

**Galabuzi & 2 Others v Uganda
(Criminal Appeal 299 of 2017)
[2024] UGCA 286 (4 October 2024)**

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Representation

The appellants were represented by Ms. Shamim Nalule on state brief while the respondent by Mr. Joseph Kyomuhendo, Chief State Attorney in the Office of the Director of Public Prosecutions.

2. BACKGROUND

10 On 24th July 2012, the appellants attacked one Mwanje Muhammed in his rented room at Kiga Wantoni, Mukono. They robbed him of 2 phones and thereafter killed him. All the 3 appellants pleaded guilty to the indictment of murder. The first two appellants, namely William Galabuzi and Edward Sempijja were sentenced to 30 years' imprisonment while the third appellant, Augustine Byakatonda, was sentenced to 25 years.

3. GROUNDS OF APPEAL

- 1. The learned judge erred in law and fact when she passed legal sentences of 30 years' imprisonment against A1 and A2 and that of 25 years' imprisonment against A3 without subtracting the period the appellants spent on remand thereby occasioning a miscarriage of justice.
- 2. That the trial judge erred in law and fact when he sentenced the 1st and 2nd appellants to 30 years of imprisonment and the 3rd appellant to 25 years of imprisonment for murder which sentences were manifestly harsh and excessive in the circumstances.

4. ISSUES

- 30 TWO issues were framed for determination
- 1. Whether when sentencing the appellants, the judge erred by not subtracting the period they were on remand?
- 2. Whether the sentences meted on the accused were manifestly harsh and excessive. 5

SUBMISSIONS OF PARTIES

10 5. APPELLANTS'SUBMISSIONS.

The appellant submitted that Rule 30(1) of the Court of Appeal Rules provide the duty of the first appellate Court. They cited *Kifamunte Henry u Uganda Criminal Appeal 10 of 1997, [1998] UGSC 20* where the court stated that

15 "It is the duty of the first appellate court to rehear the case on appeal by reconsidering all the materials which were before the trial court and make up its own mind."

They also cited *Kiwalabye Bernard u Uganda Supreme Court Criminal Appeal 143 of 2021, [2005] UGCA 74*.

On ground 1., the appellants submitted that the trial judge passed an illegal sentence when she did not deduct the period of 4 years and 7 months spent on remand as required by Article 23(8) of the Constitution and Guidelines 15(1) and (2) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) 25 Directions 2003. The appellants submitted that Article 23(8) of the Constitution

makes it mandatory for any period an accused has spent in lawful custody to be deducted from the sentence. The appellants cited *Rutabuganda v Uganda* 2017 UGSC 8, where the court stated;

"It is our view that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with certainty and precision, consideration of the remand period should therefore necessarily mean reducing as subtracting that period from the first sentence."

The appellants prayed that the period of 4 years and 7 months spent on remand be deducted.

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- ⁵ On ground 2, the appellants submitted that the trial judge did not properly take into account mitigating factors thereby arriving at harsh and excessive sentences. They submitted that the trial judge departed from the conventional rule of uniformity in sentencing thereby arriving at harsh sentences.
- 10 The appellants quoted Benjamin Odoki's Guide to Criminal Procedure 3^d Edition P. L73. where it is stated that "The fact that an accused person is a first offender and has had previous good record is a valid real mitigating factor." The appellants also cited Guidelines 9(h) of the sentencing guidelines which is to the effect that the court would consider age of the appellant. The appellants submitted that they were in their 20s at the time they committed the offence. They also cited *Kabakera Steuen v Uganda* CA 26 of 2016 where the court held that the age of the convict is a relevant factor and a young offender may be

considered for reformation.

20 The appellants also cited Guideline 6(c) of the Sentencing Guidelines which provides that;

> "Every court shall when sentencing an offender take into account the need for consistency with appropriate sentencing levels and other areas of dealing with offenders in respect of similar offences convicted in similar circumstances."

