

UGANDA / JUDGMENT

Kambale v Uganda (Criminal Appeal 188 of 2012) [2025] UGCA 30 (13 February 2025)

[2025] UGCA 30

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Criminal Appeal 188 of 2012

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT GULU**

[Coram: Egonda-Ntende, Tibulya & Kazibwe Kawumi, JJA]

CRIMINAL APPEAL NO. 01S8 OF 2012

(Arising from High court criminar session No. 0143 of 20r5 at Nebbi)

BETWEEN

MUSA KAMBALE alias KLEpA OIKANE APPELLANT

AND

UGANDA RESPONDENT

(An appeal arising from the judgment of the High Court of Uganda (Stephen Mubiru, J) delivered on 17th May 2018)**JUDGMENT OF THE COURT.**

1. This is an appeal against sentence only. The appellant was indicted with murder contrary to sections 188 and 189 of the penal code Act. The particulars of the offence were that on 3^d June 2015 at Ogwaronen village, Jupadindo Parish in Zombo District, he murdered Munguromo David.

Background.

2. The facts of this appeal as accepted by the learned judge are that on the fateful day at around 4.00 pm, the deceased, a five-year-old boy, went with other children to the well to fetch water. The appellant who was 51 years old then got him from the well and took him to his home. He then repeatedly assaulted him and stamped on his stomach.

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- 3. The neighbors later found the victim who was in much pain' on the veranda to the Appellants house. He was covered in his excreta' vomiting blood and passing out blood-stained urine' The victim told them that he had been assaulted by the appellant for no apparent reason' He was bathed and rushed to a nearby Awasi clinic from where he was referred to Holy family hospital at Nyapea. A few hours later, the boy died' The appellant was subsequently arrested and charged with his murder. He was tried, convicted and sentenced to life imprisonment.
- 4. In his defence, the appellant denied any participation in victim's murder' He maintained that he did not know the deceased' He was only surprised when he was arrested while he was cleaning his cassava at home' He attributed the false accusation to envy because he had accumulated a lot of land in the area.
- 5. Dissatisfied with the above sentence, he appealed to this court on the following ground: - The learned trial Judge erred in law and fact when he imposed a sentence which in the circumstances was manifestly excessive and very harsh which occasioned a miscarriage of justice'

Representation.

6. At the hearing, the appellant was represented by Mr' Walter Okidi Ladwar while the respondent was represented by Ms' Immaculate Angutoko' Chief State Attorney'

Submissions by Counsel.

- 7. For the appellant, it was submitted that the learned judge did not consider the period he had spent on remand. Counsel further submitted that the sentence of life imprisonment was harsh and excessive considering the fact that the appellant was first offender. He also pointed out that the sentence of life imprisonment is out of range considering the sentences imposed in similar cases. He added that the learned judge did not take into account the principle of consistency in sentencing the appellant. He relied on *Abaasa Johnson & Anor vs Uganda* [2016] UGCA 71, where a sentence of life imprisonment was substituted with one of 35 years.

- 8. In reply, counsel for the respondent opposed the appeal and submitted that life imprisonment sentence is legal and not harsh or excessive in the circumstances of this case. He argued that the sentence of life imprisonment is not amenable to Article 23(8) of the constitution. She cited *Magezi Gad vs Uganda* [2017] UGSC 75, in which the court stated that Article 23(g) of the constitution applies where there is a term of imprisonment i.e. a quantified period of time which is deductible.
- 9. counsel submitted that life imprisonment is neither harsh nor excessive in the circumstances of this case. She submitted that perfect uniformity of sentences is impossible given the fact that the trial judge had the discretion in sentencing, as was observed by the Supreme court in *Aharikundira yustina vs uganda*, SCCA No.27 of 2015.
- 10. Counsel relied on *Sebuliba Siraj vs Uganda* [2014] UGCA 123, in which the victim was cut on the head, neck and hand with a pangani. This court upheld a life imprisonment sentence.
- 11. In *Bashasha Sharif Ys Uganda* [2016] UGSC 65, in which a 9-year-old boy was killed, and his body was dismembered. The different body parts of the body were hidden in different places. The Supreme court upheld a death sentence.
- 12. In *Kyabire Patrick & 3 others vs Uganda* [2020] UGSC 5 in which four victims were set on fire and they were burnt to ashes, the supreme court upheld a death sentence.
- 13. *Sunday Gordon vs Uganda* [2015] UGCA 67 in which the murder was a result of a tribal clash, this court upheld life imprisonment sentence.

Consideration of the appeal.

