

UGANDA / JUDGMENT

Baliruno v Uganda (Criminal Appeal 371 of 2019) [2025] UGCA 9 (24 January 2025)

[2025] UGCA 9

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Criminal Appeal 371 of 2019

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDDA AT I(AMPALA CRIMINAL APPEAL No. 321 of ZOtg

BALIRUNO ISMAIL APPELLANT

VERSUS

UGANDA.... RESPONDENT (An appeal arising from the decision of Hon. Justice Emmanuel Baguma in the High Court of Uganda-Criminal Session Case No. O29 OF 2018 Holden at Mplgi delivered on the llzth day of July, 20tel

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ HON. JUSTICE EVA LUStrIATA, JA HON. JUSTICE OSCAR JOHN KIHIIKA, JA

JUDGEMENT OF COURT

Introduction

The Appellant was indicted, tried and convicted of murder contrary to section 188 and 189 of the pena-l code Act and was sentenced to 23 years and 8 month's imprisonment.

Background

The facts as ascertained from the court record are that on the 6th day of November 2017, at Gwatiro vilage in Butamba-la District, at

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around 8.00 pm, the Appellant attacked one Nanfuka Justine, the deceased, and hit her with a stick leading to a fractured skull which caused brain damage that ultimately resulted into her demise. The Appellant was arrested and indicted with the offence of murder. Upon conviction, the Appellant was sentenced to a term of 23 years and ^g months' imprisonment which was reduced to 22 years after the trial Judge deducted the period of 1 year and g months which the Appellant had spent on remand.

Being dissatisfied with decision of the trial Judge, the Appellant appealed to this Court against the sentence only.

GROUND OF APPEAL

The Learned trial Judge erred in law and fact when he sentenced the Appellant to 23 years and 8 months imprisonment for murder which sentence were manifestly harsh, and excessive in the circumstances.

Appearances

At the hearing of the Appeal, Ms. Shamim Nalule appeared for the Appellant on state brief while Ms. Nabisenke viclgr, Assistant Director Public Prosecution appeared for the Respondent.

The Appellant sought leave under Section 132 (r) (b) of the Trial on Indictment Act (TIA) to appeal against sentence only which leave was accordingly granted by this Court.

Both counsel relied on written submissions which this court has considered in the resolution of this appeal.

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Submission for the Appellant

It was submitted for the Appellant that the learned trial judge did not properly take into account the mitigating factors thereby arriving at harsh and excessive sentence. It was the Appellant's submission that the learned trial judge did not follow the principle of consistency and uniformity in sentencing the Appellant thereby arriving at an excessive sentence. counsel relied on the authority of *Kiwalabye Bernard v Uganda*, Supreme Court Criminal Appeal No. 143 of 2001 which highlights the principle that courts are not supposed to interfere with the discretion of the sentencing trial judge unless the result of the sentence imposed is manifestly excessive or so low as to amount to a miscarriage of justice. counsel contended that the sentence imposed was harsh and excessive, and, as such prayed that this court ought to set aside the sentence and substitute it with ^a more lenient sentence of 20 years.

Counsel for the Appellant, while relying on Benjamin Odoki, s Guide to criminal Procedure, 3rd Edition 120,061, further submitted that an accused person who is a first offender and as had a previous good record, is valid mitigating factor. Counsel for the Appellant contended that the Appellant had no previous record and that the trial Judge ought to have taken this into account as a mitigating factor, which he did not.

Counsel for the Appellant made a prayer that court allows this ground of appeal,

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Submission for the Respondent

In reply, Counsel for the Respondent argued that the trial court considered both the aggravating and mitigating factors and that the sentence which was passed by the learned trial judge was neither harsh nor excessive.

Counsel further argued that there was no illegality on the part of the sentence passed by the trial Judge to warrant interference by this court. It was further contended that the sentence was neither harsh nor excessive based on the circumstances under which the offence was committed.

Counsel submitted that the sentence passed was well within the precincts of the law and that it was consistent with the sentencing ranges in murder cases as provided by the Sentencing Guidelines and previously decided cases. He prayed that court dismisses the appeal and upholds the sentence of the trial Court

Analysis

We are guided by the principles laid down by the Supreme Court in *Kamya Johnson Wavamuno v Uganda SCCA Iyo. 16 of 2000* where the court held that,

o... It is well settled. that a court of appeal will not interfere with the exercise of discretion unless there has been a failure to take into account a material consideration, or an error in principle, or a manifest error.

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See *Aiso Sekandi Hassan v Uganda SCCA No. 25 of 2019*, *Livingstone Kakooza v Uganda SCCA No. 12 of 1993* [unreported] and *Jackson Zita v Uganda, SCCA No. 19 of 1995*.

The major complaint raised by the Appellant is that the sentence passed by the trial Judge was harsh and excessive. In his sentencing notes the Learned Trial Judge stated as follows;

"I have considered both the aggravating and mitigating factors as submitted by both the prosecution and the defence.

Accused (A1) is sentenced to 23 years and 6 months imprisonment.

Howeuer, since the accused has been on remand for one year and 8 months as the period accused has been on remand.

In the uiew of the aboue the accused (A1) is sentenced to serue a period of 22 gear's imprisonment."

It is quite clear to us that after putting into consideration, the mitigating and aggravating factors, the Learned Trial Judge sentenced the Appellant to 22 years, imprisonment. It has to be stated that according to the proceedings of the lower court, the major mitigating factor brought to the attention of the tria-l Judge was that the Appellant was a hrst offender, 27 years of age, who had no previous criminal record. we therefore do not agree with the submissions of counsel for the Appellant that the trial Judge did not take this mitigating factor into account.

According to the third schedule of the Sentencing guidelines, the sentencing range for the offence of murder is 30 years to the death sentence after considering the mitigating and aggravating factors. In the matter before us, it is evident that the Learned Trial Judge handed down a sentence of 22 years, which is far below the maximum penalty of death after accessing all factors.

To maintain the principle of stare-decis, this court bares in mind that there is need to maintain uniformity and consistency in its decisions. This is achieved by looking at previous decisions of this Court and the Supreme court which have considered cases with relatively similar facts.

In Hon. Akbar Godi v Uganda Supreme Court Criminal Appeal No. 3 of 2013, Court confirmed a 25 year's imprisonment where the Appellant had killed his wife.

In Kyaterekera George William v Uganda; Court of Appeal Criminal Appeal No. 113 of 2010, this Court confirmed the sentence of 30 year's imprisonment, imposed by the trial court, where the Appellant was convicted of murder by fatally stabbing the victim in the chest.

In Kakeeto Joseph Vs Uganda, Court of Appeal Criminal Appeal No. 370 of 2019, this Court reduced the sentence of 25 years for murder to 23 years after deducting the period spent on remand.

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In Musana Alex Vs Uganda, Court of Appeal Criminal Appeal No. 705 of 2015, this Court sentenced the appellant, who was a young man, to a prison sentence of 23 years for murder.

It is our considered view, that without proof that the learned trial Judge acted on a wrong principle or ignored some material fact, this Court would have no lawful reason to interfere with the decision of the learned sentencing Judge.

We find no merit in this appeal and it is accordingly dismissed. The sentence that was passed by the trial Judge is hereby upheld.

We so order.

\$\ldots\$ day of Delivered and dated this .. 2024 HON. MR. JUSTICE RICHARD BUTEERA Deputy Chief Justice HON. LADY JUSTICE EVA LUSWATA **Justice of Appeal** Page 7 of 8

HON. MR JUSTICE JOHN OSCAR KIHIIKA Justice of Appeal

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