25 30 They cited *Francis Butalatum v Uganda* Court of Appeal Criminal Appeal 048 of 2011, [2018] UGSC 64 where the appellant was convicted of the offence of murder on two accounts and sentenced to 50 years of imprisonment. The court reduced the sentence on murder to 14 years. In *Bamanya Happy & Kafumba Rashid v Uganda* SCCA 22 of 2010 (unreported) a sentence of 37 years for murder was reduced to 20 years of imprisonment.

6. f,RESPONDENT'S SUBMISSION

The respondent submitted that it is the duty of the first appellate court to review and re-evaluate the evidence before the trial court and reach its own conclusion, taking into account that the appellate court did not have the opportunity to hear 35

⁵ and see the witnesses. It cited Rule 30(1)(a) of the Court of Appeal Rules and *Panda u Rlt957l EA 336*.

On ground 1, though the respondent in its written submissions, had opposed the appeal, at the hearing Mr. Kyomuhendo conceded that the learned trial Judge had not applied the Rwabugande rule which she should have. He conceded this ground.

On ground 2, the respondent submitted that the sentences imposed on the appellants was neither harsh nor excessive. The trial judge evaluated the aggravating and mitigating factors that guided her to arrive at the sentences. The sentences imposed on the appellants are within the sentencing guidelines of the court. The respondent submitted that the 30 and 25 years' imprisonment sentences were neither harsh nor excessive. It submitted that the sentences were lenient given the barbaric manner the accused attacked the deceased. They hacked him and stole his property. The respondent submitted that the trial judge made no error in sentencing the appellants. The judge noted that the accused were lucky in that they not charged also with aggravated robbery. 15 20

The respondent submitted that the principle of consistency and parity of sentence should be applied and varied according to circumstances. It cited *Byaruhanga Okot u Uganda CACA 078 of 2010*, where it was held that the court is bound to follow the principle of parity and consistency while sentencing, bearing in mind the circumstances under which the offences were committed. 25

The respondent submitted that a plea of guilty does not always attract a lenient sentence. It cited *Bachua Benon u Uganda CACA 869 of 2014* where this court confirmed a life imprisonment sentence for the appellant who had pleaded guilty to aggravated defilement. In *Bongo Abdulu UgandaSCCA 7 of 2021* the Supreme Court confirmed life imprisonment sentence of an HIV positive appellant. The respondent also cited *Atio Angelo u Uganda CACA 439 of 2015, I2022l UGCA 15 30 35*

- 5 where the appellant was convicted on his own plea of guilty for the offence and murder. This court found no reason to interfere with the sentence of 36 years and 8 months. In *Sebuliba Siraji u Uganda Criminal Appeal 319 of 2009, I2014l UGCA 123* the court upheld a sentence of on a plea of guilty by the appellant who cut the deceased to death. In *Bakubg Muzamiru u Uganda SCCA 17 of 2015*

- 10 the court held that 40+ or 30+ years imprisonment terms were neither premised on wrong principles of law nor were they manifestly excessive since they attract the death penalty. In Kyotereka George u Uganda CACA 13 of 2013 this court confirmed sentence of 30 years on conviction of murder by stabbing. [n Mbuya Godfreg u Uganda SCCA 4 of 2014 the supreme court upheld a sentence of 25 15 years'imprisonment as neither harsh no excessive.

7. DETERMINATION

The appellants were convicted of murder contrary to Sections 188 and 189 of the 20 Penal Code. Two of them were sentenced to 30 years' imprisonment while one was sentenced to 25 years. The appellants are aggrieved by the sentence of the trial judge.

Before we can address the grounds of appeal, this court is mindful of the duty of an appellant court. In Kifamunte Henry u Uganda (Supra) the court stated that

"It is the duty of the first appellate court to rehear the case on appeal by reconsidering all the materials which were before the trial court and make up its own mind."

