
25 circumstances of the case deserved a severe sentence, which was imprisonment for the rest of the appellant's life. The respondent concluded on this point by contending that the learned Justices of the Court of Appeal's decision was based on the intention of the sentencing Judge.

Referring to the cases cited by the appellant's counsel, that is *Kansiime Brazio & Kibarikola Molly v. Uganda, Criminal Appeal Nos. 12 of 2008 & 39 of 2009* and *Kamugisha Amon v. Uganda, Criminal
30 Appeal No. 250 of 2009*, the respondent contended that the trial Judges neither qualified their life imprisonment sentences to 20 years imprisonment nor implied in meting out the sentences that they intended the appellants to serve the rest of their lives in prison.

Lastly, counsel for the respondent contended that the learned Justices of the Court of Appeal observed that the life imprisonment sentence passed by the sentencing Judge which they had interpreted to mean imprisonment for the rest of the appellant's life was neither harsh nor manifestly excessive in the circumstances of the case. In counsel's view, they therefore found that, the sentence of life
5 imprisonment meaning that the appellant was to spend the rest of his life in prison was commensurate to the circumstances in which the murders were committed.

Counsel also contended *Tigo's* interpretation of life imprisonment was applicable to all the criminal cases that would be determined by all the Courts thereafter. Relying on the US Supreme Court case of *Griffith v. Kentucky, 479 U.S. 314 (1987)*, counsel for the respondent contended that a new rule for the
10 conduct of criminal proceedings could be applied retrospectively to all cases not yet final, even where the rule constituted a clear break with the past. Counsel further relied on the dissenting Judgment of O'Connor J. on the retroactive application of a case in *Ring v. Arizona, 122 S. Ct. 2428, 2449 (2002)*.

Further, relying on *Allen W. Stephen: Toward a Unified Theory of Retroactivity. Vol 54 (2009/2010)*, counsel for the respondent submitted that if a judicial decision interprets a law, then it does no more
15 than declare what the law had always been and that the Court's declaration of what the law is must have a retrospective effect.

Counsel for the respondent also submitted that the appellant's appeal in the Court of Appeal was at the time of the decision in *Tigo* pending determination. In the circumstances, the appellant's case was not final. Counsel further contended that the Court of Appeal determined the appellant's appeal in 2014
20 and that therefore the decision in *Tigo* was applicable to his case.

Counsel also argued that the sentence of life imprisonment existed in the Penal Code Act and that the Supreme Court in *Tigo* only interpreted existing law in the Penal Code Act which meant that was always the meaning of life imprisonment.

In conclusion, counsel for the respondent prayed that the appellant's appeal against sentence be
25 disallowed and the sentence imposed on him be sustained.

Court's Consideration of Ground 2 of this Appeal.

Under this ground the appellant faulted the Court of Appeal for relying on this Court's decision in *Tigo* to hold that his sentence of life imprisonment meant that he had been sentenced to spend the rest of his natural life in prison and not a term of 20 years imprisonment, which, he claimed was the law prior to
30 the *Tigo* decision. The appellant further contended that the *Tigo* decision should not apply to him since at the time he was sentenced to life imprisonment, a sentence of life imprisonment amounted to 20

years imprisonment. In his view, **Tigo** should apply from the date it was passed by this Court which was 10th May 2011 and should not be retrospective in its application.

The respondent on the other hand, argues that this Court in **Tigo** only interpreted the existing law in the Penal Code Act which meant that was always the meaning of life imprisonment. Furthermore that
5 when a judicial decision interprets a law, then it does no more than declare what the law had always been and that therefore the Court's determination of what the law is must have a retrospective effect.

