

UGANDA / JUDGMENT

Karimunda and Others v Uganda (Criminal Appeal of 2019) [2025] UGCA 120 (20 March 2025)

[2025] UGCA 120

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Criminal Appeal of 2019

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Richard Buteera, DCJ, Eva K. Luswata & Oscar J. Kihika,

\$JJA\$

CRIMINAL APPEAL NOS. 0126 OF 2019 AND 0057 OF 2019 10

BETWEEN

- 1. KARIMUNDA EDWARD
- 2. MUHOOZI MEDARD
- 3. AMANYA DEUS alias KACUNGU 15
- 4. BAINOMUGISHA ALEX alias KAGURUTSI
- 5. MWESIGWA GEORGE alias MUTIIMA
- 6. TUGUME LUKE ::::::::::::::::::::::::::::::

AND

UGANDA :::::::::::::::::::::::::::::: 20

JUDGMENT OF THE COURT

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- 31 The brief facts as gathered from the judgement of the High court are that on the morning of 28th April, 2015, a decomposing body of Kabigumira Pauson was discovered in his house at Ruzo Cell, Bushwere Parish, Mwizi Sub County in Mbarara District' He was an uncle to Tlrryatunga Patrick (the deceased and subject of this case). Many people, the accused persons inclusive, gathered at the scene. The crowd was incited by Karimunda Edward Kabigumira had been killed by Turyatunga Patrick' Appellants and others then set upon the house of Turyatunga's mother one Kyeneserikora Robinah, where the deceased and his mother had hidden. The Appellants damaged the house and when the deceased and his mother tried to escape, the Appellants pursued Turyatunga and murdered him' They were arrested, charged and indicted for murder, and subsequently convicted and sentenced as stated above. P that The

> The learned trial Judge erred in law and fact when she imposed a harsh and excessive sentence upon the Appellant given the circumstances pertaining the Appellants (sic!).

Representation

- 5] At the hearing of the appeal, the Appellants were represented by 15 Ms. Kihumuro Sheila Musinguzi, on State brief, while the Respondent was represented by Mr. Aliwaali Kizito, a Chief State Attorney of the Office of the Director of Public Prosecutions (ODPP). Both counsel filed written submissions before the hearing of the appeal. We adopted those as their legal arguments and in addition, authorities supplied and those obtained by the Court, to decide this appeal.
- 6] At the hearing, it was also confirmed that Tugume Luke (A6) passed on while at the Jinja Main Prison and a certificate of his death was furnished. The appeal therefore abated against A6 and our decision is entered in respect of the rest of the Appellants.

Appellants submissions

7] Ms. Kihumuro Sheila Musinguzi re-stated the principle laid down by many authorities of the powers of this court on first appeal, as set out in Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions. For emphasis, she cited the Supreme Court

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⁵ decision of Kifamunte Henry vs Uganda, Supreme Court

Criminal Appeal No. 10 of 2013. Ms. Kihumuro continued that this being an appeal preferred against sentence only, this Court will only interfere if it is shown that the sentence is illegal or was based on a wrong principle, or where the court had overlooked ^a material factor, or where the sentence is manifestly excessive or so low as to amount to a miscarriage of justice' For guidance' counsel referred to Kizito Senkula vs Uganda, SC Criminal Appeal No. 24 of 2001. 10

¹⁵ 8] Counsel argued that the sentencing regime in this country is guided by the Constitution, Statutes, Practice Directions and case law. That sentencing coming at the end tail of the criminal justice system, it is crucial that a trial court imposes an appropriate sentence. She added that before a convict can be sentenced' the trial court is obliged to exercise its discretion by meticulously considering all the mitigating factors and other pre-sentencing requirements as elucidated in the Constitution, and other laws and authorities.

