

5

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO.34 OF 2020

[Coram: Owiny-Dollo, CJ; Mwondha; Tibatemwa-Ekirikubinza, Tuhaise;
Chibita; JJSC.]

10

MUTENDE GONZAGA DODOVIKO :::::::::::::::::::::::::::APPELLANT

VERSUS

15 **UGANDA ::::::::::::::::::::::::::: RESPONDENT**

[Appeal from the judgment of the Court of Appeal at Masaka before:
(Musoke, Muhanguzi and Kasule, JJA) dated 10th March, 2020 in
Criminal Appeal No.0003 of 2018]

20 **Representation**

*The appellant was represented by Mr. Jolly Mutumba on State
Brief. Ms. Ainebyoona Happiness (Chief State Attorney) appeared
for the respondent.*

25 *Both parties adopted their written submissions which had been
filed in Court.*

JUDGMENT OF THE COURT

This is a second appeal filed by the appellant Mr. Mutende
Gonzaga Dodoviko, against sentence only.

5 **Background**

The facts of the case as accepted by the lower court are that the appellant murdered two persons. He was subsequently arrested and indicted for the offence of murder c/s 188 and 189 of the Penal Code Act. He was convicted and sentenced to imprisonment for the rest of his natural life by the High Court.

Dissatisfied with the High Court decision, the appellant appealed to the Court of Appeal which upheld both the conviction and sentence.

Still dissatisfied with the Court of Appeal decision, the appellant filed an appeal in this Court on the sole ground that:

The Learned Justices of the Court of Appeal erred in law when they confirmed an illegal sentence of imprisonment for the rest of the appellant's natural life imposed by the Trial Judge.

20 **Appellant's submissions**

Counsel for the appellant contended that the ground of legality of sentence was not argued nor challenged at the Court of Appeal. Counsel submitted that as an exception to the general rule this Court should consider the appellant's ground since it touches on the legality of the sentence. He cited the case of **Rwabugande Moses vs Uganda, SCCA No.25 of 2014** to support this submission.

5 Counsel further submitted that the sentence passed against the appellant by the trial Court and upheld by the Court of Appeal was illegal and contravened **Article 28(12)** of the **Constitution**.

He submitted that the wording in the sentence "*imprisonment for the rest of his natural life*" was vague and therefore made the
10 sentence illegal. Counsel argued that such a sentence was not prescribed in law and that what was provided for in the Penal Code Act was imprisonment for life or life imprisonment.

In conclusion, counsel prayed that the appeal is allowed and the said illegal sentence be substituted with a lawful sentence.

15 **Respondent's reply**

In reply, counsel argued that the Penal Code Act provides for a sentence of imprisonment for life. She contended that the sentence passed against the appellant was neither vague nor illegal and as such there was no miscarriage of justice.

20 Counsel argued that the wording of the sentence given to the appellant was in line with the sentence of imprisonment for life. Counsel cited the case of **Tigo Stephen vs Uganda, SCCA No.8 of 2009**, in support of her submissions.

In conclusion, counsel invited this Court to find that the
25 sentence upheld by the Court of Appeal was legal and therefore this appeal should be dismissed.

5 **Court's consideration**

As admitted by counsel, we note that the ground was not appealed against at the Court of Appeal.

It is trite law that this Court will not determine a ground which was not raised and considered at the Court of Appeal. This principle has been well articulated by this Court in decisions such as **Kwashaho Francis & 2 Ors. v Uganda No. 85 of 2018 (SC)** and **Rwabugande Moses v Uganda, No. 25 of 2014 (SC)**. However, the said rule is not without exceptions. And one exception is set out in **Kwashaho Francis & 2 Ors** wherein this Court stated that:

“The general rule is that an appellate court will not consider an argument raised for the first time on appeal ... However, there are exceptions to this general rule. For example, as explained in the well-known legal maxim, “*Ex turpi causâ non oritur action*”, a court of law cannot sanction what is illegal. (See: **Kisugu Quarries vs. The Administrator General SCCA No.10 of 1998**).” (emphasis added)

We also note that this being an appeal against sentence only, we must consider the applicability of **Section 5(3) of the Judicature Act** which provides that:

5 **“In the case of an appeal against a sentence and an order other than one fixed by law, the accused person may appeal to the Supreme Court against the sentence or order, on a matter of law, not including the severity of the sentence.”**

10 The instant appeal is questioning the legality of the sentence and therefore falls within **Section 5(3) of the Judicature Act** on the one hand and within the exception set out in **Kwashaho Francis & 2 Ors (Supra)** on the other hand.

15 The appellant argues that the learned Justices confirmed an illegal sentence of *“imprisonment for the rest of his natural life”* which is not provided for in the statute books and thus contravened **Article 28(12)** of the **Constitution**.

The record indicates that the High Court sentenced the appellant as follows:

20 *“... though he deserves to die, he is instead sentenced to imprisonment for the rest of his natural life...”*

The learned Justices of Appeal in dealing with sentence held at page 17 of their judgment as follows:

25 *“As the appellant did not appeal against the sentence imposed by the trial Court, we take it that he did not contest it and it is hereby maintained. Accordingly, the relevant*

5 *conviction of the appellant by the learned trial judge and the sentence arising therefrom are upheld.”*

The appellant contended that the sentence of “*imprisonment for the rest of his natural life*” imposed by the trial Court was vague and contravened Article 28(12) of the Constitution hence making
10 it illegal.

Article 28(12) of the **Constitution** provides that: -

“Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.”

15 The essence of the appellant’s contention is that since the words ‘for the rest of the natural life’ do not appear in the penal law, the sentence imposed by the trial Judge and upheld by the Court of Appeal offended the above constitutional provision.

In the case of **Tigo Stephen vs Uganda, Criminal Appeal No.**
20 **08 of 2009**, this Court defined life imprisonment as follows:

“We hold that life imprisonment means imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned.” (Court’s emphasis)

5 From the above case, it is our finding that the appellant was sentenced to life imprisonment. Life imprisonment is a penalty which is stipulated in our statute books.

Conclusion and Order

10 In the result, we find no merit in this appeal and it is accordingly dismissed. Consequently, the appellant's sentence as upheld by the Court of Appeal is upheld.

Dated this^{8th} day of^{Aug.}..... 2023.

15
.....
HON. JUSTICE ALFONSE OWINY-DOLLO
20 **CHIEF JUSTICE.**

25
HON. JUSTICE MWONDHA
JUSTICE OF THE SUPREME COURT.

30
HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.



.....
HON. JUSTICE PERCY NIGHT TUHAISE
JUSTICE OF THE SUPREME COURT.

10



.....
HON. JUSTICE MIKE CHIBITA
JUSTICE OF THE SUPREME COURT.

15