In clarifying that the appellant's sentence meant that he was to spend the rest of his natural life in prison, the learned Justices of the Court of Appeal held as follows:

10 ***“What constitutes life imprisonment was discussed in the case of Tigo Stephen v. Uganda, Supreme Court Criminal Appeal No. 08 of 2009 (unreported)***
...
The meaning of life imprisonment has since changed since the case of Attorney General v. Susan Kigula & 417 others, Constitutional Appeal No. 03 of 2006 in which the Supreme Court observed that:
15 ***‘The death penalty though constitutional was not mandatory but discretionary. Life imprisonment then became the next most severe sentence and probably the most effective alternative to the death sentence.’***
...
20 ***It is our well considered opinion that the trial Judge intended and meant life imprisonment for the rest of the appellant's life on each of the three counts and the sentences to run concurrently. There was no indication of setting the limit of life imprisonment to 20 years.***
We are therefore unable to accept the appellant's counsel submission that in 2009 after the Susan Kigula case (supra) he understood life imprisonment to be equivalent to 20 years where remission is earned by the prisoner on definite period.
25 ...
The appellant should continue serving his sentences in prison for the rest of his life.”

We note that the learned Justices of the Court of Appeal made a minor error when they attributed a quote on life imprisonment in our **Tigo** Judgment to our decision in **Attorney General v. Susan Kigula & 417 others, Constitutional Appeal No. 03 of 2006**.

30 Counsel for both parties submitted extensively on the applicability or otherwise of **Tigo** in this appeal. It is true that **Tigo** had not yet been decided by the time the appellant was convicted and sentenced by the High Court on 15th April 2009.

We have however not found it necessary to delve into the applicability of **Tigo** in respect of the parties' arguments on whether or not **Tigo** was applicable to the appellant. Rather our view is that this appeal is
35 governed by our decision in **Kigula** (supra) which the appellant conveniently avoided to cite. The

respondent in turn did not address this Court on the sentence of imprisonment for life in light of the **Kigula** decision.

We have declined to delve into the applicability or otherwise of **Tigo** on the appellant because this Court in **Tigo** was not dealing with a post **Kigula** murder convict as it is in the present appeal. Rather
5 this Court in **Tigo** was dealing with the issue of a vague sentence imposed on a person convicted of defilement. The trial Judge had imposed a sentence of life imprisonment yet she had qualified it to twenty years. In the present appeal, there is no such qualification. Rather we are dealing with what the trial Judge had in mind when he sentenced the appellant to life imprisonment in the post **Kigula** era.

Be that as it may, we note that **Tigo** is important in our resolution of this appeal because it reflects the
10 magnitude the sentence of imprisonment for life has gained in the post **Kigula** era. We find that the pronouncements made in **Tigo** on the significance of a sentence of imprisonment for life reflect the law on what a life imprisonment sentence means in the post **Kigula** era.

We note that the learned Justices of the Court of Appeal rightly relied on the **Kigula** decision to reach their decision, which we have found necessary to highlight. On 21st January 2009, this Court rendered
15 its Judgment in **Kigula**. Before **Kigula**, a conviction for murder automatically led to only a death sentence. There was no provision for imprisonment for life for a person convicted of murder. Under the Penal Code Act, a sentence of imprisonment for life only existed as a maximum sentence for a conviction of manslaughter and other offences where this sentence was prescribed.

In the **Kigula** decision, this Court upheld the constitutionality of the death sentence but declared that the
20 mandatory imposition of the death sentence was unconstitutional. The implication of the **Kigula** decision was that a sentencing Judge retained his or her discretion to determine an appropriate sentence for a person convicted of murder, whereas previously the only sentence that a trial Court could mete out to a person convicted of murder was a death sentence.

The sentence of imprisonment for life has always been in our Penal Code Act, Cap 120 Laws of Uganda
25 as a maximum sentence for persons convicted of manslaughter. However, because of the **Kigula** decision, the sentence of imprisonment for life has attained greater significance. The abolition of the mandatory death sentence for murder left the sentence of imprisonment for life as the next most serious sentence for a murder convict. This has been emphasized by this Court in various decisions. For instance in **Tigo** this Court rightly held that the meaning of life imprisonment under our penal system
30 assumed greater significance following the decision of this Court in **Kigula**. Pursuant to the above observation, we held as follows:

“...the death penalty though constitutional was not mandatory but discretionary. This would make a sentence of Life imprisonment the next most severe sentence and probably the most effective alternative to the death sentence.”

