

UGANDA / JUDGMENT

Beinomugisha v Uganda

(Criminal Appeal 478 of 2014)

[2025] UGCA 4 (24 January 2025)

[2025] UGCA 4

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Criminal Appeal 478 of 2014

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THE REPUBLIC OF UGANDA**THE COURT OF APPEAL OF UGANDA AT KAMPALA**

(Coram: Buteera DCJ, Luswata JA, Kihika JA).

CRIMINAL APPEAL NO. 478 OF 2014**BETWEEN**

BEINOMUGISHA GERALD: 10

AND**UGANDA: EXAMPLE 10 RESPONDENT**

(Appeal from the Judgment of the High Court sitting at Kampala in Criminal Session Case No. 226 of 2013 by Justice Elizabeth K. Kabanda delivered on 11th November, 2013)\$

JUDGMENT OF THE COURT

Introduction

- The Appellant was charged with the offence of murder contrary to $\S 1$ Sections 188 and 189 of the Penal Code Act Cap. 120. He was 20 indicted, convicted and sentenced to suffer death. It was stated in the indictment that Beinomugisha Gerald on the 9th day of January 2006, at Rugando Village in the Rukungiri District, murdered one Komukama Dinavence.
- The brief facts as discerned from the record are that the Appellant 25 $\S 2$ who was married to the deceased, resided with her in Rugando

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Village, Buhunga Subcounty in the Rukungiri District. They developed misunderstanding after the deceased found out that the Appellant had contacted HIV/AIDS, and a decision was made that they sleep in separate bedrooms. During the night of 9th January 2006, at about 11:00pm, the Appellant used a ladder to access the deceased's bedroom. When the deceased made an alarm, the Appellant cut her with a panga inflicting extensive wounds around her neck and temporal area. PW3, Tushemerirwe Winnie, who was in the same house, heard the commotion in the deceased's room and forced the door open. She discovered the Appellant holding a panga and the deceased was covered in blood. PW3 raised an alarm that attracted neighbours who rushed the deceased to Rusheshe Health Centre. The deceased later succumbed to her injuries at Nyakibale Hospital on 10th January, 2006. The Appellant who had fled the scene was arrested the following day in a sorghum plantation where he was found in possession of a panga.

The Appellant did not contest the conviction. His appeal is $\S 3$ premised on one ground of appeal that:

The learned sentencing Judge erred in law and in fact when he failed to properly evaluate the evidence in mitigation of sentence and sentenced the appellant to suffer death, which sentence was manifestly harsh and excessive in the circumstances.

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Representation S

At the hearing of the appeal, the Appellant who appeared by video $\$4$ link from the Upper Prison in Luzira, was represented by Ms. Shamim Nalule on State brief. The Respondent was represented by Ms. Innocent Aleto, a Senior State Attorney. Both counsel filed written arguments before the hearing of the appeal, and Ms. Nalule was at the hearing allowed to file a rejoinder to her colleague's submissions. We have considered them to arrive at our decision.

Submissions for the Appellant

As an introduction to her submissions and a rejoinder filed on 14th 15 51 March 2024, Ms. Nalule provided an overview of previous decided cases which discussed and then gave the current legal position on the death penalty in Uganda and other jurisdictions. She cited for example Attorney General vs Suzan Kigula & 17 others, [2009] UGSC 6 where the Supreme Court held that the death penalty is 20 unconstitutional and cannot be uniformly imposed because murders take different forms. She also cited Mbunya Godfrey vs Uganda, SC Criminal Appeal No. 04 of 2011 where the same court held that because of its finality, the death penalty should be reserved only for grave and rare circumstances to permit the $\$25$ possibility of reform. Counsel cited in addition Kakubi vs Uganda, CA Criminal Appeal No. 04 of 2011 and LDU Kyarikunda Richard vs Uganda [2016] UGCA 70 which cited the position in the South African case of State vs Makwanyane (1995) (3) S. A.

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391 that the death penalty should only be imposed in circumstances that establish the gravest of extreme culpability, and where it is determined that individual reform and rehabilitation consequent to a custodial sentence would be impossible, or where the object of punishment would not be achieved by any other sentence. Counsel in addition cited Paragraph 17 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice Directions) 2013 (hereinafter the Sentencing Guidelines) and Section 5 of the Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019 (hereinafter the Law Revision Act), which provide that facts that merit that penalty, should fall into the category of the "rarest of the rare." That law and the court pronouncements above have now cemented that principle into law.

