

UGANDA / JUDGMENT

Endreonzi v Uganda (Criminal
Appeal 835 of 2014) [2024]
UGCA 322 (27 November 2024)
[2024] UGCA 322

COURT

Court of Appeal of Uganda

BEFORE

Egonda-Ntende, JA, Tibulya, JA/JCC, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 835 of 2014

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⁵ THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT GUTU

CRIMINAL APPEAL NO. 0835 OF 2014

(Arising from High Court Criminal Session No. 1-1.0 of 2012 at Arua)

ICORAM : Egonda-Ntende, Tibulya, Kazibwe Kowumiri. All

BETWEEN

ENDREONZI ORENZIO APPELLANT

AND

UGANDA RESPONDENT

(An appeal from the judgment of Okwanta, J delivered at Arua on 25th September 2014)

JUDGMENT OF THE COURT

The appellant was convicted for murder contrary to Sections 188 and 189 of the Penal Code Act. On 25th September 2014 the appellant was sentenced to 20 years' imprisonment.

Background.

- The appellant and his late wife, Tiko Grace, lived together at Livu-Vurra village in Arua District. On 14th February 2011a quarrel ensued between them over money. The appellant started assaulting the deceased with a club and a hoe in the presence of their children until she collapsed and died. 20
- The appellant escaped from the village but was later arrested and charged with murder. The post mortem report on the body of the deceased revealed that she died of cardiogenic shock secondary to haemorrhage. The base of the skull was fractured and there were multiple soft tissue injuries all over the body. 25
- The appellant was examined and found to be 42 years old with a sound mind. The appeal is against the sentence imposed by the trial court. 30

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⁵ Ground of Appeal.

The learned trial Judge erred in law and fact in sentencing the Appellant to a term of 20 years' imprisonment which was manifestly harsh and excessive in the circumstances.

Representation.

Harriet Otto represented the appellant on state brief while Catherine Namakoye, Senior Assistant Director of Public Prosecutions, in the Office of the Director Public Prosecutions represented the respondent. 10

On application by Counsel for the Appellant, the appeal filed 10 years out of time was validated. Leave to only appeal against the sentence

also granted by the Court. Counsel for the parties filed submissions, which, with the leave of court were adopted as their final submissions in the determination of the Appeal. 15

Submissions by Counsel for the Appellant.

It was submitted that it was in the discretion of the trial court to determine a sentence and an appellate court cannot interfere with such a sentence save for instances including when it was manifestly excessive. 20

Counsel argued that the Appellant was a first offender, 45 years old, and had spent 3 years and 7 months on remand at the time he was sentenced to 20 years' imprisonment.

The court was referred to Atuku Margret Opii V Uganda, Criminal Appeal No.123 of 2008 (unreported) in which the appellant who killed a neighbour's daughter aged 12 years by drowning had a sentence of death reduced to 12 years. Counsel also cited Twikirize Alice V Uganda,

CACA No.0764 of 20L412016l UGCA 81 in which a sentence of 37 years was reduced to 25 years'imprisonment. 30

Counsel urged the court to apply the rule of consistency and reduce to sentence imposed by the court to 1.3 years.

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⁵ Submissions by Counsel for the Respondent,

It was submitted for the respondent that the trial court correctly evaluated the aggravating and mitigating factors before arriving at Life imprisonment as the appropriate sentence.

The court considered the fact that the appellant was a first offender, was 45 years old, was a family man with 10 children and had spent 3 years and 7 months on remand at the time he was sentenced to the impugned punishment.

In aggravation of the sentence, it was argued that the Court considered the nature of injuries occasioned to the deceased, the degree of force used and the fact that she was murdered in the presence of her children.

Counsel for the Respondent referred the court to Ojangole John Micheal V Uganda SC Criminal Appeal No. 35 of 2000 [2001] UGSC 10 in which the Supreme Court declined to alter a 34 years' prison term on account of the submission that the appellant had children to look after. The court stated that it could not on appeal re-consider aggravating and mitigating factors raised at the trial.

The court was also referred to Bashasha Sharif V Uganda SC Criminal Appeal No.82 of 2018 [2019] UGSC 55 where the court upheld a death sentence on the principle that one of the objectives of sentencing is deterrence. The decision was premised on the manner in which the Appellant murdered an innocent child, which "depicted a depraved person devoid of all humanity."

Analysis.

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As a first appellate court, it is our duty to re-appraise all evidence that was adduced before the trial court and come to our own conclusions on the facts and the law while making allowance for the fact that we neither saw nor heard the witnesses testify. 30

See Kifamunte Henry V Uganda SC Criminal Appeal No. 10 of 1997 [1998] UGSC 20. 35

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5 It is also established law that an appellate court will only alter ^a sentence imposed by the trial court if it is evident that it acted on ^a wrong principle, or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case.

10 See Livingstone Kakooza V Uganda SC Criminal Appeal No. L7 of L993 [1994] UGSC 17.

The maximum penalty for the offence of murder is death which, however, is reserved for the rarest of the rare cases. The circumstances in which the offence the appellant was convicted for did not warrant the death sentence and the trial judge opted for a custodial sentence of 20 years.

We found it imperative to reproduce the sentencing order of the trial Judge in the determination of the Appeal:

> "I have listened to the submissions by counsel of both sides. I have also heard the accused person in mitigation. I find that the accused is a first offender aged 45 years old today and has spent 3 years and 7 months on remand.

> He is a family man with ten children left without any care taker as his other wife had left him before his arrest, and his mother is dead. He has an old father. However, I find murder resulting from domestic violence very rampant within this jurisdiction. Life is sacred and given by God only and no one has any right to take away the life of another. The law condemns that,

The manner in which the accused caused the death of his wife in the presence of these very children he is pleading for calls for a very deterrent and stiff sentence. Taking into

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account the 3 years and 7 months already spent on remand which period I hereby deduct from the sentence, I do sentence the accused to 20 years' imprisonment."

We note from the above excerpt of the sentencing ruling that the trial court ably considered both the mitigating and aggravating factors 10 surrounding the circumstances in which the offence was committed.

The trial judge considered all the mitigating factors, aggravating factors as well as the evidence on record and properly directed himself on the law. We find the sentence of 20 years' imprisonment imposed by the trial court appropriate in the circumstances. We find no merit in the appeal, which is accordingly dismissed.

Signed, delivered and dated at Gulu this. A. ... day of

Fredrick Egonda-Ntende Justice of Appeal

Margaret Tibulya

Justice of Appeal

Moses Kazibwe Kawumi **Justice of Appeal**

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