

UGANDA / JUDGMENT

Adupa v Uganda (Criminal Appeal 81 of 2020) [2024] UGSC 42 (21 October 2024)

[2024] UGSC 42

COURT

Supreme Court of Uganda

BEFORE

Tibatemwa-Ekirikubinza, JSC, Mike Chibita, JSC,
Stephen Musota, JSC, Madrama, JSC, Catherine
Bamugemereire, JSC

CASE / FILE NUMBER

Criminal Appeal 81 of 2020

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA.**IN THE SUPREME COURT OF UGANDA AT KAMPALA**(CORAM: PROF. TIBATEMWA - EKIRIKUBINZA, CHIBITA, MUSOTA, MADRAMA &
BAMUGEMEREIRE, JJSC)**CRIMINAL APPEAL NO 81 OF 2020**

<table>

ADUPA DICKENS}

APPELLANT

\$10\$

VERSUS

UGANDA}

(Appeal against the decision of the Court of Appeal Holden in Gulu, before their Lordships Kenneth Kakuru, Percy Night Tuhaise, and Remmy Kasule, JJA delivered on the 15th of January, 2020 in Criminal Appeal No. 267 of \$2017\$

JUDGMENT OF COURT

\$\overline{5}\$

The appellant appealed from the decision of the Court of Appeal which dismissed his appeal against a sentence imposed by the High Court. The appellant had been sentenced to 31 years' imprisonment with effect from 20 the date of his conviction by the High Court on the 30th of June 2017. The appellant was indicted, tried and convicted of the offence of murder. The facts were that on 7th of May 2013 at Aumi village, he murdered Sharon Eluny, his spouse. The appellant and Eluny had had disputes that led to the deceased being taken back to her parents. The deceased returned to her 25 matrimonial home to weed her millet field whereupon she was shortly thereafter found dead. She had been assaulted with a blunt object which left wounds on her body and thereafter her dead body was hanged. The appellant was arrested, tried and convicted of the murder of the deceased and sentenced accordingly. His ground of appeal in the Court of Appeal was against sentence only in that he averred that:

$\mathbf{1}$

"The learned trial judge erred in law and fact when she imposed a harsh and excessive sentence in the circumstances, thereby occasioning a gross miscarriage of justice to the appellant."

In this court, the appellant's ground of appeal is that:

The learned Justices of the Court of Appeal erred in law when they upheld a sentence which is harsh, manifestly excessive and inconsistent with previous judicial precedent.

At the hearing of the appeal, the appellant was represented by learned counsel Ms. Awelo Sarah on state brief while the respondent was represented by the learned Senior State Attorney Mr. Wanamama Mics Isaiah. The appellant appeared via video conferencing from Upper Luzira 15 Prison. The court was addressed in written submissions which had been filed on the court record by learned counsel and which were adopted variously by counsel as their address to this court.

The appellant's counsel relied on *Abaasa Johnson vs Uganda; Criminal Appeal No 33 of 2010* for the proposition that the Supreme Court will only interfere with a sentence imposed by the trial court in a situation where the sentence is illegal or founded upon a wrong principle of the law. It would equally interfere with sentence, where the trial court has not considered a material fact in the case; or has imposed a sentence which is harsh and manifestly excessive in the circumstances. The appellant's counsel submitted that the sentence imposed against the appellant was excessive in that the appellant was of an advanced age and was convicted when he was 48 years old. At the time of the submissions, the appellant has served

10 years out of the term of 31 years' imprisonment. At the time of the submissions the appellant was 58 years old. Counsel prayed for the 30\$ sentence to be reduced to 20 years' imprisonment. Further he submitted that the appellant had acquired skills for example in carpentry while serving his sentence. He noted that these skills would sustain the appellant economically when he gets released from prison. Further that the appellant

would have an opportunity to impart his skills to the youth of his locality. 35

- Counsel prayed for reduction of the sentence of 31 years to 20 years' imprisonment from the time of the appellant's conviction. Further the appellant has 10 children of which four were with the deceased and six with other women. The appellant was a first-time offender and he was remorseful. Thirdly counsel submitted that the sentence was inconsistent
- with other precedents such as in Uganda Vs Uwera; Criminal Appeal No 312 10 of 2013 where the accused ran over her husband with a vehicle thereby causing his death and on appeal, a sentence of 20 years' imprisonment was found appropriate. In Aharikundira Yustina vs Uganda, Supreme Court Criminal Appeal No. 27 of 2015, it was held that not all murders were
- committed in the same circumstances and not all murders were of the same character. The court has to consider the circumstances and establish the appropriate sentence. He contended that the court had a duty to consider earlier precedents with similar circumstances and to ensure consistency in sentencing and equality before the law.
- The appellant's counsel prayed that we allow the appeal and set aside the 31 years' sentence of imprisonment and substitute it with a sentence of 20 years' imprisonment.

In reply, the respondent's counsel opposed the appeal on the main ground that no appeal lies to the Supreme Court against severity of penalty.