In the main body of her submissions, Ms. Nalule relied on the $\$6$ decision of Muwonge Fulgensio vs Uganda, CA Criminal Appeal No. 0586 of 2014 to contest the imposition of the death penalty in this case. In particular, that:

- $\$i$. The test for the imposition of the discretionary death penalty was not met in the circumstances of this case and/or
- It was unduly harsh and manifestly excessive in the ii. circumstances and,
- It was not consistent with sentences imposed in earlier iii. decided cases involving similar facts.

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- To expand the above submissions, Ms. Nalule argued strongly that S the facts here did not meet the threshold for imposition of the death penalty. She conceded that murder is a crime of utmost seriousness but the facts here did not establish extreme culpability and when compared with other similar cases, did not fall into the category of the "rarest of the rare". It was her view that 10 the aggravating factors identified by the prosecution were not exceptional for there has previously been murders by partners in a shared home, pangas as murder weapons are not new, and there have been other cases of murders resulting from wounds to the head and neck. Further that a single threat before commission of 15 the offence would not be exceptional, and the possibility of use of a ladder in this case, would be an opportunistic maneuver by the offender other than an indication that the offence was preplanned. Further that, since the Appellant was easily connected to the murder and apprehended soon after it happened, there was no marked degree of sophistication or concealment by him. Ms. Nalule argued in addition that the Court should have considered that fact that the Appellant was heavily intoxicated at the material time, which should have been considered as a mitigating factor in his case.
- Ms. Nalule also pointed out other mitigating factors raised but not S considered during the Appellant's sentencing. For example, that the Appellant supported a large family of 10 children, he was remorseful and had readily accepted responsibility of the crime. Further that at 58 years, he was of advanced age and now suffers from a number of health problems including HIV. Lastly that

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- ample evidence was given during his resentencing but not S considered that he was now a reformed man. It was Ms. Nalule's view that the Judge neglected to fairly balance the aggravating and mitigating factors, or at least gave no weight to the latter and as a result, wrongly imposed a death sentence.
- Ms. Nalule buttressed that argument by quoting previous 10 S decisions involving similar or greater levels of culpability. In addition to the Kakubi Paul, Muwonge Fulgensi, Mbunya Godfrey and Suzan Kigula (supra) decisions, she cited for example, Attine Bonny vs Uganda, Criminal Appeal No. 255 of 2017 (decided on 25/5/2023), Aharikundira Yustina vs Uganda, 15 Criminal Appeal No. 27 of 2015, Uwera Nsenga vs Uganda, Criminal Appeal No. 312 of 2013 and Lule Festo vs Uganda, Criminal Appeal No. 214 of 2009. That in comparison, the sentence here was manifestly excessive and resulted into an injustice. She argued that most authorities presented by the Respondent to demonstrate the consistency principle, contained gruesome facts, quite different from the case here.

Ms. Nalule also complained of what she considered inordinate \$10\$ delay for the Appellant's case to be processed through the court system, which she considered as a violation of the Appellant's right to a fair and speedy hearing. She in addition mentioned his detention as the subject of an unlawful mandatory death sentence, the delay to hear this appeal, and the fact that her client has had to endure deplorable prison conditions and the attendant effects brought about by the "death row syndrome". She made

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- reference to the Supreme Court decision of Suzan Kigula vs \$\mathsf{S}\$ Attorney General (supra) in that regard, and then argued that the delays would be justification for this Court to consider setting aside the death sentence.
- In conclusion, Ms. Nalule submitted that there being evidence that \$[11]\$ the Appellant had reformed, the imposition of a death penalty was 10 wrong in principle and manifestly excessive in the circumstances. In her opinion, a custodial sentence in the region of 20 years' imprisonment would be appropriate in the circumstances and from that, the remand period of 2 years and 7 months and 30 days (dating back to the conviction date) should be deducted. 15

