

UGANDA / JUDGMENT

Kiiza Jovan v Uganda (Criminal Appeal No. 305 of 2020) [2025] UGCA 178 (30 May 2025) [2025] UGCA 178

COURT

Court of Appeal of Uganda

BEFORE

Dr. F. Zeija, DCJ, Gashirabake, JA, K.K. Katunguka,
JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 305 of 2020

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

HOLDEN AT MASINDI

[Coram: F. Zeija, DCJ, C. Gashirabake, K K. Katunguka, JJA.]

CRIMINAL APPEAL NO. 305 OF 2020

BETWEEN

KIIZA JOVAN APPELLANT

AND

UGANDA RESPONDENT

An appeal from a Judgment of the High Court of Uganda sitting at Masindi by Rugadya Atwooki, J., in Criminal Session Case No. 014 of 2017 delivered on the 24th day of July, 2018

JUDGMENT F THE COURT

Introduction

- t11 The appellant was indicted and convicted by the High Court of the offence of murder contrary to Sections 188 and 189 of the Penal Code Act Cap 120. He was sentenced to 40 years' imprisonment less 5 years the period he had spent on remand. He was ordered to serve the remaining 35 years' imprisonment.
- 121 Being dissatisfied with the sentence of the trial court, the appellant filed this appeal on the following grounds;
- 1. The learned trial Judge erred in law and fact by imposing a sentence of ⁴⁰ years' imprisonment, which is manifestly excessive and harsh given the circumstances of the case.
- 2. The trial Judge failed to adequately consider the mitigating factors presented in favour of the appellant.

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t31 The appellant seeks that; the appeal be allowed, the sentence be quashed and set aside. And that he is given a lenient sentence.

Background

- t41 The facts of the case as presented before the trial Court are that the appellant (Kiiza Jovan) rented a room within the same housing unit with a one Ben (herein referred to as "the deceased"). The two were known to be on good neighbourly terms
- t51 On the 18^m day of July, 2013, Ayebale Angela, a lady in the neighbourhood lost her bicycle and the deceased (Ben) reported that he had seen the bicycle at the appellant's house. Upon search, the stolen bicycle was recovered from the appellant's house who admitted to and apologized for the theft. The following day, the deceased reported to a one "mayo" that the appellant had threatened to kill him, A day after, the appellant reported to the Local Council authorities that his housemate Ben had been killed,
- t61 The appellant led the local authorities to the house where he and the deceased rented. Indeed, the deceased was found lying in a pool of blood, a navy blue cap and panga were found lying next to him. Kasaija John - "the Mayo" (PW2) and Kamusiime Robert (the village's Secretary for Defence- PW3) recognized the items as belonging to the appellant. The appellant was arrested and arraigned before the High Court on the charge of murder where he was convicted and sentenced to 40 years' imprisonment.

Representation

t7l At the hearing, the appellant was represented by Ms, Susan Zemei holding brief for Mr. Simon Kasangaki, Mr. Simon Peter Ssemalemba holding brief for Ms. Nabisenke Vicky appeared for the respondent. Both parties filed written submissions which were adopted as their legal arguments.

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Appellant's Submissions

- I81 On ground one of the appeal, learned counsel for the appellant submitted that the circumstances of the crime, including the accused's lack of prior criminal history, his expression of remorse, and the fact that he was a first time offender, were not given adequate weight in sentencing. Counsel contended that the appellant's age (35 years old at the time of sentencing), his status as a sole breadwinner with dependents, and his health condition (HIV positive) should have been sufficient considerations for a more lenient sentence.
- I9l On ground two, Counsel for the appellant submitted that the trial Judge did not give sufficient weight to the substantial mitigating factors that were presented during the sentencing phase such as the appellant being a first time offender, the appellant's age and health, remorsefulness, family and social responsibility, impact of remand period and possibility of rehabilitation. Counsel cited a host of authorities including; Atiku Lino versus Uganda, [2015] UGCA and Kasaija Daudi Versus Uganda, [2014] UGCA 47, where the appellant was convicted of two counts of murder and sentenced to life imprisonment. On appeal, the sentence was found to be manifestly excessive and was substituted with 18 years' imprisonment on each count, to be served concurrently.
- [10] Counsel for the appellant concluded by praying for a reduced sentence of 12 years' imprisonment on the account that the decision to impose 40 years' imprisonment was disproportionate to the offence.

Respondent's submissions

[11] In reply, the learned State Attorney for the respondent submitted on the first ground that; the appellant was convicted of murder which carries a maximum sentence of death, That in passing the sentence, the trial Judge considered both the mitigating and aggravating factors, and came to the conclusion that a sentence of 40 years' imprisonment was an appropriate and suitable sentence given the circumstances of

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the case, Further still, the trial Judge reduced that sentence by the 5 years that the appellant had spent on remand leaving the sentence of 35 years' imprisonment.

