

UGANDA / JUDGMENT

Ategka Yubu v Uganda

(Criminal Appeal No. 0066-2019)

[2025] UGCA 184 (30 May 2025)

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COURT

Court of Appeal of Uganda

BEFORE

Dr. F. Zeija, DCJ, Gashirabake, JA, K.K. Katunguka,
JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 0066-2019

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MASINDI

[Coram: F. Zeija, DCJ, C. Gashirabake, K K. Katunguka, JJA.]

CRIMINAL APPEAL NO. 0066-2019 OF 2020

BETWEEN

ATEGEKA YUBU APPELLANT

AND

UGANDA RESPONDENT

Appeal arising from the decision of the High Court of Uganda at Masindi (Rugadya Atwooki, J.),
in Criminal Session Case No. 130 of 2013 delivered on the 24th day of July, 2018

JUDGMENT OF THE COURT

Introduction

- The appellant was indicted and convicted by the High Court on two counts of murder contrary to Sections 188 and 189 of the Penal Code Act Cap 120. He was sentenced to life imprisonment on each count and the sentences were to run concurrently.

- 121 Being dissatisfied with the decision of the trial court, the appellant filed this appeal on the following grounds;
- 1. The learned trial Judge erred in law and fact when he convicted and sentenced the appellant when there was no evidence to corroborate the evidence of the PW1 a single identifying witness thereby reaching an erroneous decision which occasioned an injustice.
- 2. The learned trial Judge erred in law and in fact when conducting plea taking of the Appellant.

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- 3. The learned trial Judge erred in law and fact in disregarding the appellant's alibi and found that the offence of murder was proved beyond reasonable doubt.
- 4. The learned trial Judge erred in law and fact when he imposed a manifestly harsh and excessive sentence against the Appellant.
- t31 The appellant seeks the following orders;
- '1. Orders of the trial judge be set aside and be substituted with an order allowing the Appeal.
- 2. Quash the conviction and set aside the sentence and;
- 3. In the alternative, should the conviction be upheld; the sentence be reduced as shall be judiciously determined.

Background

- [4] The facts of the case as presented before the trial court are that the appellant was cohabiting with Tumusiime Jacqueline at Kasambya village, Waiga "B" in Masindi District. Tumusiime was the mother of twins, named Nyangoma Rosemary and Kato Joseph (jointly referred to as the deceased). On the night of 20th January, 2013, the appellant picked a quarrel with Tumusiime over her alleged adulterous acts and a fight ensued.
- [5] Tumusiime then went to the home of Mustafa Unegiu known as the Mayor of the Trading Centre seeking assistance to go and collect her property from the couple's house. Before they left, the appellant arrived and tried to hit Tumusiime. He was held back and he moved away. The appellant was then seen picking a panga from outside his house, he entered the house and a sound was heard from inside. When Mustafa Unegiu and a one Beatrice entered the house, they found when the deceased had been cut on their heads and were dead.
- [6] Upon arraignment, the appellant denied the offence. At trial, the prosecution presented four witnesses and the appellant made an unsworn statement from the

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dock and did not call witnesses.

Representation

- [7] At the hearing of this appeal, Ms. Susan Zemei appeared on State brief for the appellant while Ms. Happiness Ainebyona- a Chief State Attorney holding brief for Ms. Kabazungu Anne represented the respondent.
- [8] Counsel for the appellant and with leave of court, withdrew the first memorandum of appeal filed on '18th April, 2019. She proceeded with the memorandum of appeal filed on 24th April 2025. Counsel further sought and was granted leave to withdraw ground 1,2 and 3, and proceed only on the 4th ground regarding sentence.
- tgl Both parties filed written submissions, which were adopted as their legal arguments in the appeal.

Appellant's submissions

- [10] Counsel for the appellant submitted that the trial Judge erred in law and fact when he imposed a manifestly harsh and excessive sentence against the appellant. Counsel was alive to the law relating to interference by the appellate court with the sentence of the trial court and cited *Wamutabanewe Jamiru vs Uganda SCCA No. 74 of 2007*.
- [11] Counsel submitted that the appellant was a first time offender, was only 22 years old at the time the offence was committed, that he has learnt his lesson from the years spent on remand, he is HIV +, has children and dependants. Counsel submitted that the maximum sentence did not serve justice.
- [12] Counsel in her oral submissions prayed for leniency, stating that at the appellants' age he would spend his entire life in prison. Counsel concluded by praying that the appeal be allowed and the sentence of life imprisonment be reduced.

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Respondent's submissions

- [13] In reply, Counsel for the respondent opposed the appeal and supported the sentence passed by the trial court. Counsel relied on the decision of *Kiwalabye vs Uganda, Supreme Court Criminal Appeal No. 143 of 2001*.
- [14] Counsel submitted that the appellant was convicted of murdering two, three-year-old children. That the appellant committed the offence in a brutal manner. That he had quarrelled with his wife Tumusiime and then hacked the children on their heads to death. Further, that the maximum penalty for the offence of murder as provided under the Penal code is death.

- [15] Counsel for the respondent submitted that the trial Judge in sentencing the appellant considered both the aggravating and the mitigating factors. Further that the sentence befits the crime committed by the appellant and prayed that cou(deems the sentence handed down by the trial Judge appropriate and befitting the horrific circumstances of this case.

Consideration of the appeal

- [16] The duty of the first appellate court stated under Rule 30(1) of the Judicature (Court of Appeals Rules) Directions, is to reappraise all material evidence that was adduced before the trial court and come to its own conclusions of fact and law while making allowance for the fact that it neither saw nor heard the witnesses testify. This principle is re-echoed in *Henry Kifamunte vs Uganda*, Supreme Court Criminal Appeal No.10 of 1997. In this regard, we have carefully read the record of the trial court, the submissions of both counsel and the authorities cited, and others not cited by the parties.

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Resolution of the appeal

- [17] The contention in this appeal is that the sentence passed by the trial Judge is manifestly harsh and excessive. The principles guiding the appellate court when considering any contest relating to the severity of a sentence are well settled as follows;

> "The appellate court is not to interfere with the sentence imposed by a trial court where the court has exercised its discretion of sentence, unless the exercise of 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 the trial court ignores to consider an important matter or circumstance which ought to be considered while passing sentence or where sentence imposed is wrong in principle."

See; *Kiwalabye Bernard vs Uganda* (Supra) and *Wamutabanewe Jamiru vs Uganda* (Supra).

- [18] In the present case, the trial Judge in his sentencing notes at pages 21-22 of the record of appeal considered both the aggravating and mitigating factors, and sentenced the appellant to imprisonment for life on Count 1 and Count 2 to run concurrently.
- [19] The reasons advanced by the trial Judge, the mitigating and aggravating factors were considered before the appellant was sentenced. We find that the trial judge's sentence should not be faulted. The appellant will continue serving the sentence meted out on him at trial.

Decision of Court

- [20] In the final result, we find no merit in the appeal and it stands dismissed

We so order

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U^ 3D Dated and delivered at Masindi day of .2025. avtan Zeija (PhD) r r.....!..... Christopher Gashirabake Justice peal Ketrah Kitariisibwa Katunguka Justice of Appeal Justice of Appeal

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