Recently, this Court re-affirmed the above position in *Okello Geoffrey v. Uganda, Criminal Appeal No. 34 of 2014* when we held as follows:

“In terms of severity of punishment in our penal laws a sentence of life imprisonment comes next to the death sentence which is still enforceable under our penal laws.”

5 In our view, *Tigo* not only clarified on the meaning of the sentence of imprisonment for life. It also clarified what the sentence of imprisonment for life meant in the post *Kigula* sentencing regime for persons convicted of murder but who are spared the maximum sentence of death provided for under the Penal Code Act.

Persons convicted of murder and sentenced to imprisonment for life (meaning for the remainder of their
10 lives) as a result of this Court’s decision in *Kigula* should be distinguished from persons convicted of manslaughter and sentenced to imprisonment for life, who could benefit from remission provisions under our section 86 (3) of the Prisons Act, which provides that ‘for the purposes of calculating remission of sentence, imprisonment for life shall be deemed to be twenty years.’ Parliament never intended these provisions to be applicable to persons convicted of murder for whom there was only one
15 mandatory sentence after conviction: death. It is also important to note that the remission provisions under our Prisons Act concurrently existed with the mandatory death sentence provisions in the Penal Code Act in the pre *Kigula* era.

We have already noted that following the *Kigula* decision, imprisonment for life became and remains the second most severe sentence a person convicted of murder can be sentenced to, if he or she is not
20 sentenced to death. We are therefore not convinced with the appellant’s argument that convicts of murder should be treated in a similar manner as those convicted of manslaughter by getting the same sentence when they are sentenced to life imprisonment, which, according to the appellant is 20 years.

We have further noted that the appellant’s arguments are also premised on the decision of this Court in *Livingstone Kakooza v. Uganda, Supreme Court Criminal Appeal No. 17 of 1993*. Kakooza had been
25 convicted of manslaughter, whereas the appellant was convicted for murder of 3 children. *Kakooza* (supra) is therefore not applicable to him.

In our view, it would be absurd, for a convict sentenced to a capital offence of murder to be deemed to have been sentenced to a period of 20 years imprisonment, as the appellant contends, when the lesser offence of manslaughter still attracts a maximum sentence of life imprisonment under section 190 of
30 our Penal Code Act, Cap 120, Laws of Uganda.

Before we take leave of this matter we wish to note that it could be an absurdity if a person convicted of murder was allowed to benefit under the provisions of remission in respect of the life sentence and

another person convicted of murder and sentenced to death would not. Clearly, this was never the intention the Legislature had in mind when it passed the provision under the Prisons Act, which the appellant wanted to benefit from by equating his sentence of life imprisonment to 20 years.

5 We shall now proceed to consider the appellant's arguments as to what the learned trial Judge had in mind when he convicted the appellant on three counts of murder and sentenced him to 3 terms of life imprisonment on 15th April 2009.

We note from the Record of Appeal that in allocutus, the DPP prayed for the maximum sentence of death on ground that the appellant did not show any mercy on the children he murdered. In response, counsel for the appellant submitted that he would not say anything in mitigation of sentence because the
10 appellant was innocent and that there was a mistrial. The appellant in mitigation stated that he had left the matter to the Court. Having heard from both parties, the trial Judge sentenced the appellant as follows:

15 ***“The 3 deceased children were killed in the most brutal manner by a person they least expected to kill them. They were all in their young age. In the circumstances of this case, there is no mercy that Court can show and the convict will be sentenced to life imprisonment on each of the 3 counts and the sentences are to run concurrently.”***

The Trial Judge was very clear in his sentencing. He did not qualify his sentence in any way by limiting it to 20 years.

20 We have already highlighted the fact that at the time the trial Judge sentenced the appellant, this Court had already rendered its decision ***Kigula*** on 21st January 2009. The appellant has not adduced any evidence to show that the Trial Judge erred in imposing a sentence of life imprisonment or that he meant that the appellant was to be imprisoned for 20 years or that the Court of Appeal erred in holding that the sentence of life imprisonment imposed on him meant imprisonment for the rest of his natural life.

