

UGANDA / JUDGMENT

Kyomugisha v Uganda (Criminal Appeal 261 of 2017) [2024] UGCA 177 (17 July 2024) [2024] UGCA 177

COURT

Court of Appeal of Uganda

BEFORE

Obura, JA, Muzamiru, JA, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 261 of 2017

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA HOLDEN AT
MASAKA CRIMINAL APPEAL NO.261 OF 2017

(CORAM: Hellen Obura, Muzamiru Mutangula Kibeedi, Moses Kazibwe S Kawumi, JJA)

KYOMUGISHA ALLEN

APPELLANT

VERSUS

10 UGANDA

RESPONDENT

(An appeal from the decision of Rugadya Atwoki, J delivered on 12th January 2015 at Masaka in Criminal Session Case No,091 of 2014)

JUDGMENT OF THE COURT

The Appellant was charged with Murder contrary to sections 188 and 15 189 of the Penal Code Act, Arson contrary to section 327 of the Act and Attempted suicide contrary to section 210 of the Penal Code Act.

The Appellant and the Prosecution entered a Plea bargaining agreement. The Appellant pled guilty to the Manslaughter and Arson charges. On 12th January 2015 the Appellant was convicted and sentenced to 16 20 years and 9 months on the Manslaughter charge. She was sentenced to 6 years and 9 months on the Arson charge on the same date with the sentences to run concurrently.

Background

In October 2013 the appellant developed misunderstandings with her 25 husband Kalonkano Charles. On 13th October 2013 the appellant set ablaze their residential house and burnt their daughter and household property. She then carried their daughter and dived into a nearby stream.

Page 1 of 5

She was rescued by village mates but the child died. Drowning was established as the cause of death.

The appellant was not satisfied with the sentence confirmed by the trial Judge under the Plea bargaining arrangement. She lodged the present 5 appeal on the following ground:

1. The learned trial Judge erred in law and fact when he irregularly sentenced the Appellant to 16 years and 9 months, and 6 years and 9 months' imprisonment for the two counts of arson and manslaughter respectively, which sentence is irregular, harsh, illegal and excessive in the circumstances of the case.

Representation

\$10\$

The appellant was represented by Mr. Ssekyewa Sam on State brief while the Respondent was represented by Mr. Simon Peter Ssemalemba - Assistant DPP together with and Mr. Mukiibi Lawrence- State Attorney. \$15\$ Counsel for the Appellant sought leave to validate the Notice of Appeal having filed it out of time and leave was granted since there was no objection from Counsel for the Respondent.

Submissions

The Appellant contests the Plea bargaining agreement contending that 20 at the time it was entered by the parties it had no legal basis to support it since the Judicature (Plea Bargain) Rules S. I. No.43 of 2016 were enacted on 24th June 2016 which is an illegality.

It is further contended that no facts constituting the ingredients of the charges were read to the Appellant and the sentencing Judge did not \$25\$ make provision for allocutus by the parties contrary to section 94 of the Trial on Indictments Act which renders the sentence irregular.

Counsel further argued that the sentence imposed by the trial Judge was harsh and excessive since the Appellant readily pled guilty, was a frustrated and disillusioned woman due to the mistreatment by her husband and she was a young person aged 21 years at the time she 5 committed the offences.

It was finally argued that the time the appellant had spent in prison amounts to sufficient punishment and the court was urged to substitute the imposed sentence with a release of the appellant from Prison.

10 The Respondent on the contrary submitted that the Plea bargain Agreement was rooted in the Plea Bargain Guidelines of 2014 made pursuant to Articles 28 (3) (a) and 126 (2) (a) (d) (e) of the Constitution and Section 41(1) and 2 (e) of the Judicature Act.

Counsel further relied on Wangwe Robert V Uganda. CACA No.0572 of

15 2014 where the court validated the Plea bargain initiative rooted in the cited Constitutional Provisions, the Judicature Act and principles underpinning free and speedy trials.

It was submitted that the Appellant voluntarily plea bargained and was represented by an Advocate. All the plea taking processes as outlined in

20 **Adan V Republic (1973) EA 445** were followed by the trial Court. The sentence imposed was neither harsh nor excessive and the trial Judge considered the period the Appellant had spent on remand which he deducted from the sentence.

The court was urged to dismiss the appeal.

Consideration by the court

We have perused the record of the trial court proceedings, the submissions filed by Counsel and the authorities relied on by either side.

Page 3 of 5

The court is alive to its duty which is to re-evaluate the evidence placed before the trial court and come up with its conclusions as per **Rule 30 (1) (a)** of the Judicature (Court of Appeal Rules) Directions.

It is also settled law that this court will not interfere with the sentence S imposed by the trial court which has exercised its discretion on sentence unless the exercise of the discretion is such that it results in the sentence imposed to be manifestly excessive or so 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 10 passing the sentence or where the sentence imposed is wrong in principle.

Kyalimpa Edward V Uganda, Criminal Appeal No.10 of 1995.

We have perused the record of the sentencing proceedings and the Plea \$15\$ Bargain Agreement between the parties. It is evident from the record that the Appellant was represented by Counsel, the charges and facts were explained to her before the trial Judge appended his signature on the Agreement. The Appellant agreed to the sentence of 18 years on the two charges she was convicted on. \$20\$

The Appellant appeared before the Judge for plea taking and sentencing on 12th January 2015 with her Counsel and the same Prosecuting Attorney involved in the Plea Bargaining process. The plea taking 25 procedure was followed and the court sentenced her. The argument by Counsel to the effect that a two tier process was used is correct since no valid plea bargain result can be achieved without a formal plea taking by the court.

The court notes that the Plea bargaining arrangement prior to the 2016 Statutory Instrument was rooted in the Constitution and the 2014 Guidelines hence the impugned Agreement was backed by the Law. The sentence imposed by the court was legal and not harsh since it was 5 agreed on by both the Appellant and the Prosecution.

In Lwere Bosco V Uganda CACA No.531 of 2016 this court held that an appeal on the severity of a sentence cannot arise out of a plea bargain agreement where parties negotiate and voluntarily agree on the terms thereof.

10 Given the fact that the Appellant negotiated and did not state that the terms of the agreement were involuntarily agreed on, this Appeal is devoid of merit and is accordingly dismissed.

Dated at Masaka this

Hellen Obura **Justice of Appeal**

Muzamiru Mutangula Kibeedi **Justice of Appeal**

Moses Kazibwe Kawumi 25 **Justice of Appeal**

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2024/177/eng@2024-07-17>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kyomugisha-v-uganda-criminal-appeal-261-of-2017-2024-ugca-177-17-july-2024-unknown-topic-unknown-court-2024--6a3ea4dc3b1caa91297e9212>

Prepared on 13 October 2026 · Esheria