Submissions for the Respondent

- 12] Ms. Innocent Aleto opposed this appeal. She contended that sentencing being in the discretion of the trial Judge, the Appellate court may interfere only if certain criteria are not met, or if the sentence is manifestly excessive or so low as to amount to a miscarriage of justice. She cited the decision in Kiwalabye Bernard vs Uganda, SC Criminal Appeal No. 143 of 2001 which followed James s/o Yoram versus R (1950) 18 EACA 147.
- Ms. Aleto strongly contested the submission that the death \$13]\$ sentence is illegal. She cited Sekandi Hassan vs Uganda, Criminal Appeal No. 25 of 2019, and Wandubire Clement vs Uganda, Criminal Appeal No. 41 of 2017, in which the Supreme Court explained that its decision of Suzan Kigula (supra) only renounced the compulsory nature of the death penalty, but

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emphasized that it is a legal sentence that can be imposed even 5 after mitigating factors are considered. Ms. Aleto drew our attention to Paragraphs, 6(a) of the Sentencing Guidelines which provides for factors to be taken into account when passing a sentence, and paragraphs 17, 18 and 20 that specifically make provision for factors to consider when a Court considers that a particular case merits imposition of the death sentence. In her view, both the trial Judge and the re-sentencing Judge did. consider the mitigating and aggravating factors, the Sentencing Guidelines, all penal provisions and the available authorities while sentencing the Appellant.

Counsel found it as correct for the trial and re-sentencing Judge [14] to make a finding that it was a planned gruesome murder, that weakened the mitigating factor that the Appellant was a first time offender. Counsel cited the Supreme Court decisions of *Turyahabwe Ezra & 12 Others vs Uganda*, Criminal Appeal No. 50 of 2015, and *Mbunya Godfrey vs Uganda*, (supra), cited with approval in *Wandubire Clement vs Uganda*, (supra) in that regard. In her view, it was a senseless death of a woman who sacrificed to remain in her marital home to take care of her family, even after learning of the Appellant's illness.

15] In addition, Ms. Aleto disagreed with the submission that the Appellant having gone through a reformatory program while in prison, earned him a right to a more lenient sentence or that such experience should have a bearing on the sentence imposed. Further that the Appellant's age was never raised during the re-

- sentencing proceedings and the Judge was thus correct to disregard it. Counsel cited the Supreme Court decision in *Turyahabwe Ezra & 12 Others vs Uganda*, (Supra) and *Dembere Samson vs Uganda*, CA Criminal Appeal No. 470 of 2015, where the courts declined to interfere with sentences of fairly elderly convicts, holding that at such an age, the convicts should not have participated in the crimes for which they were convicted. That similarly in this case, the Appellant aged 57 years at the material time, ought to have protected his wife as opposed to ending her life.
- Counsel argued further that delay in hearing the appeal is not in law a mitigating factor, and the defence of intoxication having not been raised at the trial, cannot be considered on appeal. Further the letter adduced to demonstrate the Appellant's that remorsefulness having never been adduced into evidence at the trial, should equally be disregarded. Ms. Aleto also strongly discounted the submission that the Appellant has or had 10 children to take care of. That he showed no care for them when he murdered their mother in the same home they all shared leaving them with a lifelong trauma, and one of them had testified at the trial that he preferred the Appellant to stay away from them. 25
- Finally, Ms. Aleto agreed with the submission that in line with the [17] Sentencing Guidelines, Courts ought to consider the consistency principle. However, citing several authorities, she argued that each case must be considered in regard with its peculiar facts and in this case, the Appellant who killed his wife with a sharp panga

inside a house they shared with their children, was devoid of any humanity and deserved the death penalty. Counsel cited several cases where the Supreme Court found cause to uphold the death sentence, even where the convict had pleaded guilty. He cited, for example, *Bashasha Sharif vs Uganda*, SC Criminal Appeal No. 62 of 2018, *Kyabire Patrick & 3 Ors vs Uganda*, SC Criminal Appeal No. 62 of 2018, and *Namwange Pauline vs Uganda*, SC Criminal Appeal No. 14 of 2009. Also giving reasons, Counsel distinguished some cases where a death sentence was reversed.

18] In conclusion. Ms. Aleto, argued that the Appellant had advanced no reason for this court to interfere with the sentence imposed and then confirmed by the High Court. She contended that the trial Judge weighed both the mitigating and aggravating factors before finding that the latter far outweighed the former. That mitigating factors not by themselves being law, would not be binding on any court and could be disregarded by a Court as was the case in *Dhewume Abdulla vs Uganda*, CA Criminal appeal No. 21 of 2016. Finally, that since all issues raised on appeal were fully addressed by the trial and re-sentencing Judges, this appeal should be dismissed and the sentence upheld.