30 Therefore, the court will reconsider all the materials the judge used to reach her sentences against the appellants. In Kiwalabge Bernard u Uganda (supra) it was held that it is trite law that the appellant court is not to interfere with the sentence imposed by a trial court which has exercised its discretion unless the discretion is such that it results in the sentence imposed is manifestly excessive or 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 the sentence is imposed on wrong principle. 35

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On ground 1, the appellants contended that the trial judge imposed an illegal sentence when she passed the sentence without subtracting the period the appellants spent on remand thereby occasioning a miscarriage of justice. The appellants claimed that they were on remand for 4 years 7 months which were not deducted from their sentences. The need to subtract the period on remand from the sentence of an accused is provided for in the Constitution. Article 23(8)

of the Constitution of Uganda provides that

"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before completion of his or her trial shall be taken into account in imposing the term of imprisonment."

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions also provide for subtracting of period in remand. Guideline 15 states

"15. Remand period to be taken into account.

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- (1) The court shall take into account any period spent on remand in determining an appropriate sentence.
- (2) The court shall deduct the period spent on remand from the sentence considered appropriate after all factors have been taken into account."

In Rutabuganda u Uganda (Supra) where the court stated;

25 "It is our view that the taking into account of the period spent on remand by a court is necessary arithmetical. This is because the period is known with certainty and precision, consideration of the remand period should therefore necessarily mean reducing as subtracting that period from the first sentence.

Therefore, this Court has to ask whether the trial court took into consideration

30 the period the appellants spent on remand before arriving at its sentences.

A perusal of the sentencing by the trial judge shows that she was aware that the appellant had served a remand period. In her sentence, the trial judge stated.

"A3 is sentenced to 25 years'imprisonment while A1 and A2 are sentenced to 30 years' imprisonment period on remand inclusive."

The said sentencing order is ambiguous. If the trial judge had considered the period on remand when sentencing, then the sentence of 25 years should have pg.7

⁵ read 20 years and 5 months from the date of conviction. While the sentence of 30 years should have read 25 years and 5 months from the date of conviction. This does not seem to be the case. The learned trial judge did not, firstly, ascertain the period the appellants had spent in pretrial custody. It is only by first ascertaining the same that it is then possible to take it into account. It is not enough simply to state that the period is inclusive in the sentence without the same ever being ascertained. Therefore, we find that the trial judge did not consider the period on remand served by the appellants and therefore the sentence was illegal, and contrar5r to Article 23(S) of the Constitution. The respondent's counsel, rightly in our view, conceded that the learned trial judge had not complied with Article 23(8) of the Constitution. 10 15

The sentences imposed upon the appellants are set aside. Ground 1 of the appellants' appeal succeeds.

- It is not necessary to consider ground 2 as ground 1 is dispositive of the appeal. Having found the sentences illegal as period of remand was not considered they cannot stand. We shall exercise the powers granted to this Court under S. 11 of the Judicature Act to re-sentence the appellants. 20
- Taking alt the above into consideration, especially the fact that the appellants were successful on ground 1, the sentences of the accused are set aside and replaced with the following. 25

- We note that the appellants were of youthful age at the time they committed the crimes. The appellant no.1 was 26 years old while the appellant no. 2 was ¹⁸ years of age. They were first offenders. They entered a plea of guilty though not at the first opportunity in the case of appellants 1 and 2. All the three appellants were remorseful. On the other hand, the appellants committed a capital offence whose maximum punishment is death. In the course of doing so they stole the 30

deceased's phone. Taking the said circumstances into consideration we shall S pass the sentences as below.

The third appellant is sentenced to 20 years and 5 months from the date of sentencing. The period on remand of 4 years 7 months is deducted therefrom. Therefore, he will serve 15 years and 10 months from the date of conviction of $\$10\$ 3^{\text{rd}}$ August 2017. The first and second appellant are sentenced to 25 years and 5 months from the date of sentence. The period on remand of 4 years and 7 months shall be considered. Therefore, the first and second appellant shall serve 20 years and 10 months from the date of conviction which is 3^{rd} August 2017. This appeal partially succeeds. 15

Dated at Kampala this 2024

redrick Egonda-Ntende

Justice of Appeal

Barishaki Cheborion

Justice of Appeal

Muno Dr. Asa Mugenyi

Justice of Appeal

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