To that end, she again cited Kizito Senkula (Supra) where it was emphasized that if a court considers to interfere with a sentence on grounds of it being manifestly excessive, it should consider whether the sentence imposed exceeds permissible ranges or sentence variations. For further guidance, counsel referred to Guideline 6(c) of the constitution

(Sentencing Guidelines) For Courts of Judicature) Directions 2013 which provides that every court shall, when sentencing an offender, take into account the need for consistency with 20 25 30

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- appropriate sentencing levels and other means of dealing with S offenders in respect of similar offences committed in similar circumstances.
- 9] Ms. Kihumuro argued that the learned trial Judge did not take into account the mitigating factors presented for the Appellants 10 and also departed from the conventional rule of uniformity in sentencing and as a result, arrived at a harsh and excessive sentence. For guidance, counsel referred to the decision of Aharikundira Yustina vs Uganda, SC Criminal Appeal No. 27 of 2005 where the principle of consistency was espoused for the 15 reason that laws ought to be applied with equality and without unjustifiable differentiation. Counsel then drew our attention to other decisions of this court and the Supreme Court to argue that in comparison, the sentences imposed were excessive. She for example, cited Epuat Richard vs Uganda, Criminal Appeal No. 20 0199 of 2011, where an Appellant charged with an offence and circumstances similar to this case, on appeal, had his sentence reduced from 30 to 15 years' imprisonment.
- 10] Counsel contended that all the Appellants were first time offenders, sole bread winners and with dependents. That Muhozi 25 Edward (A2), Amanyu Deusi (A3) and Bainomugisha Alex Kagumusi (A4) were of youthful age with a chance of reform, and on the other hand, Kalimunda Edward (A1) and Mwesigwa George alias Mutina (A5) were of advanced age who deserved a lenient sentence. In her view, had the trial Judge addressed her mind to the mitigating factors, and the principle of uniformity of sentences,

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⁵ she would have arrived at a more lenient sentence. In conclusion, she prayed that this court considers to invoke the provisions of section 11 Of the Judicature Act to set aside the sentence and substitute it with a fairer and more lenient one of 15 years, bearing in mind the time the Appellant had spent on remand in the lawful custody of the State.

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Respondent's submissions

11] In response, Mr. Aliwaali Kizito opposed the appeal and supported both the conviction and sentence. Nevertheless, he concurred with the submissions of his colleague with respect to our duty as a first appellate court. Citing the decisions of Rwabugande Moses vs Uganda, SC Criminal Appeal No. 25 of 2014, Kyalimpa Edward vs Uganda, SC Criminal Appeal No. 16 of 2000, and Kiwalabye vs Uganda SC Criminal Appeal No. 143 of 2001 he added that an appropriate sentence is a matter of the discretion of the trial Judge specifically; that interference by this Court should only be for reasons including, illegal or manifestly excessive sentences, or failure to exercise discretion. In his view, it has not been shown or demonstrated by Appellants' counsel that the sentence of 40 years' imprisonment passed against A1 and 4,6 and 35 years' imprisonment against A2, A3, A4 and A5 were illegal. He strongly argued that considering that the maximum and extreme sentence for the offence of murder

is death or life imprisonment, the Appellants who were spared of either term and instead given definite terms of imprisonment, would eventually return home to be reunited with a]ld then 100k after their families and take care

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⁵ of the orphans, that being one of the reasons advanced as ^a mitigating factor.

- ¹²¹Mr. Aliwaali categorically disagreed with the submission that the trial Judge did not take into account the mitigating factors. In his view, the Judge considered both the mitigating and aggravating factors before arriving at a sentence. In addition, at page 81 of the judgment, she addressed herself on the principle of uniformity by making reference to previous sentences of murder in cases committed in a similar fashion. Counsel then drew our attention to other decisions of the Supreme Court to argue that in comparison, the sentences against the Appellants in the instalt case were lenient. Counsel in particular referred to the case of Karisa Moses vs Uganda, SC Criminal Appeal No. 23 ol 2016 where the Appellant who murdered his grandfather, was sentenced to death. Also the case of Bakubye Muzamiru vs Uganda, SC Criminal Appeal No. 56 of 2015 where the Supreme Court upheld a sentence of 40 years' imprisonment for murder' Similarly, that in Turyahabwe E,zra & 12 others vs Uganda, SC Criminal Appeal No. 56 of 2015 the Appellants who murdered their victim during a mob justice altercation, were sentenced to life imprisonment, which was upheld by the Supreme Court for the reason that there was neither illegal nor manifestly excessive'
- ¹³¹In conclusion, Mr. Aliwaali contended that no compelling reasons were advanced by the Appellants upon which this court could interfere with the sentences against them and prayed that the

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conviction and sentence against the Appellants be upheld, and \$\mathsf{S}\$ that the appeal be dismissed.