²⁵ Analysis and Decision of the Court

191 we have carefully studied the record, considered the submissions of both sides, as well as the law and authorities cited therein. ^A first appeal from the decision of the High Court requires this Court to review the evidence and make its own inferences of law and fact.

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See: Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions S. I 13-10 (COA Rules) which is in tandem with the Supreme Court decision in *Kifamunte Henry vs Uganda*, SC Criminal Appeal No. 10 of 1997, where it was held that on a first appeal, this court has a duty to:

> "... review the evidence of the case and to consider materials before the trial Judge. The appellate court must then make up its own mind not disregarding the judgement appealed from, but carefully weighing and considering it."

20] This appeal was lodged against sentence only. The Appellant considered the death sentence as manifestly harsh and excessive. 15 His specific complaint against sentence was that the learned trial Judge and the resentencing Judge failed to properly evaluate the facts presented in mitigation of the evidence and by doing so, wrongly categorized this case as one being "rarest of the rare," and therefore deserving of a death sentence. That considering previously decided cases with similar circumstances, the fact that the Appellant had reformed while still in prison, where he had spent a considerably long period before being re-sentenced, the death penalty was in the circumstances, harsh and excessive. Conversely, Respondent's counsel considered that the appeal lacked merit because the death penalty was imposed after the trial and re-sentencing Judge, considered all pertinent facts and the law. That considering previously decided cases, and the facts presented here, no grounds were established to persuade this court to interfere with the sentence imposed. BR

21] The settled legal position is that an appellate court's powers to S intervene and set aside a sentence is limited. The decisions provided by Respondent's counsel are instructive on this point. This Court in the decision of *Olar Joseph Peter vs Uganda*, CA Criminal Appeal No. 30 of 2010 that cited with approval the earlier decision of *Kiwalabye Bernard vs Uganda*, (Supra) held as follows:

> "The appellate court is not to interfere with sentence imposed by the trial court where the trial court exercised its discretion on sentence, unless the exercise of that 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 the sentence or where the sentence imposed is wrong in principle."

Also see: *Livingstone Kakooza versus Uganda*, SCCA No. 17 of 1993.

Alive to the above-stated duty and limitations, we shall proceed to resolve the grounds of appeal.

The old position under Section 189 of the Penal Code Act, was that $\mathsf{22}$ a conviction of murder carried a mandatory sentence of death. As such, on rd December 2004, the Appellant received a death sentence and currently remains on death row. The position has since changed after the Supreme Court Constitutional Appeal in the case of *Attorney General vs Suzan Kigula & 417 Others*, (Supra). The Supreme Court agreed with the Constitutional Court

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that various provisions of the laws of Uganda which prescribe a mandatory death sentence are inconsistent with the Constitution. It was in addition held that the inordinate delay to carry out the death sentence is unconstitutional. As a result, the Supreme Court set aside the mandatory death sentence and allowed such persons found guilty to mitigate their sentence. In that case, it was observed that:

> "..... a person accused of stealing a chicken may not only be heard in mitigation, but may actually request the court to inquire into his character and antecedents for purposes of assessing appropriate sentence for him, while on the other hand, a person accused of murder and whose very life is at stake, may not do likewise. We think this is inconsistent with the principle of equality before and under the law. Not all murders are committed in the same circumstances, and all murderers are not necessarily of the same character. One may be a first offender, and the murder may have been committed in circumstances that the accused person deeply regrets and is very remorseful. We see no reason why these factors should not be put before the court before it passes the ultimate sentence..."

- The above position was subsequently explained by the same Court $\mathsf{23}$ in *Aharikundira Yustina vs Uganda*, SC Criminal Appeal No. 27

- of 2015, where it was held that:

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"In the instant case, the Appellant was found guilty of murder and sentenced to suffer death. It is trite that \$a\$ person convicted of a capital offence in this country cannot be sentenced to suffer death as a matter of course without the court considering mitigating factors and other pre-sentencing requirements. This is because

a death sentence is no longer mandatory in this country: See Suzan Kigula (supra). According to the above case, the death Sentence should be visited on a convict in the rarest of the rare cases. It is also important to bear in mind that a death sentence being the heaviest sentence in the land should be carefully examined at different levels including at the appellate level to ensure its propriety."

