

UGANDA / JUDGMENT

Kirangwa v Uganda (Criminal Appeal 128 of 2016) [2024] UGCA 171 (17 July 2024)

[2024] UGCA 171**COURT**

Court of Appeal of Uganda

BEFORE

Obura, JA, Muzamiru, JA, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 128 of 2016

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA HELD AT MASAKA**

(Coram: Hellen Obura, Muzamiru M. Kibeedi & Moses K. Kazibwe, JJA)

CRIMINAL APPEAL NO. COA-00-CR-CN-0128-2016

KIRANGWA MONDAY ::::::::::: APPELLANT

VERSUS**UGANDA :::: ::::: RESPONDENT**

[Appeal against conviction and sentence arising from the judgement and orders of Hon. Justice John Eudes Keitirima dated the 29th of April 2016 in Criminal Session Case No. 124 of 2012 of the High Court of Uganda at Masaka]

JUDGMENT OF THE COURT**Introduction**

- [1] The appellant was indicted before the High Court of Uganda at Masaka for the offence of murder of Jackson Kaitare (deceased) contrary to Sections 188 and 189 of the Penal Code Act. It was the prosecution's case that on the 01st of April 2012, at Kayonza B village in Lwengo District, the appellant hit the deceased with a big stick on the head, the abdomen and other body parts which led to his death on the following day.
- [2] The appellant denied the charge and set up an alibi.

The trial Court decision

After a full trial, the trial court convicted the appellant as charged and sentenced him to 25 [3] years' imprisonment after considering the remand period.

\$[4]\$ The appellant was dissatisfied with the decision of the High Court and appealed to this court against both the conviction and sentence.

Grounds of appeal

- \$[5]\$ The appellant set forth three grounds of appeal in his Memorandum of Appeal, namely:
- 1) The learned trial Judge erred in law and in fact when he rejected the defence of alibi raised by the appellant and thus come (sic!) up to a wrong conclusion thereby wrongly convicting the appellant.
- The trial Judge erred in law and in fact in sentencing the appellant to 25 years' $\overline{\{2\}}$ imprisonment which was a manifestly harsh and excessive sentence in the circumstances thereby occasioning a miscarriage of justice.
- 3) The trial Judge erred in law and in fact in sentencing the appellant to 25 years imprisonment without considering the period spent on remand thereby rendering the sentence illegal.

Representations

- At the hearing of the appeal, Mr. Innocent Kaliba, Learned Counsel, appeared for the [6] appellant while Mr. Brian Kalinaki, Assistant Director of Public Prosecutions and Mr. Peter Angoli, Senior State Attorney in the Directorate of Public Prosecutions (DPP), jointly appeared for the respondent.
- The parties, with leave of the Court, relied on their written submissions as their legal \$[7]\$ arguments in support of their respective cases.

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Duty of the Court

- The duty of this court as a first appellate court is now settled. It is to reappraise all material [8] 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. See **Rule 30(1)(a)** of the Judicature (Court of Appeal) Rules S. I. No. 13-10; **Baguma Fred Vs Uganda, Supreme Court Criminal Appeal No. 7 of 2004**; **Kifumante Henry Vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997**; and **Pandya Vs R [1957] EA 336**.

- \$[9]\$ We have taken cognizance of the principles above in the determination of this appeal and carefully reviewed the record before us, considered the submissions of both counsel, the authorities cited and those not cited that were relevant to the appeal.

Ground one - Alibi

[10] The first ground of appeal was couched thus:

"The learned trial Judge erred in law and in fact when he rejected the defence of alibi raised by the appellant and thus come (sic!) up to a wrong conclusion thereby *wrongly convicting the appellant."*

- [11] It was the appellant's case that on the 01st of April 2012, when he is stated to have fatally beaten the deceased, he was at his home attending to visitors till around 3 pm when he left his home to attend a village meeting called by the Village Council Chairperson (LC1) Chairperson). He faulted the trial Judge for not judicially evaluating the question of the actual time when the offence was committed and where the appellant was at the material time which resulted in being wrongfully convicted.
- [12] In reply, the respondent submitted that the trial Judge was right to reject the appellant's alibi. The respondent contended that the trial Judge judiciously evaluated the testimony of

the single identifying witness which placed the appellant at the scene of the crime vis-à-vis the testimonies of the appellant and his three witnesses and properly rejected the appellant's alibi. The respondent prayed to this court to dismiss the first ground of appeal.