Analysis and decision of Court

14] We have carefully studied the record, considered the submissions for either side, as well as the law and authorities cited to us, and those not cited but which we find relevant to this matter. Both 10 counsel understood quite well the duty of this Court on a first appeal. Our duty is to review the evidence on record and reconsider the materials before the trial Judge, including the decision of the trial Court, and come to our own judgement. See: Rule 30(1)(a) of Rules of the Court. We do agree with and follow 15 the decision of the Supreme Court in Kifamunte Henry vs Uganda, (*supra*) where it was held that on a first appeal, this Court has a duty to;

" ... review the evidence of the case and to consider the 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.*"

We agree with both counsel that an appropriate sentence is a \$151\$ 25 matter of discretion of the sentencing Judge and each case presents its own facts upon which a Judge exercises that discretion. See: Karisa Moses vs Uganda, SC Criminal Appeal No. 23 of 2016. The principles guiding the appellate Court when considering any contest to the severity of a sentence are well 30 settled. As pointed out by both counsel, our powers to intervene

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- are quite limited. We may interfere only in cases where it is shown that:
- a. The sentence is illegal,
- b. The sentence is manifestly harsh or excessive,
- c. Where there has been failure to exercise discretion,
- d. Where there was failure to take into account a material factor, or
- e. Where an error in principle is made.

See Ogalo S/O Owoura vs R (1954)21 E. A. CA. 270, Kyalimpa Edward vs Uganda, SC Criminal Appeal No. 10 of 1995, Kanya Johnson Wavamuno vs Uganda, SC Criminal Appeal No. 16 of 2000 and Kiwalabye vs Uganda, SC Criminal Appeal No. 143 of 2001.

16] The contention here is that the Judge imposed manifestly harsh sentences. We agree that this court may interfere with a sentence that in the circumstances of the case appears to be manifestly excessive. Even so, we take the caution offered by this Court in Ndyabalema Fulugensio vs Uganda, CA Criminal Appeal No. 126 of 2016 that there is always a high threshold to be met for an appellate court to interfere with the sentence handed down by a trial Judge on grounds of it being manifestly excessive. Since sentencing is a matter of judicial discretion, uniformity of sentences is hardly achievable. Therefore, appellate courts should only interfere where it is clear that the sentence was manifestly excessive, for example where the trial court arrived at a sentence without considering mitigating circumstances. We are in addition

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- mindful of the decision of the Supreme Court in Kakooza vs S Uganda, SC Criminal Appeal No. 17 of 1993, that sentences imposed in previous cases of a similar nature, while not being precedents, do afford useful material for consideration.
- 17] When considering the arguments advanced by both counsel, we 10 choose to be guided by the facts that led to the indictment, as well as what was presented during the allocation proceedings. The submissions of both counsel when presenting the aggravating and

mitigating factors are well stated on record. Without repeating ourselves, we note that much was presented as aggravating 15 factors and mitigating factors for each of the Appellants. The Appellants also prayed for leniency. The Judge gave an equally lengthy sentencing ruling touching on most of counsels' submissions. We have reproduced it here as follows:

- a. "Upon the accused persons Karimunda Edward, Muhoozi Kacungu, alias Amanyanya Deus *Edward* Medard, Bainomugisha Alex alias Kagurutsi, Mwesigwa George alias Mutiima and Tugume Luka being convicted of the offence of Murder C/S 188 and 189 of the Penal Code Act, the learned State Attorney prosecuting the case prayed for a deterrent custodial sentence, on grounds that; the deceased was a young man, crime preventer with a young family; the convicts actions amounted to mob justice thereby eroding the trust people have in courts, eroded the law; that mob justice is common in Mwizi so there is need to show an example; the cause of conflict was land so a signal should be sent out to show that land disputes should be resolved in courts of law.
- b. In response, the learned defence counsel prayed for a lenient *sentence on grounds that;*

$\frac{10}{9}$ $\frac{10}{9}$ A1 is a 1^{st} time offender, aged 56 years, has a wife and eight biological children and three orphaned children whose father Kabigumira Pauson died; one orphaned child of his deceased sister and that all these need support and provision; that the wife of A1 has a chest problem which she got from a motor accident so she is incapable of sustaining a family; He is remorseful and has 3 years and 6 months on remand; he committed the offence out of provocation. A1 has a kidney problem whose treatment has failed due to lack of money.

