

5 **THE REPUBLIC OF UGANDA**

IN THE COURT OF APPEAL OF UGANDA AT ARUA

(Coram: Kiryabwire, Mulyagonja, & Luswata, JJA)

10 **CRIMINAL APPEAL NO. 0316 OF 2017**

BETWEEN

15 **1. ADRAMA WILFRED alias ABU**

2. ATANDU MOSES alias OZEE ::::::::::::::::::::::::::: APPELLANTS

AND

UGANDA ::: RESPONDENT

20 **(Appeal from the Judgment of the High Court sitting at Arua
in Criminal Session Case No. 0036 of 2015 delivered by
Stephen Mubiru J on 04/07/2017)**

25 **JUDGMENT OF THE COURT**

Introduction

30 1] This as an appeal from the decision of the High Court of Uganda
sitting at Arua in which the trial Judge convicted the appellants
of the offence of murder, contrary to Sections 188 and 189 of the
Penal Code Act and sentenced them to 21 years and 4 months'
and 26 years and 4 months' imprisonment, respectively. It was
stated in the indictment that on 1/9/2013, at Okokoro Trading
Center in the Maracha District, the appellants unlawfully
35 murdered Nyakuni Kamilo.

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2] The facts upon which the appellants were convicted were well related in the written submissions filed by their advocate. It was stated that on the night of 1st September 2013 at around 9:00 p.m, the deceased together with his cousin, Asindu Dennis PW2, were riding their bicycles back home with Ayikoru Felicita a newly acquired wife of PW2, whom the deceased was carrying on the carrier of his bicycle. PW2 was following them when they met the appellants among a group of about fourteen other youths returning from Okokoro Trading Centre in Maracha District. A1 pushed a log in between the frame of the deceased's bicycle, causing the deceased and the bride of PW2 to fall to the ground. Immediately, both appellants and the rest of the group joined in assaulting the deceased and PW2. The deceased was beaten to death while PW2 was beaten to unconsciousness. When PW2 subsequently regained his consciousness, he realized the deceased had been killed. He managed to find his way to Okokoro where he reported the attack to his aunt. The following day at 9.00am, PW2 was taken to the Okokoro Police Post from where he identified the appellants as some of the people who attacked him and the deceased, which led to their arrest, indictment, conviction and sentencing, as abovementioned.

3] The appellants being aggrieved with the decision of the High Court lodged an appeal to this Court premised on one ground set out in the memorandum of appeal as follows:

That the learned trial Judge erred in law and fact when he sentenced the appellants to imprisonment of 21

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5 *years and 4 months and 26 years and 4 months' respectively, which sentence is harsh and excessive in the circumstances.*

Representation

10 4] At the hearing of the appeal, the appellants were represented by Ms. Patience Daisy Bandaru while the respondent was represented by Mr. Patrick Omia a Chief State Attorney. We allowed Ms. Bandaru's prayer to appeal against sentence only and likewise allowed the prayers to consider both counsels' written
15 submissions as their legal arguments for the appeal. We have considered those submissions and a host of authorities to decide the appeal.

Submissions for the appellant

20 5] In her submissions, Ms. Bandaru drew our attention to the settled position of the law that a first appellate court, will only interfere with a sentence imposed by a trial court if it is illegal or based on a wrong principle of law, or where a material factor is ignored. She
25 also alluded to instances where it is shown that the sentence is harsh or manifestly excessive. She in that regard referred us to the Supreme Court decisions of **Kizito Senkula versus Uganda, Criminal Appeal No. 24 of 2001**, and **Kiwalabye Bernard versus Uganda, Criminal Appeal No. 143 of 2001** (unreported). Ms.
30 Bandaru then argued that the sentences imposed by the trial Judge were not only harsh but manifestly excessive in the circumstances of this case.