- [13] From the record, the scene of the crime was at Dr. Ndyamuba's farm in Kayonza village. PW3 Detective Sergeant Geoffrey Katungi who made the sketch plan of the scene of crime testified that he was led to the crime scene on the 2nd of April 2012 by PW4, Wilson Akanyijuka. He, inter alia, found the stick used to hit the deceased at the crime scene and took it as an exhibit.
- [14] The prosecution evidence relied upon by the trial court to place the appellant at the scene of the crime was the direct evidence of PW4 Wilson Akanyijuka. Akanyijuka testified that before the fateful date, he knew the deceased. He also knew the appellant as a fellow resident in Kayonza village who lived near Dr. Ndyamuba's farm. On the fateful day, Akanyijuka was with the deceased grazing cattle from Dr. Ndyamuba's farm located in Kayonza village when he saw the appellant arrive at the crime scene and started hitting the deceased with a big stick on the head and other parts of the body while stating that the deceased's cattle had strayed into his garden and eaten his crops. The deceased fell down. The hitting lasted about one minute, after which the appellant left. It was day time and Akanyijuka was about one and a half metres away from the deceased. The deceased shortly thereafter complained of a headache. Akanyijuka and the deceased took their animals to drink and parted ways. PW4 later learnt that the deceased's health had deteriorated

afterwards and died from a clinic on the day following the beating meted upon him by the appellant.

- [15] In his unsworn testimony, the appellant stated that he neither knew the deceased nor beat him. That on the 01st of April 2012 when he was accused of having beaten the deceased, he was at the home of his uncle, James Kamya, where he was involved in family activities

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to clear and reconstruct the graves of their departed family members. He stated that the function was attended by over 30 relatives. And as soon as the family activities were done, at around 3 pm he went and attended a Village Council meeting.

- [16] In support of his alibi, the appellant produced three witnesses all of whom had attended the family function and seen the appellant actively participating in the family function activities on 01st April 2012. These were DW1 Winnie Nansubuga who was the appellant's neighbour, DW2 Justine Bamwite, and DW3 George Kasenkende who was the appellant's cousin. All the three witnesses testified that each one of them saw the appellant at the family function on 01st April 2012.
- In his judgment, the trial Judge found that proof of the participation of the appellant in the \$[17]\$ killing of the deceased was based on the evidence of a single identifying witness (Akanyijuka) who claimed to have seen the appellant hitting the deceased. He found that the conditions in existence at the material time favoured a proper identification of the appellant by Akanyijuka in accordance with the criteria set out in the case of **Moses Bogere Vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997**. These were: Akanyijuka knew the appellant well before the incident and this fact was likewise admitted by the appellant in his evidence. Second, the incident occurred during broad day light. Third, Akanyijuka was in a distance of about one metre from where the deceased was assaulted.
- [18] The trial Judge also considered the credibility of Akanyijuka who he found truthful. There was also no grudge Akanyijuka had against the appellant.
- [19] The trial Judge then considered the alibi of the appellant and found that the family function in which the appellant was involved took place very near the scene of the crime. The fatal incident lasted about one minute. It was possible for the appellant to sneak from the

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function, carry out his mission and resume his duties in the function within a space of only ten minutes.

- [20] One of the ways of disproving an *alibi* is for the prosecution to adduce cogent evidence which puts the accused at the scene of the crime. See: **Jamada Nzabaikukize Vs Uganda, Supreme Court Criminal Appeal No.01 of 2015.**
- [21] In the instant matter, upon re-evaluation of both the prosecution evidence and the appellant's defence of alibi, the trial Judge cannot be faulted for finding that the appellant was put at the scene of the crime. Carrying out the act of beating up the deceased was not incompatible with the appellant participating in his family functions on the same day. Beating the deceased lasted approximately one minute and the scene of crime was very close to where the appellant and his family members were involved in the family function. The trial Judge found that it was just a ten minutes' walk. Accordingly, the appellant's alibi was properly rejected.
- [22] Ground one accordingly fails.