- 14. An appellate court may only interfere with sentence where it is either illegal, or founded on a wrong principle of the law, or when the trial court failed to consider a material factor. This court may also interfere with a sentence which is harsh and manifestly excessive in the circumstances of the case. See *Kiwalabye Bernard vs Uganda*, Supreme Court Criminal Appeal No. 143 of 2001.
- 15. While sentencing the appellant, the learned judge stated as follows:-
 - a. "The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of the penal Code Act. However, this represents the maximum sentence which is usually reserved for the worst of the worst cases of Murder. This case does not fit that description .. .
 - a
 - b. Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. A sentence of life imprisonment may as well be justified by extreme gravity or brutality of the crime committed, or where the prospects of the Offender reforming are negligible, or where the court assesses the risk posed by the offender and decides that he or she will probably re-offend and be a danger to the public for some

unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see *R v. Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410). Where there is a deliberate, pre-meditated killing of a victim, but in circumstances not justifying the death penalty, courts are inclined to impose life imprisonment.

- c. There are cases where the crimes are so wicked that even if the offender is detained until he or she dies it will not exhaust the requirements of retribution and deterrence. It is sometimes impossible to say when that danger will subside, and therefore an indeterminate sentence is required (see *R v. Edward John Lilkinson and others* (1993) 5 Cr App R (s) 105 at 109). I have considered the aggravating factors in this case. In light of the fact that the convict murdered a toddler in such a brutal manner, and considering the rest of the aggravating factors outlined by the learned Resident State Attorney, the convict deserves to spend the rest of his natural life in prison.'
- 16. We accept counsel for the Respondents submission that since the Appellant was sentenced to life imprisonment, the trial judges was not required to consider the period which the Appellant had spent on remand' The Supreme Court has clarified that a sentence of life imprisonment is not amenable to Article 23(8) of the Constitution' See *Magezi Gad vs Uganda* (supra)' in which the court stated that Article 23(s) of the Constitution applies where there is a term of imprisonment i.e. a quantified period which is deductible.
- 17. Regarding complaints that the learned judges did not consider the fact that the appellant was a first offender and the failure to consider the requirement for uniformity of sentences, a review of the sentencing proceedings confirms that these factors were not considered' Clearly, Judge was more concerned with the brutal manner in which the offence was committed than with any other factors.
- 18. It is now established that there is need for consistency while imposing sentences for similar offences committed in similar circumstances. See Guideline No. 6(c) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 and *Kakooza Vs Uganda* {1994} UGSC 1).
- 19. In *Baruku Asuman vs. Uganda*, Court of Appeal criminal Appeal No' 387 of 2014, this court, underscored the importance of consistency of sentences.
- 20. We have looked at the range of sentences for similar offences in order to determine whether the sentence of life imprisonment for murder committed under similar circumstances was harsh and excessive as alleged by counsel for the appellant.
- 21. In *Aharikundira Yustina Vs Uganda* [2018] UGSC 49, the Supreme Court substituted a death sentence with 30 years' imprisonment for the appellant

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who had murdered her husband in a brutal manner by cutting his body parts. The court took into consideration the fact that the appellant was a first offender, of advanced age, the fact that she did not bother court on second appeal regarding her conviction and displayed remorsefulness.

- 22.1n Akbar Hussein Godi vs Uganda, SCCA No. 62 of 2011, the Supreme Court confirmed a sentence of 25 years' imprisonment imposed by the High court and affirmed by the court of Appeal where the appellant was convicted for the murder of his wife.
- 23.1n Atiku Lino vs Uganda [2016] UGCA 20, this court set aside the life imprisonment sentence imposed on the appellant for the murder and substituted it with a sentence of 30 years' imprisonment.
- 24.1n Tusingwire Samuel vs Uganda [2016] UGCA 53, this court reduced ^a sentence of life imprisonment to 20 years for the offence of murder.
- 25. Taking into consideration the range of sentences for murder in the above cases whose modes of commitment bore marks of brutality similar to this case, and the aggravating and mitigating factors of this case, we think that the sentence of life imprisonment is harsh and manifestly excessive in the circumstances of this case.
- 26. We therefore set it aside and sentence the appellant to 30 years, imprisonment from which we deduct the period of 2 years and 11 months he had spent on remand. He shall therefore serve 27 years and 1 month from the date of his conviction which is the 17th May 2018.

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We so order.

Signed, dated and delivered at Kampala this.... day of

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Fredrick Egonda-Ntende

Justice of Appeal

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Margaret Tibulya

Justice of Appeal

Moses Kazibwe Kawumi

Justice of Appeal

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