5 6] In support of her argument, Ms. Bandaru referred us to a host of
decisions by this Court and the Supreme Court in which
sentences of murder are given. She cited for example,
Ndyomugenyi Patrick versus Uganda, SC Criminal Appeal No.
57 of 2016, where a death sentence was on remission to the High
10 Court, reduced to 32 years. Both the Court of Appeal and Supreme
Court further reduced the sentence to 20 years' imprisonment.
Also that of **Byaruhanga versus Uganda, CA Criminal Appeal**
No. 144 of 2010, where this Court reduced a sentence of 22 years
to 20 years' imprisonment. Similarly, that of **Manige Lamu versus**
15 **Uganda, CA Criminal Appeal No. 384 of 2017**, where this Court
reduced a sentence of 44 years and 4 months to 20 years. Suffice
to say, Ms. Bandaru made her choice of those authorities carefully
to bring out the important principle of consistency in sentencing.
She further pointed us to peculiar facts in some of them, for
20 example, the facts of age of the convicts, remorse, and other
mitigating factors, and the fact that in some, the sentences were
found to be manifestly excessive.

7] In her concluding submissions, Ms. Bandaru was alive to the fact
that although the offences in the cases she relied on may not have
25 been committed under circumstances similar to those before us,
it was still incumbent on this Court as an appellate court, to
maintain consistency or uniformity in sentencing. She then
prayed that the Court interferes with the sentence of the High
Court so as to bring it in conformity with the sentences for murder
30 that she had sampled. In her view, since the appellants who
offended when still youthful had spent 3 years and 8 months on

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5 remand, the chances of their reform and re-integration into society were high. She suggested a sentence of 14 years.

- 8] In conclusion, Ms. Bandaru prayed this Court finds merit in the appeal and sets aside the manifestly harsh and excessive sentence imposed by the trial Judge and replaces it with a more lenient
10 sentence of 15 years' imprisonment.

Submissions for the Respondent

- 9] In response, Mr. Omia first adopted the background of the case as narrated by his learned friend. He in addition agreed with the authorities and legal principles she had relied on. However, he did
15 not agree with the submission that the sentences given were manifestly harsh or excessive. He argued that before sentencing, both the appellant and his counsel were given an opportunity to make a submission, and the trial Judge then considered what was presented in mitigation. In his view, the Judge meted out varying
20 terms of sentences in a carefully considered sentencing ruling, excerpts of which he quoted. He drew our attention to the fact that when deciding on the sentences, the Judge considered previous authorities as well as the sentencing guidelines and in addition, explained why the 1st appellant attracted more leniency.

- 25 10] Mr. Omia also briefly alluded to the consistency principle and argued that the sentences here were in range with sentences handed down in authorities quoted by the appellant's counsel. He also provided previous decisions in which this Court and the Supreme Court reduced sentences for murder to sentences
30 ranging from 25 to 30 years' imprisonment. Those included for

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5 example in **Kisitu Mahaidin versus Uganda, SC Criminal Appeal No. 66 of 2015, Mbunya Godfrey versus Uganda, SC Criminal Appeal No. 4 of 2011 and Mboinegaba versus Uganda, CA Criminal Appeal No. 511 of 2014.** He concluded then that the trial Judge rightly exercised his discretion and that neither of
10 sentences was harsh or excessive. He urged this Court not to interfere with the sentences and instead dismiss the appeal.

Resolution by the Court

11] We have had the opportunity to carefully study the record of appeal and consider the submissions of both counsel. We have
15 also perused the relevant laws and authorities cited to us plus those not cited but which are relevant to the issues under consideration. We are alive to the duty of this Court as a first appellate court to review the evidence on record and reconsider the materials before the trial Judge, and make up our mind not
20 disregarding the judgment appealed from but carefully weighing and considering it. See **Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions, S.I 13-10.**

12] This appeal is premised on only one ground that faults the learned trial Judge for passing manifestly harsh and excessive sentences
25 against the appellants, and thereby occasioning a miscarriage of justice. The thrust of Ms. Bandaru's submissions appear to be that the Judge did not appreciate the mitigating factors, especially the appellants' youthful age, and that this Court needs to consider the consistency principle when re-evaluating the sentence. Her
30 colleague did not agree. He argued conversely that the Judge gave

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5 a well reasoned ruling after giving all concerned parties an opportunity to address him during the allocution proceedings. We have confirmed from the record that each counsel and the two appellants were allowed to submit during the allocution proceedings.