25 On the contrary, the Record of Appeal clearly shows that the trial Judge was very much alive to the fact that the appellant brutally ended the lives of 3 innocent children and that justice needed to be done to all parties including the victims of this heinous crime.

30 By opting to sentence the appellant to 3 life terms in April 2009 instead of the maximum penalty for murder which is death, it is our view that the learned trial Judge must have had in his mind the decision of this Court in ***Kigula***, the gravity of the offence committed by the appellant, the circumstances of its commission and the need to see justice done to the slain victims of the horrendous crime. With all the above in mind, the learned Trial Judge exercised his discretion and opted to sentence him to life imprisonment and not the maximum sentence of death. If he was not following the ***Kigula*** decision, he

would have sentenced the appellant to death. Given the heinous and cold-blooded manner in which the appellant murdered three innocent children in his care, it would be a travesty of justice for this Court to hold otherwise, and to allow this appeal. The appellant avoided a sentence of death by being sentenced to imprisonment for life.

5 We have further noted that the appellant also relied on two Court of Appeal decisions to advance his argument that the sentence of life imprisonment he received was equivalent to a 20 year sentence. These were *Kansiime Brazio & Kibarikola Molly v. Uganda, Criminal Appeal Nos. 12 of 2008 & 39 of 2009*, and *Kamugisha Amon v. Uganda, Criminal Appeal No. 250 of 2009*.

10 Counsel for the appellant did not provide us with copies of these decisions for our review. Be that as it may, these two decisions are not binding on this Court since they are Court of Appeal decisions.

Furthermore, we have noted that in *Kansiime* (supra), both appellants had been convicted of murder and sentenced to life imprisonment. The point of contention with regard to sentence by the appellants was that the trial Judge had not considered the period the appellants had spent on remand when he was sentencing them. In addition, by the time the appellants were sentenced on 24th February 2008, the
15 Constitutional Court had already declared the imposition of the mandatory death sentence unconstitutional in *Susan Kigula & 417 others v. Attorney General, Constitutional Petition No. 06 of 2003*. This explains why the trial Judge did not sentence them to death. We therefore find that
20 *Kansiime* is not relevant to the appellant's case whose whole appeal was premised on what the trial Judge had in mind when he sentenced him to life imprisonment. We further find that the discussion of the Court of Appeal on what life imprisonment meant in *Kansiime* was obiter.

It should be noted once again that the appellant was sentenced by the High Court for murder on 15th April 2009, which was one year and two months later than the appellants in *Kansiime*. If the Court of Appeal had not decided the appellant's appeal after the *Kigula* decision the Court of Appeal would have reversed the appellant's sentence of life imprisonment and instead imposed the mandatory death
25 penalty, as had been the case before the *Kigula* decision.

Regarding the second authority of *Kamugisha Amon* (supra), the Court was not able to trace it and therefore Court cannot comment on it.

We have found no reason to fault the decision of the learned Justices of Appeal. We have found no merit in this appeal. It is accordingly, dismissed. We confirm the decision of the Court of Appeal that
30 the appellant was sentenced to spend the rest of his natural life in prison.

Before we take leave of this matter, we note that there is need for the Penal Code Act to be amended to reflect the new sentencing regime in respect of persons convicted of murder that was ushered in by ***Kigula***.

We call upon Parliament to take the necessary steps to ensure that these developments are reflected in our Penal Laws.

Dated at Kampala this9th .. day of ..April.... 2018

.....
JUSTICE BART KATUREEBE,
10 **CHIEF JUSTICE.**

.....
JUSTICE DR. ESTHER KISAAYE,
JUSTICE OF THE SUPREME COURT.

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JUSTICE STELLA ARACH-AMOKO,
JUSTICE OF THE SUPREME COURT.

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JUSTICE RUBY OPIO-AWERI,
JUSTICE OF THE SUPREME COURT.

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JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA,
JUSTICE OF THE SUPREME COURT.