Grounds two and three – illegality and gravity of the sentence

- In the second ground of appeal, the appellant complains about the gravity of the sentence. [23]
- In the submissions, the appellant contended that the trial Judge did not consider the youthful age of the appellant of 26 years as a mitigating factor. [24]
- [25] The appellant further submitted that the sentence was outside the sentencing range in similar cases. The appellant cited the case of **Jackline Uwera Nsenga Vs Uganda, Court of Appeal Criminal Appeal No. 824 of 2015**, where this court confirmed the sentence of 20 years' imprisonment imposed by the High Court for the offence of murder, and the case of **Susan Kigula & Ors versus Uganda, HCT-00-CR-SC_r0115** (in mitigation) where the

the accused was re-sentenced to 20 years' imprisonment for murder of her husband by cutting his

throat with a panga in the presence of his children.

- In the third ground of appeal, the appellant contended that the sentence was illegal on [26] account of the failure of the trial Judge to arithmetically deduct the remand period from the sentence imposed. The appellant relied on article 23(8) of the Constitution of Uganda, 1995 and the Supreme Court decision in ***Rwabugande Moses Vs Uganda, Supreme Court Criminal Appeal No. 25 of 2014**
- [27] The respondents disagreed.
- [28] The sentencing order of the trial Judge stated thus:

"I have heard both the aggravating and mitigating factors. I have considered the period the convict has spent on remand. However, human life is precious and should be protected at all costs. A young man's life was taken at such an early age by the convict.

The convict wasted court's time by allowing a protracted trial.

I will therefore sentence the convict to twenty-five years' imprisonment. The convict has a right of appeal against both the conviction and sentence.

Hon. Justice John Eude Keitirima

JUDGE

2/05/2016"

[29] The sentencing order of the trial court was made on 02nd May 2016. This was before the Supreme Court decision in the Rwabugande case (op cit) which was rendered in March 2017. To expect a trial court to comply with a non-existent precedent would be superfluous. The Rwabugande case (op cit) did not have retrospective application. See: Nashimolo Paul Kibolo Vs Uganda, Supreme Court Criminal Appeal No. 46 of 2017

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- [30] We are satisfied that the trial Judge by stating that he did consider, **inter alia**, the period spent by the appellant on remand, he complied with the then prevailing interpretation of article 23(8) of the Constitution by the Supreme Court where the court's constitutional duty of taking into account the remand period was held not to necessarily mean an arithmetical exercise in all cases. See: Kizito Senkula Vs. Uganda, Supreme Court Criminal Appeal No. 24 of 2001 (unreported)
- [31] Accordingly, the claim that the sentence is illegal is without basis. Ground three, therefore, fails.
- [32] As regards the alleged harshness of the sentence on account of failure of the trial court to consider the appellant's age as a mitigating factor, we find that the complaint likewise has no basis. The sentencing proceedings indicate that the appellant's age of 30 years at the time of conviction was one of the mitigating factors raised by the appellant's Counsel before the trial court. It was, as such, one of the considerations by the trial court while sentencing the appellant.
- [33] The sentence of 25 years imprisonment was not outside the sentencing range of this court and the Supreme Court in murder cases of similar circumstances. See: **Mboneigaba James Vs Uganda**, Supreme Court Criminal Appeal No.025 of 2017 where the Supreme Court confirmed 26 years and 6 months' imprisonment; and **Karisa Moses Vs Uganda, Supreme Court Criminal Appeal No.23 of 2016** where the Supreme Court confirmed life imprisonment.

Disposition

- [34] The Appeal is dismissed.
- [35] The conviction and sentence imposed by the High Court are hereby confirmed.

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We so order.

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Delivered and dated this 17th day of July 2024.

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Justice of Appeal

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MUZAMIRU MUTANGULA KIBEEDI Justice of Appeal

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Prepared on 13 October 2026 · Esheria