

UGANDA / JUDGMENT

Afedra Juliano v Uganda (Criminal Appeal 165 of 2018) [2025] UGCA 99 (10 April 2025)

[2025] UGCA 99

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Mulyagonja, JA, Luswata, JA

CASE / FILE NUMBER

Criminal Appeal 165 of 2018

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THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA AT ARUA

[Coram: Geoffrey Kiryabwire, Irene Mulyagonja, Eva K. Luswata,

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CRIMINAL APPEAL NO. 165 OF 2018

(Arising from the High Court Criminal Session Case No. 12 of 2021 at Arua)

BETWEEN

AFEDRAJULIANO APPELLANT

AND

RESPONDENT UGANDA

(An appeal from the Judgment of the High Court of Uganda, Hon. Lady Justice Elizabeth Ibanda J, delivered on 20th August 2012)

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JUDGMENT OF THE COURT

Introduction

The Appellant was indicted and convicted of the offence of Murder Contrary to Sections 188 and 189 of the Penal Code Act Cap 120.

The facts

The particulars of the offence are that on the 14th September 2011, at Central One Village, Adjumani Town Council in Adjumani District, the Appellant, a guard at a petrol station, shot and killed the deceased (Sadam Brahan Ibrahim) who he alleged was part of a group of three thieves stealing from the petrol station. The Appellant stated that he shot the deceased in the defence of himself and property. On the other hand, it is the case of the prosecution that the deceased was returning home at 3:00 am at night after selling his merchandise and was deliberately shot outside the petrol station while lying down. Furthermore, it is the case of the prosecution that after shooting the deceased the Appellant placed a jerry can and an accumulator near the body to make it appear that the deceased had stolen them. The Appellant denied the charge but he was tried and convicted of the offence of murder and sentenced to life imprisonment.

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Decision of the Trial Court

The Trial Judge sentenced the Appellant to life imprisonment. Dissatisfied, the Appellant appealed against conviction and sentence on the following grounds: -

- 1. The Learned Trial Judge erred in law and facts when she ignored the defence of property and self defence raised by the Appellant and convicted him of the offence of murder thereby occasioning a miscarriage of justice.
- 2. The Learned Trial Judge further erred in law and fact when she failed to properly evaluate the evidence on record regarding the circumstances under which the Appellant shot the deceased and wrongly convicted him of murder thereby occasioning the Appellant a miscarriage of justice.
- 3. The Learned Trial Judge further erred in law and fact when she sentenced the Appellant to life imprisonment which is harsh and excessive thereby occasioning him a miscarriage of justice.

The Respondent opposed the Appeal.

Legal Representation

The Appellant was represented by Mr. Parwoth Micheal holding brief for Mr. Onenchan Ronald of Donge and Company Advocates, while the Respondent was represented by Ms Adrine Asingwire, Chief State Attorney in the Office of the Director of Public Prosecutions (DPP).

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Powers of the Appellate Court

The case of *Oryem Richard v Uganda Criminal Appeal No. 22 of 2014 (SC)* provides for the duty of the Court as follows:

"We should point out at this stage that rule 30(1) of the court of Appeal Rules, places a duty on the court of Appeal, as the first appellate court to re-appraise evidence on record and draw its own inference and conclusion on the case as a whole by making allowance for the fact that it has neither seen nor heard a witness. This gives the appellate court the duty to rehear the case."

We are alive to the duty of this court as a first appellate court as stated in *Kifamunte Henry v Uganda, SCCS No. 10 of 1997* to reappraise all the evidence at trial and come up with our own inferences of fact. This is a first appeal and it is the duty of this court to reappraise the evidence, weigh conflicting evidence and reach its own conclusion on the evidence bearing in mind that it did not see the witnesses testify (*See Pandya v R [1957] EA p 336*)

In *Kiwalabye vs Uganda Supreme Court Criminal Appeal No143 Leon!
Leon! of 2001* it was held that:

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"It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing Judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive *to amount to an injustice."*

We shall apply the above principles to the resolution of this Appeal.

Ground 1: The Learned Trial Judge erred in law and facts when she ignored the defence of property and self defence raised by $\mathbf{r}$ raised by the Appellant and convicted him of the offence of *murder thereby occasioning a miscarriage of justice.*

Submissions of the Appellant

Counsel for the Appellant argued that the appellant acted in selfdefense and in defense of the property which he was employed to guard. He submitted that three thieves entered the petrol station the Appellant was guarding and stole items, including accumulators and fuel. It is the case of the Appellant that he fired a warning shot in the air to deter the thieves, however in the process one of the thieves was fatally injured. Counsel for the Appellant submitted that the

Appellant's actions were reasonable under the circumstances and justified within the meaning of Sections 15 and 16 of the Penal Code Act. In this regard, counsel relied on the case of **Byabagambi Gabriel v Uganda** Criminal Appeal No. 16 of 2002, where it was held that a

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person entrusted to guard property is entitled to use reasonable force to protect it.