For that reason, the Appellant as a lawful candidate for mitigation,

- had his case referred back to another High Court Judge who after hearing the matter, confirmed the death sentence.
- 24] The Legislature has followed up the numerous court pronouncements with an amendment to the Penal Code Act. Section 5 of the Law Revision Act, provides as follows:

"the court may only impose the sentence of death in *exceptional circumstances* where the alternative of *imprisonment* for life or other custodial sentence is demonstrably inadequate."

That amendment is mirrored in Paragraphs 17 and 18 of the Sentencing Guidelines.

Guideline 17 provides as follows:-

Imposing a sentence of death

"the court may only pass a sentence of death in exceptional circumstances in the "rarest of the rare" cases where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate."

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In Paragraph 18 the "rarest of the rare" include cases where-

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- *a) The court is satisfied that the commission of the offence was* planned or meticulously premeditated and executed;
- \$b) \ldots \ldots\$

- c) The death of the victim was caused by the offender while *committing or attempting to commit*

\$(i)\$ *Murder*:

It is clear from the above provisions that the death penalty remains a legal sentence that is open for a court to impose. The only caution is that it should be imposed only in the most exceptional cases, where the court establishes that the prospect of reform rehabilitation consequent to a custodial sentence is reasonably absent and the object of punishment would not be achieved by any other sentence. See *Kakubi vs Uganda* (supra).

25] During the re-sentencing proceedings, both counsel were permitted to make submissions in mitigation and otherwise. After they had done so, the re-sentencing Judge ruled as follows:

> "Having listened and taken into consideration the above aggravating and mitigating factors, the court has while passing sentence taken into consideration the following *aggravating factors.*

1. The gravity of the offence of murder, the degree of culpability of the convict and the manner and circumstances under which he committed the offence. I reiterate the reasons for the sentence by the Hon. Trial Judge that the circumstances of the death of the deceased are heinous and inexcusable.
2. The parts of the victim's body where the injury was occasioned as is shown report, medical Exh. No.1. \$(Sic!)\$
3. Pre-meditation- The witnesses' evidence indicated that the offence was pre-meditated. Am in agreement with the prosecution that the convict had prior to the

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fateful day, been warning the deceased that he would kill her. This coupled with the fact that a ladder was used to climb into the deceased's bedroom is circumstantial proof of a pre-meditated mind.

4. The impact of the crime on the victim's family in this regards children.(Sic!) These testified against the convict as pw3 and Pw4. pw4 told court that "I want my father away from me because he killed my mother who was helping me more than him," In the above circumstances. The defense statement from the bar that the children of the convict have forgiven him is not born out of evidence and was rebutted by the prosecution evidence see the Constitution (sentencing guidelines for Courts of *Judicature (practice) Directions 2013, paragraphs 20 (b)* (c) (d) and (p).

> 5. The other consideration is that the murder was committed within reach of the victim's children as is born out of the evidence of \$pw3\$. In whose hear presence (Sic!) the gruesome offence was committed by the convict in the dock. She actually assisted the victim to safely run to her death. See paragraph 20 (k) of the sentence guidelines (supra).

"In arriving at the appropriate sentence, the court has taken into account the following mitigating factors,

(1) That the convict is a first offender.

(2) The circumstances prevailing at the time of the offence \$up\$ to the time of sentence in that the convict lived a useful life while in prison, undertaking education programs and bible study courses, involvement in Christian activities and a certificate course in Alpha. This is shown in various reports by Uganda Prisons (upper) admitted during mitigation. This case falls in the category of the rarest of the rare cases in that the commission of the offence was planned premeditated executed, given that the convict had made past threats before the offence that he would kill the victim. And on the material day at night, he used a ladder, accessed her room and cut her

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⁵ t9 pieces suing a blunt object. The motiue that there was a familg rou caused bg the conuict's HIV status is irreuerent in ciminal law and the court has not taken this and the conuict's HIV status into account during mitigation.

> In the aboue circumstances, had the death sentence not been mandatory at the time of conuiction on loth September, 200g., this court u.tould stilt haue sentenced. the conuict to suffer death. Accordinglg, und.er section 1g9 of the penal cod.e Ai, ^I sent-enced (Sic!) Beinomugisha Gerald. the ionuict therein to suffer death. The sentence tuill be caried. out in a manner prescibed bg law.

