

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA
CRIMINAL APPEAL NO. 110 OF 2007
TUSINGWIRE SAMUEL:.....APPELLANT**

VS

UGANDA:.....RESPONDENT

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Coram: Hon. Mr. Justice Kenneth Kakuru, JA

**Hon. Mr. Justice Byabakama Mugenyi Simon, JA Hon. Mr. Justice
Alfonse C Owiny-Dollo, JA**

JUDGMENT OF THE COURT

This is an appeal from the judgment of Hon. P.K Mugamba J (as he then was) in **High Court Criminal Case NO. 32 of 2007** at Rukungiri dated **24/10/2014** in which the appellant was convicted of murder contrary to **Section 188 and 189 of the Penal Code Act** and sentenced to life imprisonment.

Representations

At the hearing of this appeal, learned Counsel Mrs. Suwaya Matovu appeared for the appellant who was in Court; while Ms. Jennifer Amumpaire appeared for the respondent.

Mrs. Matovu abandoned the first two grounds of appeal which were both in respect of the conviction preferring instead to argue the third ground, which was only in respect of sentence. This appeal therefore is in respect of severity of sentence only.

The Appellant's Case

Counsel for the appellant submitted that the learned trial Judge erred when he did not take into account the period the appellant had spent on remand before passing sentence. She argued that the appellant had spent **4** years and 6 months on remand and this period ought to have been taken into account before the passing of the sentence.

Counsel also argued that the learned trial Judge did not take into account all the mitigating factors in favour of the appellant. These factors, counsel argued, included the age of the appellant. She submitted that the appellant was **23** years old at the time he committed the offence. He was young and capable of reform she submitted. Counsel asked Court to reduce the sentence, to a definite custodial term that would allow him to reform and to be a good citizen. She asked Court to reduce the sentence to **15** years imprisonment. She relied on the authority of Mbunya Godfrey Vs Uganda Supreme Court Criminal Appeal NO. 4 of 2011.

Counsel argued that in the above cited case, Court took into account the fact that the appellant was a first offender who deeply regretted his actions.

In this case counsel submitted the appellant is a first offender, he is remorseful, has siblings to look after and he is capable of reform.

The Respondent's Case

Ms Amumpaire opposed the appeal and supported the sentence. She contended that the sentence was neither harsh nor manifestly excessive in the circumstances of the case. She said the deceased had been killed in a very cruel manner, she was an old woman of **60** years and had also been raped.

Counsel also submitted that the trial Judge had taken into account all mitigating and aggravating factors before passing the sentence of life imprisonment. Further, that the learned trial Judge had taken into account the fact that the maximum sentence for murder is death, and having taken into account the mitigating factors, he

refrained from imposing the death sentence preferring a lesser sentence of life imprisonment.

Resolution of issues

This being a first appeal, this court is required to reappraise all the evidence to make its own inferences on all issues of law and fact. See **Rule 30(1) of the Rules of this Court and Kifamunte Henry Vs Uganda SCCR. Appeal No. 10 of 1997.**

We have carefully listened to the submissions of both counsel. We have also perused the court record and authorities availed to us. We have also carefully considered the circumstances of this case in relation to already decided cases.

In this case, the appellant was a young man of 23 years when he committed the offence. At the time of conviction, he was 27 years old. He is therefore capable of reform while in prison. He is stated to have been remorseful at the time of conviction. He is a first offender with no previous criminal record.

However there are aggravating facts. Those include the fact that the appellant attacked and killed an old

woman of 60 years, without provocation. He inserted a sharp object into her vagina pushing it deep into her abdomen. The intestines were protruding through her birth canal when she died. This Court in **Nkonge Robins Vs Uganda Court of Appeal Criminal Appeal No. 148 of 2009** upheld a death sentence of murder of a single person. The murder in that case was not this gruesome.

In Kisutu Mujerdin alias Mpata Vs Uganda, Court of Appeal Criminal Appeal No. 128 of 2010, this Court upheld a sentence of 30 years imprisonment for murder. In Kyaterekera George William Vs Uganda, Court of Appeal Criminal Appeal No. 0113 of 2010, this Court similarly upheld a sentence of 30 years for murder. Acuku Margret Opii Vs Uganda Court of Appeal Criminal Appeal N0.123/2008, this Court reduced the sentence from death to 20 years imprisonment. The victim had been killed by drowning. The circumstances under which this Court may interfere with the sentence of a trial court are limited. Before this Court can interfere with a sentence, the factors must exist which were set out by the Supreme Court in Kiwalabye Bernard Vs Uganda, Supreme Court CR. Appeal NO. 143 of 2011 as follows;

“The appellate Court is not to interfere with sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to

amount to a miscarriage of justice or where a trial court ignore to consider an important matter or circumstances which ought to be considered when passing the sentence or where the sentence imposed is wrong in principle.”

The Court may not interfere with the sentence imposed by a trial court simply because it would have imposed a different sentence had it been the trial Court. See **Ogalo S/O OWOU Vs Republic [1954] 24 EA CA 270.**

Mindful of the above principles of law and considering the decisions of this Court and the Supreme Court on sentencing, we find that a sentence of life imprisonment in the circumstances of this case was harsh and manifestly excessive.

We accordingly set aside this sentence on that account and substitute it with a sentence of **30** years imprisonment, to run from the date of conviction, having taken into account the period the appellant spent on remand.

It is so ordered.

DATED AT MBARARA THIS 26th DAY OF October 2016.

HON JUSTICE KENNETH KAKURU

JUSTICE OF APPEAL

HON.JUSTICE BYABAKAMA MUGENYI SIMON

JUSTICE OF APPEAL

HON.JUSTICE ALFONSE C OWINY DOLLO

JUSTICE OF APPEAL