Submissions of the Respondent

Counsel for the Respondent contended that the Appellant's actions were excessive and unjustified. Counsel argued that the deceased was unarmed and posed no threat to the Appellant's life or the property as he was shot in "no man's land" outside the perimeter wall of the petrol station. It was further submitted that the Appellant planted items on the deceased to create the impression of theft, demonstrating malice aforethought. In this regard Counsel relied on Section 9(1) of the Penal Code Act, which provides that a mistaken belief in the existence of certain facts does not absolve one of criminal responsibility where such a belief is found to be unreasonable.

Findings and Decision

We find that the Appellant's reliance on self-defense and defense of property is supported by Sections 15 and 16 of the Penal Code Act, which allow the use of force to protect property and person within reasonable limits. However, the evidence, including that of Apiko Alima PW6 and the postmortem report, indicate that the deceased was unarmed and posed no immediate threat. Apiko Alima testified that her house was next to the petrol station and she heard the Appellant shout in Swahili to the deceased to stop and lie down. Shortly thereafter Apiko Alima heard a shot and a person gasping for air. She then left her house and saw the deceased on the ground near

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the door to her house. She also witnessed someone throw a jerry can in the vicinity of the deceased. The Appellant's actions, resulting in a fatal gunshot wound, exceeded the bounds of reasonable force as required under the law.

The trial Judge found: -

... The deceased had no weapon to launch an attack with neither did he disobey the lawful orders of the Accused. I therefore, find that there was no reason as to why the Accused should have shot at the deceased. The Accused also went beyond his jurisdiction and killed the deceased on no man's land..."

The trial Judge further found that: -

"...the Accused exceeded what is reasonable. The items that the Accused claimed to have been stolen are not worth the life of a *human being. The apparent understanding is that the deceased* was not armed. It follows that the Accused used unnecessary *force in self and property..."*

We agree with the findings of the trial Judge. It is evident that there was no concrete threat to the petrol station as testified by the Appellant. The post mortem report further showed that the deceased was shot while lying down which is inconsistent with the bullet having been shot into the air.

It is our finding therefore that the case of *Byabagambi v. Gabriel v. Uganda* (supra) is distinguishable, as the Appellant in this case did

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not demonstrate that his actions were necessary to prevent an imminent threat. The reliance on Section 9(1) of the Penal Code Act further supports the finding that the Appellant's belief in the necessity of his actions was unreasonable. Therefore, the trial court correctly rejected the defense of self-defense.

Ground 1 is dismissed.

Ground 2: The learned Trial Judge further erred in law and facts when she failed to properly evaluate the evidence on record regarding the circumstances under which the Appellant shot the deceased and wrongly convicted him of murder thereby occasioning the Appellant a miscarriage of justice.

Submissions of the Appellant

Counsel for the Appellant argued that the trial Judge failed to properly evaluate the evidence, particularly regarding the circumstances of the shooting. He asserted that the prosecution's evidence did not conclusively establish the necessary ingredient for murder of malice aforethought.

Submissions of the Respondent

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Counsel for the Respondent submitted that the trial Judge adequately analyzed the evidence, including witness testimonies and

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the postmortem report. The prosecution argued that the Appellant acted with malice aforethought, evidenced by the close-range nature of the shot and the lack of an imminent threat. It was submitted that the Appellant's conduct, including allegedly planting items on the deceased, demonstrated premeditation.

Findings and Decision

This Court re-evaluates the evidence in line with the principles outlined in *Gusambizi s/o Wesonga v R* (supra), which places the burden on the prosecution to prove malice aforethought beyond reasonable doubt. The postmortem report revealed that the deceased was shot at close range, causing severe injuries inconsistent with a mere warning shot. Apiko Alima PW 6 testimony further indicated that the Appellant's actions were deliberate and not justified by the circumstances.

While counsel for the Appellant relied on the case of *Gusambizi s/o Wesonga* (supra), the prosecution's evidence sufficiently rebutted the presumption of lawful action. Additionally, the Appellant's alleged attempts to alter the scene weaken his claim of innocence. Accordingly, this Court finds that the trial court properly evaluated the evidence and correctly inferred malice aforethought.