Signed.....

E. K Kabanda. Judge.

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- 26l, In Aharikundira yustina vs uganda, (supraf the supreme court emphasized the importance of an articulate consideration of mitigating factors presented. paragraph 2l of the Sentencing Guidelines sets out the possibie mitigating factors that courts may consider when imposing a death sentence. Those relevant to this case include lack of premeditation, the Appeltant being a first, offender with no previous conviction, the fact that the offence was ^asingle or isolated act or omission, remorsefulness of the offender, family responsibilities, some element of intoxication, or any other factor the court considers

relevant. 20 25

- 27) Having perused the sentencing ruling, it is not correct as . submitted for the Appellant that the Judge did not consider all the mitigating factors. She did in fact comment on some of them in some detail. Further as pointed out for the Respondent, no , 30

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evidence was adduced at the trial that the Appellant's actions may 5 have been negatively clouded by intoxication. In fact his defence negated that reasoning because, he raised an alibi that he was away at work at the material time and did not participate in the offence. We would also not fault the Judge for finding that this was a pre meditated murder. PW3 and PW4 Akanyijuka Abel 10 mentioned that the Appellant had on previous occasions voiced threats to kill the deceased. The latter must have taken those threats seriously because for the same reason, she briefly left the matrimonial home and returned to her parents' home, before being persuaded to return by the Appellant. The latter carried 15 through with his threats when he used a ladder to access the deceased's room and after an altercation, stabbed her with wounds that resulted into her death. PW4 had earlier observed the Appellant sharpen a panga, one he probably carried with him, with an intention to inflict harm upon the deceased, which turned out to be serious enough to end her life. That would be a premeditated murder.

It was held in *Wandubire Clement vs Uganda*, SC Criminal \$28\$ Appeal No. 41 of 2017 (*supra*) that an Appellant (who attacks their victim) when armed with a lethal weapon would not be deemed as accidental, but an act carried out in preparation to kill. Therefore, those two facts would reasonably place this case in the "rarest of the rare" category.

Further, the Judge did consider the fact that the Appellant was a \$29\$ family man with several children to take care of. We agree with the 30

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reasons she gave for not considering it a compelling mitigating factor. The Appellant ended the life of his wife and one child voiced preference that he remains out of their lives since even before the incident, it was the deceased who cared for the family. We also consider as valid, Ms. Aleto's submission that the Appellant's age should not exonerate, but instead point to his culpability. Again, at 56 years of age, he cannot be considered one of advanced age, since under Paragraph 4 of the Sentencing Guidelines, that category is set at 75 years and above. We also agree that there were no facts compelling the Court to consider that the Appellant was remorseful.

We note that the Judge did consider in detail the fact that the 301 Appellant had endeavored to participate in activities geared towards his rehabilitation. As pointed out for the Respondent, those facts, were not relevant in mitigation. The Supreme Court has also guided in the decision of *Wandubire Clement vs Uganda*, (*supra*) that:

> "The social inquiry report of the Appellant that shows that he was a good man with morals and a letter from prisons indicating that the Appellant was a disciplined inmate are not issues of mitigating but relevant for the purposes of mitigation (sic). They may be factored in for the purposes of remission *and prerogative of mercy.*"

31] That said, the re-sentencing Judge appeared not to have considered or even applied the consistency principle which applies to all sentences including the death sentence. It was held by the

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Court of Appeal of St Vincent and the Grenadines in the persuasive decision of **Dick Trimmingham vs The Queen** [2009] UPKC 25 that the death penalty should be imposed only in cases which on the facts, are the most extreme and exceptional through a comparison with other murders and not ordinary civilized behavior. The importance of the principle was emphasized in the Supreme Court decision of *Aharikundira Yustina vs Uganda*, (*supra*) where it was held that:

"... it is the court while dealing with appeals regarding. *sentencing to ensure consistency with cases that have similar* facts. Consistency is a vital principle of a sentencing regime. It is deeply rooted in the rule of law and requires that laws be applied with equality and without unjustifiable differentiation."