The respondent's counsel relied on section 5 (3) of the Judicature Act cap 25:13 as well as the decision of the Supreme Court in Bonyo Abdul vs Uganda; Cr. App No. 07 of 2011 and Okello Godfrey vs Uganda Cr. App No. 70 of 2018 where the law was applied. In addition, the respondent's counsel contended that an appeal against the sentence being harsh and excessive goes to the severity of penalty (See Abelle Asuman vs Uganda; Cr. App No. 66 of 2016). He submitted that if the consistency argument were to stand, the appeal should be resolved in favour of the respondent in light of the above authorities.

Consideration of the appeal

We have carefully considered the appellant's appeal, the submissions of counsel and the law. This is a second appeal from the decision of the Court of Appeal on appeal from the High Court and is governed by section 5 (3) of the Judicature Act. The respondent's counsel raised a preliminary point of

law

to the effect that no appeal lies to the Supreme Court against severity of penalty.

We have carefully considered the point of law which is of a preliminary nature because it touches on the jurisdiction of this court to hear any appeal against the severity of penalty. Secondly, we have considered whether the issue of consistency in sentencing is a point of law that takes it out of the

issue of severity of penalties.

The point of law arises from section 5 (3) of the Judicature Act, cap 13 which provides that:

\$20\$

- (3) 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.

A careful perusal of section 5 (3) of the Judicature Act is necessary. It provides **inter alia** that an 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. This means that an accused person may appeal against 25 sentence on a matter of law. However, though the appeal may be on a matter of law, this should not include severity of penalty. In other words, the severity of penalty is excluded from matters of law that may constitute a ground of appeal against sentence.

This is clearly distinguishable from matters of law such as legality of 30 sentence for instance under article 23 (8) of the Constitution which requires the sentencing court to take into account the period spent by the convict on remand prior to his conviction before arriving at the final sentence. Such an

issue would be a matter of law on legality of sentence but not including $\$ \backslash \mathrm{mathsf{S}} \$$ severity of penalty.

The ground of appeal in this court is clearly on severity of penalty as it states that:

The learned Justices of the Court of Appeal erred in law when they upheld a sentence which is harsh, manifestly excessive and inconsistent with previous judicial precedent.

In *Okello Geoffrey v Uganda* (Criminal Appeal No.34 of 2014) [2017] UGSC 37 (20 September 2017) the Supreme Court held that:

...section 5(3) of the **Judicature** the Act does allow not an appellant to appeal to this court on severity of sentence. It allows him or her to appeal against sentence only on a matter of law.

In our interpretation, where the appeal is against the severity of penalty, it does not matter that one alleges that there is a matter of law involved. The grievance is against the severity of penalty. It is not an assertion that the sentence is illegal. A matter of law that is permissible under section 5 (3) of the Judicature Act is one that can be considered and determined on its own and leads to setting aside the penalty on a matter of law without including the severity of penalty. Such matters of law that are permissible

Similarly, in *Abelle v Uganda* (Criminal Appeal No.66 of 2016) [2018] UGSC 10 \$25\$ (19 April 2018), the appeal of the appellant in the Supreme Court was on the ground that:

include matters on the legality of the sentence.

"The learned Justices of Appeal erred in law when they sentenced him to 18 years" imprisonment which sentence is harsh, illegal and excessive in the circumstances of the case."

The ground of appeal in that appeal was couched in the same terms as in the appeal before this court.

In *Abelle Asuman vs Uganda* (supra) the Supreme Court said that:

This appeal, according to the Memorandum of Appeal was also on the ground that the sentence of 18 years imposed on the appellant was harsh and excessive.

The sentence being harsh and excessive are matters that raise the severity of the sentence.

This Court held in *Criminal Appeal No.34 of 2014, Okello Geoffrey vs. Uganda* as follows:

"... Section 5(3) of the Judicature Act does not allow an appellant to appeal to this Court on severity of sentence. It only allows him or her to appeal against sentence only on a matter of law."

Accordingly, we shall not consider issues of the sentence being harsh or excessive since that goes to severity of sentence. The appellant has no right of appeal on severity of sentence.

Likewise, we find that the appellants submissions on the ground of inconsistency in sentences really represents the argument that the sentence imposed on the appellant was higher than in previous similar cases and is harsh and excessive on that account. The harshness or severity of a penalty is a relative concept that juxtaposes the sentence being considered against previous sentences and circumstances. In other words, is in reality an argument that says that the sentence is harsh in relation to other sentences. In that context it is an appeal against the severity of penalty contrary to section 5 (3) of the Judicature Act and we are barred from hearing any appeal against the severity of penalty as this goes to the jurisdiction of the Supreme Court.

In the premises, we find that no appeal lies against severity of penalty and we hereby dismiss the appellant's appeal on this ground alone.

Dated at Kampala the 21 day of October 2024 30

Justice of the Supreme Court
Prof Tibatemwa – Ekirikubinza

Justice of the Supreme Court

Justice of the Supreme Court

Justice of the Supreme Court

Justice of the Supreme Court

Justice of the Supreme Court

Justice of the Supreme Court

Christopher Madrama Izama

Justice of the Supreme Court

$\mathcal{L}_{\text{Slob202e}}$

Catherine Bamugemereire

Justice of the Supreme Court

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugsc/2024/42/eng@2024-10-21>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/adupa-v-uganda-criminal-appeal-81-of-2020-2024-ugsc-42-21-october-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria