

UGANDA / JUDGMENT

Ahimbisibwe v Uganda (Criminal Appeal 439 of 2017) [2024] UGCA 331 (12 December 2024)

[2024] UGCA 331

COURT

Court of Appeal of Uganda

BEFORE

Buteera, DCJ, Luswata, JA, Kihika, JA /JCC

CASE / FILE NUMBER

Criminal Appeal 439 of 2017

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

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Richard Buteera, DCJ, Eva K. Luwasta JA, Oscar Kihika JA)

CRIMINAL APPEAL NO. 0439 OF 2017

BETWEEN

AHIMBISIBWE KATEREGGA:..... 10

AND

UGANDA:.....

(Appeal from the Judgment of the High Court sitting at Nakawa in Criminal Session Case No. 377 of 2015 by Justice Wilson Masalu Musene delivered on 5th June, 2015)

JUDGMENT OF THE COURT

Introduction

1] The Appellant was charged with the offence of murder contrary to Sections 188 and 189 of the Penal Code Act Cap. 120. He was indicted, and on 5th June 2015, pleaded guilty after which he signed a plea bargaining agreement admitting to serve a term of seven years' imprisonment. The Judge convicted him and sentenced him to serve 27 years' imprisonment.

$\frac{1}{2}$ and $\frac{1}{2}$

S

\$20\$

⁵ 2] The Appellant being aggrieved with the decision of the High Court sentence of 27 years which had not been agreed upon in the plea bargain agreement, lodged an appeal premised on one ground set out in the memorandum of appeal as follows:

The learned trial Judge erred in law when he sentenced the Appellant to 27 years' imprisonment contrary to the plea bargain agreement which sentence was based on wrong legal principles, harsh and excessive, leading a miscarriage of justice.

Representation

3] The Appellant attended his appeal by video link from the Murchison Bay Prison in Luzira and was represented in Court by Ms. Sheila Kihumuro Musin gtnzi, on state brief. Ms. Nalwanga Sharifah a Chief State Attorney of the Office of the Director of Public Prosecutions, represented the Respondent. Both counsel prayed to adopt their written submissions prior to hearing of the appeal. Those were confirmed and considered as their legal arguments to decide this appeal. 15 20

Appellants Submissions

4] As an introduction to her submissions, Ms. Mustugu appreciated the principles upon which an appellate court may interfere with a sentence passed by the trial court. She referred to Rule 30(1Xa) of the Judicature (Court of Appeal Rules) Directions, and Kifamunte Henry versus Uganda SC Criminal Appeal No. 10 of L997 where it was that: 25

² W & M-

⁵ "Court will only interfere with a sentence of the trial court if that sentence is illegal or based on wrong principle or the court has overlooked a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. Sentences imposed in previous cases which are not being precedents, do afford material consideration."

- 51 Ms. Musin gutzl then argued that the trial Judge imposed ^a sentence of 27 years' imprisonment which was not only harsh and excessive, but also contrary to what had been agreed in the plea bargain agreement. To support her arguments, she pointed us to Rules 13 and 15(2) of Judicature (Plea Bargain) Rules, 2016 (hereinafter Plea Bargain Rules). She then contended that should the Judge have considered the agreed sentence of seven years' imprisonment as being inadequate, he should have exercised his powers under Rule 13 of the Plea bargaining Rules to reject it. He would have then conducted a full trial.
- 61 Counsel submitted further that this court should not lose sight of various established principles or goals of sentencing for example, the need to rehabilitate offenders. She cited this Court's decision in German Benjamin vs Uganda, CA Criminal Appeal No. L42 of 20LO where it was held that:

"It should be observed that courts tend to lean more on the punitue element of sentencing and lose sight of one of the most crucial elements of sentencing, which is rehabilitation of the offender."

- 7) Counsel then prayed we set aside the sentence of 27 years' imprisonment. She in addition prayed that we exercise our powers 30

3 ilrks/ W

⁵ under Section 1 1 of the Judicature Act to impose the agreed sentence of seven years and when doing so, consider that the two parties in the trial, agreed and then signed the agreement after taking due notice of the mitigating factors presented for the Appellant.

Submissions for the Respondent 10

8] Ms. Sharifah Nalwanga did not contest the appeal. She conceded that the Judge erred in law and fact when he enhanced the sentence to 27 years' imprisonment contrar5r what had been agreed. She referred the Court to the decision of Wangwe Robert vs Uganda, CA Criminal Appeal No. 572 of 2o-14 where the trial Court had enhanced the sentence in the Plea Bargaining Agreement and on appeal, this Court, deemed it was illegal. The Court imposed a new sentence equivalent to that which had been agreed upon in the plea bargain agreement after making allowance for the deduction of the period that the Appellant had spent on remand. In conclusion, Ms. Nalwanga agreed with her colleague that the sentence should be set aside. 15 20

Analysis and decision of court

9] We have carefully studied the court record, considered the submissions for either side, and the law and authorities cited therein. The principles guiding an appellate court when considering any contest against a sentence are well settled. Our powers to intervene and set aside a sentence, are quite limited. We may interfere only in cases where it is shown that:

w---arr*

5f

- ⁵ a. The sentence is illegal.
- b. The sentence is manifestly harsh or excessive or too low as to amount to an injustice.
- c. There has been failure to exercise discretion.
- d. There was failure to take into account a material factor.
- e. An error in principle was made.

See Ogalo S/O Owoura vs R (1954) 27 E. A. C. A. 270, Kgalimpa Edward vs Uganda, SC Criminal Appeal No. 70 of 1995, Kamga Johnson Waaamuno vs Uganda, SC Criminal Appeal No. 76 of 2000 and Kiutalabge vs Uganda, SC Criminal Appeal No. 743 of 2007.

10] It is not in contention that on 5/5/2005, the Appellant pleaded guilty and then executed a plea bargaining agreement to serve a period of seven years' imprisonment. The agreement was formerly presented to court and he signed it in the presence of the Judge. As pointed out for the Appellant, once the agreement was sealed, then Paragraph L5(2) of the Plea Bargain Rules would apply. It provides as follows:

15. Protection of Plea bargain process

"The Court shall not impose a sentence more severe than the maximum sentence recommended in the plea-bargain agreement."

54, C/w TE-

df?

[11] We observed that after the mitigating and aggravating factors were read out to the Appellant, the Judge proceeded to sentence him as follows:

"Court Sentence and Reasons

I take this opportunity to appeal to the public to avoid domestic violence which has disrupted homes and families. In this case, death occurred as a result of such. I have considered the *mitigating and aggravating factors.*

The aggravating factors outweigh mitigating factors. It was indeed, an act of cruelty and beastly to apply a pang on *convict's own wife, whom he was meant to protect, allegedly* 15 over witchcraft. Given the current scientific and technological developments, the believes in witchcraft are backward and *should be disregarded. This was a proper situation where the* maximum penalty of death should have been given. However, as the convict readily pleaded guilty and pursuant to plea bargain reforms, I shall spare convict death penalty. I shall however, increase the proposed penalty by 7 years to 27 years. I subtract 6 years of remand. I do hereby sentence you to serve 27 years' imprisonment."*

Signed: Hon. Justice Wilson Masalu Musene

12] It is evident that the trial Judge accepted part of the agreement between the parties, that is, that the Appellant pleaded guilty as he did. However, he did not accept the sentence that was recommended to the court. Rule 13 of the Plea Bargain Rules provides for the rejection of the plea bargain agreement in the following terms:

\$BL\$ \$c_{h}k\$

⁵ 13. Rejection of plea bargain agreement by court.

- (1) The court maA reject a plea bargain agreement where it is satisfied that the agreement maA occasion a miscarriage of justice.
- (2) WTtere the court rejects a plea bargain agreement-
 - (a) it shall record the reasons for the rejection and inform the parties;
 - (b) the agreement shall become uoid and shall be inadmissible in subsequent trial proceedings or in anA tial relating to the same facts; and
 - (c) the mqtter shall be referred fo, tial, subject to sub rule B (s)
- 13] It is clear from sub-rule 1 above that the court may reject the plea bargain agreement if it will result in a miscarriage of justice. However, the reasons that the trial Judge gave for augmenting the sentence that was agreed upon in the plea bargain, did not arnount to a finding that there was a miscarriage of justice. The trial Judge was simply of the opinion that the sentence that was agreed upon was too low, in view of the facts. He considered that this was a case that should have attracted the maximum sentence of death, but was willing to spare the Appellant because he had readily pleaded guilty, and in light of reforms ushered in by plea bargaining.
- L41 The objectives of entering into plea bargains, are stated in Rule 3 of the Plea Bargain Rules as follows:

7 u)L \r W

The objectives of these Rules are- \$\mathsf{S}\$

- (a) to enhance the efficiency of the criminal justice system for the *orderly, predictable, uniform, consistent and timely resolution of criminal matters;*
- (b) to enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate *punishment;*
- (c) to facilitate reduction in case backlog and prison congestion;
- (*d*) to provide quick relief from the anxiety of criminal prosecution;

(e) to encourage accused persons to own up to their criminal *responsibility; and*

(f) to involve the victim in the adjudication process.

- 15] It is evident in this case that the objectives were achieved because the Appellant pleaded guilty to the offence after six years in prison. As provided in clause (b) above, this was in consideration that the court would impose a lesser sentence than would have been due to him had he been tried for the offence. We of the view that for those convicts who choose to plead guilty and then participate in the plea bargaining exercise, there is an expectation that a less severe sentence will be imposed, and an earlier discharge from prison achieved, as opposed to those who are convicted after a full trial.
- [16] This Court in *Agaba Emanuel & 2 Others vs Uganda, CA Criminal Appeal No. 139 of 2017* held that an accused person is entitled to an assurance that a sentence agreed upon in the plea

12 and

\$20\$

\$25\$

\$10\$

bargain agreement will be respected and will not be substituted with a Judge-imposed sentence. Further, that where a promise is made to an accused person in the plea bargaining process, that promise must be fulfilled as though it was a contract between the parties. The court held, and we emphasise, that:

$\$S\%$

\$20\$

"... plea bargaining creates an agreement between the 10 *prosecutor and the accused with all the features of an* agreement in the law of contract. The court plays the role of a regulator of the agreement to ensure that the agreement conforms to the needs of the justice of the case. But the court is not privy to the agreement and cannot redefine it. What the 15 court may do is to reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice. ...

> *It is because of the seriousness accorded to a plea bargain* that the rules prohibit the substitution of a judge imposed *sentence in the context of plea bargain context." (sic)*

- 17] In the more recent case of *Aria Angelo vs Uganda, CA Criminal Appeal No. 439 of 2015*, in which judgment was handed down on 11th February 2022, this court observed that:

- "The rules give the judicial officer the opportunity to superintend over the proceedings to ensure there is no miscarriage of justice or abuse of the process making it a *mockery of justice. The judge or judicial officer may recommend a particular sentence which in his or her opinion* serves the justice of the case. The above notwithstanding, the judicial officer does not have the discretion to impose his or *her own sentence.*"

De ank

- ⁵ 18] In our view, the agreed sentence of seven years' imprisonment appeared to have been on the lower side for the offence of murder which was committed by the Appellant against his spouse. It was a gruesome murder carried out in cold blood. In view of those facts, we do not consider a sentence of 27 years' imprisonment that was imposed by the trial judge as being harsh and excessive in the circumstances. However, the trial Judge's only option in the circumstances was to reject the plea bargain agreement altogether, but not to impose a sentence of his own. By doing so, the Judge imposed an illegal sentence contrary to law, one that cannot stand and we do set it aside. 10 15
- 191 In the circumstances therefore, we invoke the powers of this Court under section 11 of the Judicature Act to bring the plea bargain agreement into effect. We sentence the Appellant to a period of seven years' imprisonment that had been agreed upon in the plea bargain agreement. Pursuant to Article 23 (B) of the Constitution, we now deduct the period of six years that the Appellant had spent in prison at the time he was convicted. The Appellant is therefore hereby sentenced to a term of twelve months' imprisonment, with effect from the 12th day of June 2015, the date on which he was convicted.

rt a

201 Its clear that the Appellant has to date fully served his sentence of seven years' imprisonment. We accordingly order that he is set free with immediate effect, unless it is shown that he is serving any other lawful sentence. 25

LJ, { 10 6/ q

5 Dated at Kampala this 12th day of December 2024.

\$\lambda\$

HON. RICHARD BUTEERA DEPUTY CHIEF JUSTICE

HON. EVA K. LUSWATA JUSTICE OF APPEAL

HON. OSCAR/H JUSTICE OF APPEAL

\$10\$

20

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/ugca/2024/331/eng@2024-12-12
CASE PAGE	https://chat.esheria.ai/case-law/uganda/ahimbisibwe-v-uganda-criminal-appeal-439-of-2017-2024-ugca-331-12-december-2024-unknown-topic-unknown-court-2024--6a3ea4da3b1caa91297e69a8

Prepared on 13 October 2026 · Esheria