- [12] Counsel submitted that the appellant committed a horrific, brutal, callous, calculated, well planned and pre-meditated murder. That the learned trial Judge took into account the law, the values and the norms of the community within which this crime was committed, and rightly came up with an appropriate sentence of 40 years' imprisonment.
- [13] On the second ground, the respondent's counsel submitted that the sentence was not based on a wrong principle of law, did not overlook any material factor and was neither harsh nor manifestly excessive, given the circumstances of this case. Counsel relied on several authorities including; Sebuliba Silaje versus Uganda, Court of Appeal Criminal Appeal No. 0319 of 2009 (unreported), Opolot Justine & Another versus Uganda, [2019] UGSC 88, Kaddu Kavulu Lawrence versus Uganda, Supreme Court Criminal Appeal No. 72 of 2018, where this Court as well as the Supreme Court maintained sentences of death, life imprisonment, 50 years and 40 years' imprisonment respectively. He prayed that this honourable Court upholds the sentence passed by the trial Judge.

Consideration of the Appeal

[14] The duty of the first appellate Court as stated under Rule 30(1) of the Judicature (Court of Appeals Rules) Directions, is to re-appraise all material evidence that was adduced before the trial Court and come to its own conclusions of fact and law while making allowance for the fact that it neither saw nor heard the witnesses testify. This principle was stated in Henry Kifamunte V Uganda, Supreme Court Criminal Appeal No.10 of 1997.

In this regard, we have carefully read the record of the trial Court, the submissions of both counsel and the authorities cited, and others not cited by the parties.

[15] Both grounds of appeal relate to the sentence and shall be addressed jointly.

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Appellate jurisdiction in regards to sentencing has been exhaustively dealt with by Courts in a litany of cases including in Kiwalabye Bernard versus Uganda, Supreme Court Criminal Appeal No. 143 of 2001, where Court stated as follows,

"An appellate Court will only alter a sentence imposed by the trial Court if it is evident 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. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration"

[16] We shall duly apply the above principles. The crux of this appeal is that the sentence meted out by the trial Judge was harsh and excessive and was imposed without consideration of the mitigating factors. To intenogate the appellant's claim, we make reference to the sentencing notes of the trial Court, reproduced here under;

> "The accused was convicted of Murder. Mafimum senfence is death. State asked for impisonment for life. Circumstances under which the offence was commtfted was gruesome, Offence arose from the recent criminality of the accused. Yef lhis was said to be a friend.

> Mitigating factors; young man 35 years, can reform, prayed for leniency, has children - sole bread winner, he is sick, remand-S years.

Sentence; 40 years has remand of 5 years - therefore has 35 years"

[17] An in-depth scrutiny of the sentencing order reveals that the trial Judge took into account all the relevant mitigating and aggravating circumstances. We take the caution offered by this Court in Ndyabalema Fulugensio V Uganda, Court of Appeal Criminal Appeal No. 26 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

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manifestly excessive, for example where the trial Court arrived at a sentence without considering mitigating circumstances.

- t18l It is evident that the trial Court considered the aggravating and mitigating factors submitted by either counsel, The trial Judge weighed the above considerations as is required by the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions,2013. We find no grounds to fault the trial Court for the sentence meted out. There is no indication that the sentence was either harsh nor excessive, The pre-trial remand period of 5 years was taken into account.
- [19] The supreme Court in the authority of Livingstone Kakooza versus Uganda, (19941 UGSC '17, stated that the sentences imposed in previous cases of similar nature do afford material consideration while this Court is determining appeals.
- [20] As observed in the myriad of authorities submitted by the respondent's counsel, ^a sentence of 40 years' imprisonment is within the acceptable sentencing range for the offence of murder. We have encountered a number of appeals decided by the apex Courts where a sentence of 40 years' imprisonment for murder was found to be appropriate. These include Bakubye Muzamiru & Another versus Uganda [2018] UGSC 5, where the learned justices of the Supreme Court noted that ^a sentence of 40 years' imprisonment for murder was neither premised on wrong principles of law nor was it

excessive.

Decision of Court

[21] We have had the opportunity to look at the submissions for both counsel for the appellant and respondent. The appellant was indicted for murder, found guilty and sentenced to 35years imprisonment after deducting the period spent on remand. Bearing in mind that the maximum sentence for murder is death, this Court is constrained to interfere with the sentence meted by the trial Court for ii was not an illegal sentence nor was any principle faulted. The appellant shall continue serving

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the sentence meted by the trial Court. Accordingly, we find no merit in the appeal and it stands dismissed.

We so order

Dated this 301+ day of 2025. Flavian ua (PhD) Justice of Appeal Christopher Gashirabake Justic
Appeal Kehah Kitariisibwa Katunguka Justice of Appeal PaEe 7 of 7

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