The principle would equally apply to trial courts because it was 20 held in *Ainobushobozi Venancio vs Uganda*, CA Criminal Appeal No. 242 of 2014, that although past decisions with regard to sentences to do not have the authority of precedents, they do provide a range which ought to be considered for purposes of achieving some measure of uniformity between like cases.

32] In support of her submissions, Ms. Nalule cited several cases where Appellants who had no previous record, had carried out relatively brutal murders of victims, some of whom were their partners or spouses. In the cited cases, sentences of life. imprisonment and death were set aside and replaced with sentences ranging from 17 to 30 years. Ms. Aleto equally cited several cases in which the death sentence has been upheld by this

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⁵ court and the supreme court. She in addition distinguished some authorities cited by Ms. Nalule. considering the circumstances of this case, we choose to cross reference this case with others of a . similar nature, in which convicts carried out gruesome murders of their victims, some of whom were close relatives.

In *Bayo Sunday vs Uganda*, Criminal Appeal No. 414 of 2019 (decided on 7/9/2021), this Court considered and maintained a sentence of 30 years' imprisonment for a convict who attacked and killed his victim using a panga. In *Aharikundira yustina vs Uganda* (supra), the court was of the view that the court did not properly weigh the mitigating against the aggravating factors. That had the court considered the fact that the Appellant was a first time offender of fairly advanced age (of 63 years), the Judge would not have imposed the death sentence. The court overturned that sentence for a sentence of 20 years, imprisonment. In *Muwanga Fulugensio vs Uganda*, Criminal Appeal No. 566 of 2014, the Appellant was handed a death sentence for raping and then murdering his victim. That sentence was upon re-sentencing reduced to life imprisonment. This court further reduced it to 25 years' imprisonment after considering that the youthful Appellant, had shown remorse and there was evidence that he could be rehabilitated. In *Akbar Godi vs Uganda*, SC Criminal Appeal No. 17 of 2015, the Appellant who had made previous threats to kill his wife, eventually shot her to death. The deceased had informed her relatives and friends that her life was in danger. The Appellant was convicted and sentenced to 25 years, imprisonment which was upheld on appeal. This court upheld a similar sentence in 10 331 15 20 25 30

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- *Opio Daniel vs Uganda*, CA Criminal Appeal No. 32 of 2011, for an Appellant who brutally murdered his wife. Similarly, in *Mbunya Godfrey vs Uganda*, (supra) the Supreme Court considered that the Appellant a first time offender, had the potential to reform. His death sentence was substituted with a sentence of 25 years' imprisonment. yet in *sentongo Abdallah vs Uganda*, CA Criminal Appeal No. 465 of 2014 (decided in December 2024), this court agreed to substitute a death sentence with 40 years' imprisonment. The Appellant was convicted of the murder of his elderly father using a sharp panga and during that attack, also seriously injured his 12-year-old nephew. 10 15 5
- 341 Considering the authorities, we are prepared to agree with the submission that rendering the death penalty in this case turned out to be manifestly harsh and excessive. we set it aside, and accordingly invoke the provisions of Section 11 Judicature Act, which grants this Honorable Court the same powers as the trial court, to impose a sentence that suits the law and the circumstances of the case.
- 35] The facts of the case have been previously relayed and we shall not repeat them. We may only state that the Appellant who may have been frustrated by the deceased's estrangement and the breakdown of their marriage, ought to have pursued reconciliation, but not to attack and kill her. The post mortem report pointed to a vicious attack, and by insisting on a full trial, the Appellant showed no remorse for his actions. Since the attack happened within their home, their children must have suffered

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- ⁵ long term trauma that may take years to heal. Therefore, the Appellant ought to serve a sentence that is commensurate to his actions.
- 36] Having considered the facts of this case, as well as the aggravating and mitigating factors as presented, we impose a sentence of 3 years' imprisonment. From that sentence, we deduct the remand period of 2 years, 9 months and 30 days. He shall accordingly serve a period of 35 years and 4 months, imprisonment. The Appellant shall serve his sentence from 10th September 2008, the date he was convicted.
- ¹⁵ 371 In conclusion, this appeal has substantially succeeded upon the orders given.

B Dated at Kampala this . of ...,2025.

RICHARD BUTEERA, DEPUTY CHIEF JUSTICE

EVA K. WATA JUSTICE OF APPEAL

obship. V OSCAR J KIHICA
JUSTICE OF APPEAL

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