A2 is a 1^{st} time offender aged 38 years, remorseful; has a wife, 4 biological children and 3 adopted children of his deceased brother, he is youthful so he can be useful to society; the size of his family needs him for care and provision; he has spent 3 years and 6 months in prison.

A3 is a 1^{st} time offender, remorseful, aged 31 years has 3 children and his wife died while in prison the children are staying with their grandmother; he has spent 3 years and 5 months in prison.

A4 is a 1^{st} time offender, remorseful, at the time of his arrest he had 2 wives; one wife went away and left 3 children, the other wife has 4 children and they need support and care; he is 33 years and can contribute to the community; he has spent 3 years and 6 months on remand.

A5 is a 1^{st} time offender, remorseful, aged 62 years, he has a wife with 6 biological children and 3 adopted children of his young brother who died together with his wife; he is a teacher by profession and his entire family depended on his salary for survival. He still has 3 years to serve; he has asthma and pressure; he has been on remand for 3 years, 4 months and 13 days

A6 is a ¹time offender, remorseful, aged 52 years. He has a wife and 5 children. He has seasonal paralysis which developed while in prison. He has been on remand for 2 years, 4 months and 27 days.

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She prayed for a lenient custodial sentence which they can *serve and go back to their families.*

c. In allocutus, all the convicts prayed for leniency.

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- d. According to Section 189 of the Penal Code Act, the maximum penalty for the offence of murder is death. Regulation 20 of the Constitution (Sentencing Guidelines of the Courts of Judicature) (Practice) Directions, 2013 (herein called the Sentencing Guidelines) provides that this punishment is reserved for the most extreme circumstances such as where it has lethal or other extremely grave consequences such as the use and nature of weapon used, the degree of meticulous premeditation or planning, and the gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse. It has been held that the guidelines have not been applied taking into account past precedents of Court decisions where the facts have a resemblance to the case under trial. (See the case of Ninsiima versus Uganda Criminal Appeal No. 180 of 2010).
- *e. The post-mortem report in this case shows that the cause of* death of Turyatunga was multiple blunt force injuries; this was a painful scaring and horrendous death to the accused and traumatizing sight for the mother and the wife of the deceased; the photographs admitted in evidence showed a shattered body which no human being should ever suffer and worse still occasion; mob justice indeed has no place in society and should be condemned in the strongest terms possible; in the recent case of Uganda versus Ujiga Dominic & 9 others Criminal Session No. 14 of 2104, the convicts who had murdered a one Dramalie Francis through mob justice were sentenced to death; and court stated that if court is able it can take into account the degree of culpability of each of the convicts where the facts establish that each of the convicts participated differently as part of the mob which killed the deceased.

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f. I have considered the evidence and found that all the convicts led by A1 Karimunda pursued and attacked the deceased to kill him in such a callous and brutal manner; the degree of injuries, the mode of death, weapons used, (hoe, club, sticks stone, pangas indicate the inhuman and morbid behavior of the accused persons; worse still being applied to a relative son of A1's and A6's deceased brother. The ages of the accused person should have brought sense and sanity but they did not; An uncle is in the actual sense as father who should never engage in the death of a nephew like in this case.

