

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT FORT PORTAL**

[*Coram: Kasule, Mwangusya & Egonda-Ntende, JJA*]

Criminal Appeal No. 242 of 2014

Ainobushobozi Venancio=====Appellant

Versus

Uganda=====Respondent

[*An appeal from a judgment of the High Court of Uganda sitting at Fort Portal (Dan Akiiki-Kiiza, J.), in HCT-CR-SC-0027-2011, delivered on the 9 October 2013*]

**Judgment of the Court**

**Introduction**

1. The appellant was convicted by the High Court on 24 June 2010 of the offence of manslaughter contrary to section 187 and 190 of the Penal Code Act. He was sentenced to 18 years' imprisonment. He dropped the appeal against conviction and now, with leave of this court, appeals only against sentence.
2. The facts of the case are fairly straight forward. On the evening of 18 July 2010 at about 8.00pm one Tumwebaze Vincent, went to Mukoma trading centre riding his bicycle. He parked it. One Laban, a brother of the appellant, got hold of this bicycle and banged it on the ground. Tumwebaze intervened to stop Laban from banging his bicycle on the ground. Tumwebaze insulted Laban with the words, 'Kuma nyoko'.
3. The appellant who was present at the incident, got annoyed and assaulted Tumwebaze. He pushed him down and Tumwebaze fell on a fixed stump. Tumwebaze became unconscious. He was rushed to a nearby clinic where he died a few minutes later. The matter was reported to the local council authorities which led to the arrest of the appellant. He was charged and

tried for murder of Tumwebaze Vicent. The High Court convicted him of the lesser offence of manslaughter on account of absence of malice aforethought. He was sentenced to 18 years' imprisonment from which he appeals to this court. It is contended for the appellant that the learned trial judge erred in law in sentencing the accused to 18 years imprisonment, a sentence which is manifestly excessive and harsh in the circumstances.

### **Counsel's Submissions**

4. Ms Angella Bahenzire, learned counsel for the appellant, submitted that the sentence of 18 years imprisonment was manifestly harsh in the circumstances of this case. Had the learned trial fully considered the mitigating circumstances in this case he would not have come to such a harsh sentence. The appellant was a young man, only 21 years old, at the time the offence was committed. He was a first offender.
5. Ms Rose Tumuhaise, learned Principal State Attorney, appearing for the State opposed the appeal. She submitted that the sentence of 18 years imprisonment cannot be excessive for an offence whose maximum punishment is life imprisonment. A life was lost to the family and nation in unprovoked circumstances. All necessary factors were considered. The sentence of 18 years was appropriate. She prayed that the appeal be dismissed and sentence confirmed.

### **Analysis**

6. It has been consistently held in numerous cases both by the Supreme Court and the predecessor Court of Appeal for East Africa, and more specifically in the case of Livingstone Kakooza v Uganda SC Criminal Appeal No. 17 of 1993 [unreported] that:  
‘An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration: See Ogalo S/O Owoura v R (1954) 21 E.A.C.A. 270.’

7. The foregoing principles are equally applicable in the instant case.

8. The sentencing order of the trial judge states,

‘Accused is admittedly a first offender. He has been on remand for 3 years. I take this period into consideration while sentencing him. He is said to be a young man. However, accused over stepped his reaction to hit the deceased and eventually push him to a wooden bench / stick which fatally damaged his vital organs (liver and spleen). Though the offence is manslaughter, which is within no malice aforethought, the deceased lost his life, and his relatives lost his company and help for good. Putting everything into consideration, I sentence accused to 18 years (eighteen years) imprisonment. Right of Appeal explained.’

9. The maximum sentence for the offence of manslaughter is life imprisonment. It appears to us that the learned trial judge in this case in effect reached for the maximum sentence of life imprisonment when you take into account that the appellant had spent 3 years on remand and was sentenced to 18 years imprisonment the aggregate of which is more than 20 years. Life imprisonment in light of section 47(7) of the Prisons Act is 20 years. It is a rule of practice that first offenders ordinarily do not receive the maximum sentence for the offence of which they have been convicted.

10. The Supreme Court was faced with almost similar facts in the case of Livingstone Kakooza v Uganda SC Criminal Appeal No. 17 of 1993 [unreported]. The Supreme Court stated,

‘We agree with the learned counsel for the Appellant that the sentence of 18 years was harsh and manifestly excessive. The appellant had been on remand for two years and the learned judge took this factor in passing sentence. In effect the Appellant received a life imprisonment sentence which is twenty years according to section 49 (7) of the Prisons Act, Cap. 313.....’

11. The Supreme Court reduced the sentence of imprisonment to 10 years. The appellant in that case had been convicted of manslaughter as in the instant case. He had been on remand for 2 years. In the instant case he

had been on remand for 3 years. Although past decisions with regard to sentences to do not have the authority of precedents they do provide a range which ought to be considered for purposes of achieving some measure of uniformity between like cases.

12. We are satisfied that in the circumstances of this case the sentence imposed by the learned trial judge was manifestly excessive and harsh. It was out of range with sentences imposed on the cases of this nature. We set it aside.

13. This court has the same powers as the High Court, pursuant to Section 11 of the Judicature Act. It states,

**‘11. Court of Appeal to have powers of the court of original jurisdiction.**

For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated’

14. In the instant case the appellant was a first offender. He spent 3 years on remand prior to his trial and conviction. He was 21 years old, a very young man, at the time of the commission of offence. He was remorseful. Nevertheless he committed a very serious offence whose maximum punishment was life imprisonment. The offence was incapable of reparation.

## **Decision**

15. We are satisfied that a sentence of 12 years imprisonment from the date of conviction [9 October 2013] will meet the ends of justice in this case. We so order.

Dated, signed and delivered at Fort Portal this 18<sup>th</sup> day of December 2014

Remmy Kasule  
Justice of Appeal

Eldad Mwangusya  
Justice of Appeal

Fredrick Egonda-Ntende  
Justice of Appeal