10 13] The well settled position of law on the reasons this Court can interfere with the sentence imposed by the trial court have already been well articulated by both counsel in their respective submissions as summarised above. We note that in arriving at his decision, the Judge made a rather lengthy ruling, in which he first
15 summarised the submissions of both parties, before giving reasons for his decision. We shall not reproduce the ruling but instead extract excerpts of it that we believe addressed much of what Ms. Bandaru complained was never addressed. The trial Judge stated in part, as follows;

20 *"The convicts were found guilty of the offence of murder c/s 188 and 189 of the Penal Code Act after a full trial. . . Sentencing is a reflection of more than just the seriousness of the offence. The court at this stage, in sentencing multiple convicts at the same trial where the facts permit, may take
25 into account the degree of culpability of each of the convicts. Degree of culpability refers to factors of intent, motivation, and circumstance that bear on the convict's blameworthiness.....*

During trial, court considers legal culpability of the convict including the convict's intentions, motives, and attitudes.....
30 *It is for that reason that the principle of proportionality operates to prohibit punishment that exceeds the seriousness of the offending behaviour for which the offender is being sentenced. It requires that the punishment must fit both the*

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5 crime and the offender and operates as a restraint on
excessive punishment as well as a prohibition against
punishment that is too lenient. The principle of parsimony on
the other hand requires that the court should select the least
10 severe sentencing option available to achieve the purpose or
purposes of sentencing for which the sentence is imposed in
the particular case before the court.

Murder is one of the most serious and most severely punished
of all commonly committed crimes. The offence of murder is
punishable by the maximum penalty of death as provided for
15 under section 189 of the Penal Code Act. In cases of
deliberate, pre-meditated killing of a victim, courts are inclined
to impose the death sentence especially where the offence
involved use of deadly weapons, used in a manner reflective
of wickedness of disposition, hardness of heart, cruelty,
20 recklessness of consequences, and a mind regardless of the
sanctity of life. This maximum sentence is therefore usually
reserved for the most egregious cases of Murder committed in
a brutal, gruesome, callous manner..... This case is not in the
category of the most egregious cases of murder committed in
25 a brutal, callous manner, I have for those reasons discounted
the death sentence..... I consider a starting point of forty
years' imprisonment. Against this, I have considered in
respect of A1, the submissions made in mitigation of sentence
and in his allocutus and thereby reduce the period to twenty-
30 five years' imprisonment".

In respect of A2, I have considered the submissions made in
mitigation of sentence and in his allocutus, more especially his
relatively youthful age and thereby reduce the starting point
to thirty years' imprisonment. I therefore, sentence A2 to a
35 term of imprisonment of twenty-six (26) years and four (4)
months.

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5 14] It is apparent from the above excerpts of the record that the
learned trial Judge did consider both the aggravating and
mitigating factors in particular the 1st appellant's remorsefulness
and the fact that the 2nd appellant offended when young. He in
addition explained and then applied the consistency principle by
10 taking into consideration sentencing practices of cases of murder.
He followed previous cases by this Court when confirming
sentences of life imprisonment for convicts of murder. He in
addition applied the sentencing guidelines and was as such
prompted not to impose the maximum sentence of death. We
15 therefore find no merit in counsel for the appellant's contention
that the trial Judge fell short in some material aspect.

15] We shall now proceed to determine whether the sentence imposed
against the appellant was manifestly harsh and excessive so as to
cause a miscarriage of justice. To that end, we shall look at the
20 range of sentences in similar offences with more or less similar
circumstances. In so doing, we shall also be complying with the
principle of consistency in sentencing that was well articulated by
the Supreme Court in **Aharikundira Yustina versus Uganda, SC
Criminal Appeal No 27 of 2015**. In that appeal, the Court held
25 thus;

*"It is the duty of this court while dealing with appeals
regarding sentencing to ensure consistency with cases
that have similar facts. Consistency is a vital principle
of a sentencing regime. It is deeply rooted in the rule of*

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5 In any event, both sentences are well within the sentencing range
of cases of a similar nature. In the premises, we find no valid
reason to interfere with the learned trial Judge's discretion in
sentencing the appellants in the manner he did.

18] Consequently, this appeal fails and it is accordingly dismissed and
10 the sentences are upheld.

We so order.

Dated at **Arua** this ^{17th} day of ^{April} 2024.

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.....
GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

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IRENE MULYAGONJA
JUSTICE OF APPEAL

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EVA K. LUSWATA

30 **JUSTICE OF APPEAL**