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- g. In my view if it happens like in this case, amounts to the "most extreme circumstances with lethal and extremely gave consequences such as the use and nature of weapon used, the degree of meticulous pre-meditation or planning and the gratuitous degradation of the victim like multiple incidents of harm or in jury...' envisaged by regulation 20 of the *Sentencing Guidelines (Supra)*
- h. In the case of Mugabe versus Uganda CA Cr. Appeal No. 412 of 2009, also cited by Justice Mubiru in the case of Uganda versus UJIGA DOMINIC & 7 Ors Criminal Session Case No. 0014 of 2018, the Court of Appeal confirmed the death sentence for a thirty-year-old convict who following an allegation of rape against him, was heard threatening that he would kill a member of the deceased's family. The deceased was aged twelve years and on the fateful day he was sent by his father to sell milk at a nearby Trading Centre. He never returned home. The relatives made a search for him and his body was discovered in a house in a banana plantation. The appellant has been seen coming out of the house near the plantation. On examination of the body of the deceased, it was revealed that the stomach had been cut open and the heart and lungs had been removed. His private parts had also been cut off and were missing from his body. The cause of death

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was severe hemorrhage due to cut wounds and the body parts removed.

- i. A1 threatened the deceased through his mother and immediately mobilized the rest of the accused persons together with other people still at large to hunt the deceased out of his mother's house in the presence of his mother with different dangerous weapons, chased the deceased, caught him and brutally murdered him.
- *j.* The counsel for the prosecution in the instant case prayed for a deterrent custodial sentence. Sentencing Guidelines set 35 years' imprisonment as a starting point for the custodial sentence for a person convicted of the offence of murder contrary to Section 188 and 189 of the Penal Code Act (where the death penalty is not imposed) which can then be increased or reduced after considering the aggravating and mitigating factors.
- k. I have taken into account the aggravating factors and mitigating factors and for these reasons I have considered a starting point of 40 years' imprisonment. I have also considered the fact that A1 and A6 are related to the late Turyatunga; the rest of the convicts came from the village. Article 126(2)(d) of the Constitution of Uganda provides that courts in adjudication of both civil and criminal cases should promote reconciliation.
- *l. Having taken into account all the circumstances I find that A1* and A6 deserve a custodial sentence of 40 years

- m. The Sentencing guidelines require that court takes into account the period spent on remand while sentencing and deduct it from the sentence considered appropriate, after all factors have been taken into account. I hereby take into account and set off three years and 6 months as the period the convict has already spent on remand.
- n. I therefore sentence the convict Karimunda Edward to a term of Imprisonment of Thirty-Six (36) years and Six (6) months.

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o. I sentence the convict Tugume Luuka to a term of

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Imprisonment of Thirty-Six (36) years and Six (6) months.

- p. I find that although the rest of the convicts participated, they were not related to the late Turyatunga; Having considered the mitigating circumstances enumerated by counsel for the defence, I hereby put a starting point for A2, A3, A4 and A5 at 35 years.
- q. I hereby take into account and set off the three years and 6 months as the period A2 now convict No.2 has already spent on remand. I sentence the convict Muhoozi Medard to a term of imprisonment to thirty-one (31) years and six (6) months.
- r. I sentence the convict Amanywa Deus alias Kacungu to a term of imprisonment of thirty-one (31) years and seven (7) months.
- s. I sentence the convict Bainomugisha Alex alias Kagurutsi to a term of imprisonment of thirty-one (31) years and seven (7) months.
- t. I sentence the convict Mwesigwa George alias Mutima to a term of imprisonment of thirty-two (32) years and seven (7) months and 27 days.

The sentence starts today.

The convicts are advised that they have a right of appeal against both conviction and sentence within a period of *fourteen days.*

18] It is clear that the Court equally considered the aggravating and mitigating factors submitted by either counsel. Specifically, she meticulously outlined the mitigating factors for each of the Appellants in a detailed manner and juxtaposed the facts of the case to the provisions of the Sentencing Guidelines and the sentence ranges suggested there. Therefore, she cannot be faulted on those grounds.