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Ground 2 is dismissed.

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Ground 3: The Learned Trial Judge further erred in law and facts when he sentenced the Appellant to life imprisonment which is harsh and excessive thereby occasioning him a *miscarriage of justice.*

Submissions of the Appellant

The Appellant contended that the sentence of life imprisonment was harsh and excessive, given the mitigating factors, including his lack of prior convictions and the circumstances of the offense.

Submissions of the Respondent

The Respondent argued that the sentence was appropriate and commensurate with the gravity of the offense. The prosecution highlighted the loss of life and the Appellant's breach of professional duties as aggravating factors.

Findings and Decision

We reiterate the established principle, as articulated in **Bikanga Daniel Vs Uganda CACA NO. 38 of 2000**, that sentencing is a discretionary power vested in the trial court. This discretion, however, must be exercised judicially and in accordance with established principles. An appellate court will only intervene where there has been a failure to exercise discretion, a failure to consider material factors, an error in principle, or where the sentence is manifestly excessive.

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At sentencing the trial Judge found: -

"... The victim was only 17 years old. His life was 'snuffed' (sic) out before it could bud. He had just finished his 54 and was hopeful to proceed to the next level and unlike other juveniles he feared (sic) (did not fear) to be enterprising. This case heard (sic) (Court heard) from his relative that during holiday he wanted sell some things. Indeed, on that day he was returning from selling things at cock and built direct sin of crime (sic). He was just asking (sic) out a living just like the 22-year-old convict. I have noted that he was shot at close range perhaps the convict was trying to extract money from him.

The deceased was known to Dfedra despite his denial. He knew his name when he made the statement after the murder. Dfedra's act of stage managing a theft really bothered me. He did not care that he had taken a life of someone known to him. Deep down, he knew the truth but doanment to pronounce it.

Life is so precious (sic) (precious) and people's lives should not be taken away from them randomly. I have noted the mitigating factors: 1st offender without any criminal record; been on remand for almost seven months and has a family, a wife and 3 children including twins. He is now telling court that that he is sorry. As the prosecution observed, sorry cannot resume a life. For doing what he did, the law stipulates the sentence of death which (I) will be lenient and spare you this. I note that in today, Uganda

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manA securitg operatiues are now in the habit of u.nntonlg shooting as if theg are undergoing a shooting spree. It is high time, u.te anrtailed this trend. I haue considered the time spent on remand.

I hereby sentence you to life imprisonment..." (corrections ours)

While the gravity of the offense is undeniable, this Court finds that the learned trial Judge erred in her approach to sentencing. The trial Judge speculated about the Appellant's motives, rather than basing her decision on the evidence presented. She also added her personal feelings about the Appellant's demeanor, and thereby occasioned a miscarriage of justice as these were not tested during trial. She also failed to properly consider relevant mitigating factors.

Furthermore, the trial Judge did not directly give due weight to the Appellant's youthful age of 22 years at the time of the offense. Under Paragraph 4 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice Direction), 2013, the Appellant falls within the definition of "youthful age". In the case of *Kabatera Steven Vs Uganda CA NO. 723 of 2001*, it was held that that young offenders should be treated with more leniency and afforded opportunities for rehabilitation. This the trial Judge did not do.

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Furthermore, the Appellant was remorseful, and voluntarily surrendered to the police.

In the case of *Abaasa & anor V Uganda (CA No 54 of 2016/2018 UGSC 11 (17th April 2018))* it was held that life imprisonment is for the rest of the natural life of the convict.

In the recent appeal of *Mawazi Malinga V Uganda (CA No 43 of 2018) I20211 UGSC 33 (17th February 2021)* the Supreme Court held that the age of the accused should be taken into account at sentencing. In that matter the Court reduced the life sentence meted on an 18 year-old to one of 21 years imprisonment.

In this case we find that indeed the sentence was harsh and manifestly excessive and set it aside. We set it aside and shall substitute the sentence with one of 23 years' imprisonment. To that period, we shall deduct as required under Article 23 (8) the period on remand of 7 months spent by the Appellant and so he shall serve a period of 22 years and 5 months.

Final Decision

- The conviction of the Appellant is upheld and the grounds against conviction dismissed. 1
- The life sentence meted by the trial Court is hereby set aside and substituted with a sentence of 21 years and five months imprisonment to be served from the date of sentencing by the High Court, the 20th day of August 2012. -/ 'tztlr 2

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