



THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

(Coram: Buteera, DCJ; Mulyagonja & Mugenyi, JJA)

CRIMINAL APPEAL NO. 239 & 246 OF 2016

TATU GODFREY APPELLANT

VERSUS

UGANDA RESPONDENT

**(Appeal from the High Court of Uganda at Mubende (Nahamya, J) in Criminal
Session Case No. 245 of 2016)**

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JUDGEMENT OF COURT

A. Introduction

1. Mr. Godfrey Tatu ('the Appellant') was indicted for two counts of murder contrary to sections 188 and 189 of the Penal Code Act, Cap. 120. He was convicted on his own plea of guilt and sentenced to a custodial sentence of twenty-seven (27) years and six (6) months.
2. The uncontroverted facts as accepted by the trial court are that on 25th February 2016 at Kyakakozi village in Kiboga district, on the 25th day of February 2016 at around 7 pm, the Appellant picked a quarrel with his father, James Lwasa at the latter's home, as a result of which he hit him on the head with a hoe leaving him unconscious. Maria Tereza Kalibulungi, the Appellant's step-mother, and Evalyne Nsima, who were present during the attack on James Lwasa, attempted to flee while making an alarm but the Appellant pursued them and hit his step-mother twice on the head with the same hoe, leaving her unconscious as well. Meanwhile Nsima and another eye witness, Elizabeth Nakulanda, ran to the home of their father, John Semakula, and reported the incident. Semakula rushed to Lwasa's home and found the Appellant hitting Maria Tereza Kalibulungi with the hoe. Lwasa and Kalibulungi ('the deceased') were rushed to a health facility where they both died on 25th and 29 February 2016 respectively.
3. The Appellant fled the scene but later handed himself in at Lwamata police post. He was subsequently charged, convicted and sentenced in accordance with a plea bargain agreement dated 19th August 2016.
4. Dissatisfied with the sentence handed down by the trial court, the Appellant lodged the present Appeal on a singular ground that:

The Learned Trial Judge erred in law and fact when (s)he did not follow the procedure for recording a plea of guilty under a plea bargain agreement.

5. At the hearing, the Appellant was represented by Ms. Susan Sylvia Wakabala while Ms. Ann Kabajungu, Chief State Attorney, represented the Respondent.

B. Parties' Legal Arguments

6. Counsel for the Appellant faults the trial court for not following the procedure laid out in rule 12 of the *Judicature (Plea Bargain) Rules, 2016* ('the Plea Bargain Rules') for recording a plea of guilty under a plea bargain agreement. On the authority of **Oketch Simon vs Uganda CACA N. 7 of 2018** where a conviction and sentence were quashed because the process of admitting the plea bargain agreement on record was not followed, it is argued that the failure by the trial court to explain to the Appellant his rights, the facts against him and the legal consequences of the plea bargain led to a miscarriage of justice. This Court is therefore urged to quash the Appellant's conviction, set aside the sentence and order for a retrial.
7. The Respondent concedes that the trial court proceedings were a nullity pursuant to rule 12 of the Plea Bargain Rules and the authority of **Oketch Simon vs Uganda, Criminal Appeal No. 7 of 2018** (CA), and invites the Court to remit the matter to the High Court for the proper recording of the plea bargain agreement as executed between the parties. Learned State Counsel proposes that should the Court be inclined to order a retrial, it should ensue as quickly as possible as a serious error committed in the conduct of a trial is one of the major considerations for ordering a retrial. Reference in that regard is made to **Rev Fr Santos Wapokra vs Uganda, Criminal Appeal No. 204 of 2012** (CA).

C. Determination

8. We have carefully considered the record of appeal in this matter. It reveals that the Appellant made five separate appearances before a Magistrate Grade 1 court, which are immediately followed by the sentencing proceedings before the trial judge. It is thus becomes apparent that the Appellant was never availed an opportunity to plead to the charges against him before the plea bargain agreement was recorded.
9. Section 60 of the Trial on Indictments Act, Cap. 23 delineates the procedure to be followed in plea taking, while section 63 of the same Act enjoins the High Court to record an accused person's plea of guilt prior to his/ her conviction on such plea. The cited provisions read as follows:

60. Pleading to indictment

The accused person to be tried before the High Court shall be placed at the bar unfettered, unless the court shall cause otherwise to order, and the indictment shall be read over to him or her by the chief registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court; and the accused person shall be required to plead instantly to the indictment ...

63. Plea of guilty

If the accused pleads guilty, the plea shall be recorded and he or she may be convicted on it.

10. Meanwhile, rule 12(2) of the Plea Bargain Rules incorporates plea taking in the recording of a plea bargain as follows:

The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.

11. This Court had the occasion to expound the import of that provision in **Musinguzi Apollo vs Uganda (2019) UGCA 157**, observing that ‘**where there is a plea bargain, the accused shall still have to plead guilty and the proceedings in plea taking should be on record.**’ The same position was reiterated in **Bangizi Godfrey vs Uganda, Criminal Appeal No. 337 of 2017**. (unreported).

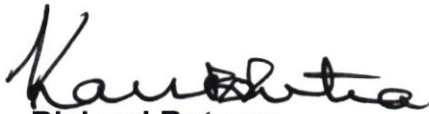
12. In **Julius Atwebembire vs Uganda, Criminal Appeal No. 524 of 2015** (CA), faced with a similar scenario like one before the Court presently, the foregoing legal provisions and authorities were invoked allow the appeal and remit the matter back to the High Court for retrial. It was held:

The record of appeal in the present Appeal clearly depicts no record whatsoever of any plea taking having ensued before the trial court. Given the succinct provisions of the legal provisions cited above, as well as case law on the subject, it becomes apparent that **a plea bargain agreement would not over-ride statutory provision for plea taking in criminal trials. In the absence of plea taking, there was no conviction as would legally justify the 20-year sentence handed down to the appellant by the trial court or the commitment warrant in respect thereof.** (our emphasis)

13. Accordingly, we do hereby allow this Appeal, quash the Appellant’s conviction and sentence, and remit this matter back to the High Court for retrial or the proper recording of the Appellant’s plea bargain agreement as a matter of urgency.

It is so ordered.

Dated and delivered at Kampala this 21st day of Feb, 2024.



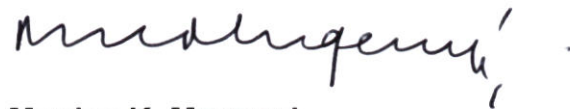
Richard Buteera

Deputy Chief Justice



Irene Mulyagonja

Justice of Appeal



Monica K. Mugenyi

Justice of Appeal