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- ¹⁹¹Another complaint raised by the Appellant is that the Judge departed from the conventional rule of uniformity in sentences laid down in Guideline 6(c) of the Sentencing Guidelines and as a result, arrived at a harsh and excessive sentence. To illustrate the point, she cited previous decisions of murder where this court and the Supreme Court handed down sentences ranging between ¹⁵ to 20 years for murder. Her colleague who appeared to equally appreciate the consistency principle, argued that not only did the Judge mention and apply the principle, the sentences she gave compared favourably with sentences in other cases of a similar nature. Counsel then cited several cases, including one involving mob justice in which the Supreme Court upheld the two most serious sentences of death and life imprisonment' 10 5 15
- 201 It is evident that while making a decision on a sentence, the Judge appreciated the import of the consistency principle and the reasons why it should be followed. She too cited a few authorities. After considering that murder could attract the most severe sentences of life imprisonment and death, she considered the facts, and culpability of each of the Appellants before deciding on what she considered the most appropriate sentences'

21] Following our own investigations, we agree that authorities are present where sentences (e.g. death and life imprisonment) have been imposed for deaths arising out of mob justice. Equally, there are cases where more lenient sentences have been given. For example, in the case of *Kamya Abdullah & 4 Others vs Uganda* SC Criminal Appeal No. 24 of 2015, [2018] UGCS (26 April ³⁰); M,

- 2018), the deceased was killed by a mob, and the Appellants who S were proved as participants were sentenced to 40 years' imprisonment. This Court substituted the sentence with 30 years' imprisonment. On further appeal, the Supreme Court reduced the sentence to 18 years' imprisonment. Further in *Omaka Charles vs Uganda*, Criminal Appeal No. 63 of 2010, the Appellant, part of a mob that murdered the deceased, was sentenced to 30 years' imprisonment. This Court reduced the sentence to 18 years' imprisonment. In *Kamya's* case, the Supreme court offered an explanation for the decision to drastically reduce the sentence. The court was of the view that those who murder in a mob may lack sheer criminality and should not be placed on the same plane as those that plan their crimes and execute them in cold blood. On the other hand, in *Sunday Gordon vs Uganda*, CA Criminal Appeal No. 103 of 2006, the Appellant who was part of a mob that murdered their victim, was sentenced to life imprisonment. 20 This Court upheld that sentence on appeal.
- The principle is that sentences imposed in previous cases of a 22] similar nature may only be used as material for cross reference. The reason is that sentence always remains as a matter of judicial discretion and uniformity is hardly possible. See for example *Aharikundira v Uganda*, SC Criminal Appeal No. 27 of 2015. Therefore, would be no justification for us to fault the Judge for deciding on sentences that the Appellant merely considers as excessive. Her decision was on correct principle and after a careful

consideration of the facts, especially the manner in which the offence was committed.

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- The facts admitted at the trial are that the 1st Appellant who was \$23\$ S the deceased's uncle had a long standing land dispute with the deceased. On the fateful day, suspecting that the deceased had a hand in the death of another relative, the Appellants fell upon the house where the deceased and his mother had taken refuge, and broke down the walls, windows and doors. The deceased was 10 forced to run out and was pursued by the Appellants and a mob who rained blows on him using hoes, an axe and sticks. He succumbed due to serious head injuries. The manner in which the Appellant's pursued and then killed the deceased and the previous threats made by 1st Appellant before and on the same date the 15 offence was committed, would to a great extent negate the notion that the Appellants acted purely out of passion or "in the moment". As pointed out by the Judge, two of the Appellants were the deceased's uncles who should have protected him and not harmed him. The Judge also considered the fact that the 1st Appellant had 20 a lead role in instigating the others to commit the offence. She correctly imposed a more severe sentence commensurate to that role.
- Considering all our findings here, we consider that the trial Judge \$24\$ made a proper evaluation of what was presented as aggravating and mitigating factors, and all other intervening factors before deciding on sentences for each Appellant. We find no merit in the submission that she imposed harsh and manifestly excessive sentences on each of the Appellants.

Accordingly we find no merit in the appeal and it is dismissed. S \$25\$ Each of the Appellants will continue to serve the terms as imposed by the trial Judge.

Dated at Kampala this 25th of Menuts, 2025 \$10\$

RICHARD BUTEERA DEPUTY CHIEF JUSTICE

EVA K. LUSWATA JUSTICE OF APPEAL

OSCARJ. KIHICA JUSTICE OF APPEAL

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