

UGANDA / JUDGMENT

Langonya v Uganda (Criminal Appeal 188 of 2012) [2024]

UGCA 325 (27 November 2024)

[2024] UGCA 325

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, JJA]

CRIMINAL APPEAL NO. 0188 OF 2012

LANGONYA MOSES APPELLANT

VERSUS**UGANDA RESPONDENT**

(An appeal arising from the decision of the High Court of Uganda at Gulu in Criminal Session Case No. 0t 54 of 2011 before Masalu Musene, J dated 3'd July 20r2)

JUDGMENT OF THE COURT.

1. This is an appeal against sentence only. The appellant was indicted with the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the offence were that on 27th July 201 I at Lanywang village, Palabek-Kal Sub- County in Lamwo District, he murdered Lovee Clodin Mado. He was tried, convicted and sentenced to death.

Background.

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2. The appellant and the deceased lived as husband and wife. On the 27th day of July 2011, while at their home in the night, the appellant picked a quarrel with the deceased, accusing her of having a sexual affair with his brother. He picked an axe and hit her several times on the head. He also burnt her on the thighs and the back with a piece of burning firewood. The deceased made an alarm which was responded to by the appellant's brothers and neighbors. They

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arrested the appellant and took him to the police. He was subsequently charged, convicted and sentenced to death.

- 3. Dissatisfied with the sentence, he appealed to this court on the ground that the "learned trial judge erred in law in sentencing the appellant to suffer death which was deemed manifestly harsh and excessive in the obtaining circumstances".
- 4. The respondent opposed the appeal and asked court to uphold the sentence.

Representation.

5. At the hearing, the appellant was represented by Ms. Alice Akello Latigo while the respondent was represented by Mr. Oola Sam, Senior Assistant DPP and Magala Joel, a State Attorney.

Submissions by Counsel.

- 6. Counsel for the appellant submitted that the death sentence was harsh and excessive considering the mitigating factors. It was submitted that the appellant was of a relatively young age of 35 years, he is capable of reform, he was a first offender and a father to three children who need his presence.
- 7. Counsel pointed out that the offence resulted from domestic violence which if considered would not warrant a death sentence. Arguing that the sentence was harsh and unfair under the law, counsel invited the court to interfere and impose an appropriate sentence.
- 8. She cited *Onyabo Bosco Vs Uganda CACA No. 737 of 2014* in which the appellant cut the deceased on the neck, head, shoulder and burnt him with molten plastic, a sentence of 45 years' imprisonment for murder was reduced to 20 years' imprisonment by this court. In *Kia Erin Vs Uganda CACA NO.*

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172 of 2013, in which the appellant killed a three-year old girl by drowning and buried her in a swamp, a life imprisonment sentence was reduced to 18 years of imprisonment. In Denis Apoto Vs Uganda CACA No. 0199 of 2017, in which the Appellant hit a 2-year-old girl with a hoe on the head and on the face thrice, a 40 years' imprisonment term for murder was reduced to 20 years imprisonment.

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- 9. In reply, counsel for the respondent submitted that the death sentence is legal and not harsh or excessive in the circumstances of this case. He argued that the learned judge took into consideration both the aggravating and mitigating factors before sentencing the appellant. Counsel submitted that the appellant committed the offence in a brutal manner as indicated in the medical report. The deceased sustained multiple wounds on the head which was smashed and sustained bum wounds on her thighs.
- 10. Counsel cited the Supreme Court case of Bashasha Sharif vs Uganda' SCCA No. 82 of 2018, in which the appellant murdered a 9-year-old who was ^a nephew to a 17-year-old girl with whom the appellant was in love. He had feared that the deceased would report him to his father for defiling the girl. He chopped the deceased's body and hid some of the body parts in the bush. On conviction for murder, he was sentenced to death. The sentence was upheld by the Supreme Court.
- 11. Death sentences were upheld by this court in Bahemuka William & another Vs Uganda CA No. 4 of 2003; Mugabe Stephen Vs Uganda, CA No. 42 of 2009 and Bidongo Zenone & 2 others vs Uganda, CA No. 216 of 2016,

Consideration of the appeal.

- 12. An appellate court may interfere with a sentence if it is either illegal, or founded upon a wrong principle of the law, or a result of the trial court's failure to consider a material factor. This court may also interfere where a sentence is harsh and manifestly excessive in the circumstances of the case. See Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001.
- 13. In sentencing the appellant, the learned judge stated: -

"I have listened to and considered the submissions by both Ms. Gloria Inzukuru for State and Ms. Judith Oroma for accused. I am also alive to the fact that the convict killed the deceased in the most brutal and callous manner. This sort of behavior and conduct was uncalled for and unexpected of a husband to his wife, with whom they had three children. And the most stupid utterances of the convict that since he had brought the deceased from Congo, he was entitled to kill her without any problem. Needless to emphasize, death or killing of a person is not only abominable religious wise, but it is unlawful and contrary to the law. It does not matter, and it makes no difference whether the person killed is a Congolese national or a citizen of any other country outside Uganda.

As long as the deceased is a human being, the laws of Uganda prohibit unlawful killing of such a human being. The people in Uganda must learn to respect the sanctity of life. The public has to learn that domestic violence is uncalled for and out of touch with civility and modernity. It must be condemned and, discouraged.

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Ms. Judith Oroma for the convict has raised many mitigating factors, including tendering in an outpatient's medical form whereby convict was treated of Pneumonia.

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Ms. Judith Oroma has also talked about the children missing both parents. But as Ms. Gloria Inzukuru for state pointed out, the trauma of the children witnessing the torture of their mother to death will remain in their lives forever.

And furthermore, unless something is done, society will forever live in fear of the convict, and ex-IIPDF soldier who deserted the army and is ready to unleash his tactics and experience acquired in the army to the people, and he already started with his own wife, a person they spent cold nights together, and produced children

This court has no doubts that convict is a dangerous person who cannot be left in society in view of one of the most cruel some murders ever known of murdering deceased in cold blood. The court has to take a tough and rough decision in the circumstances. Convict deserves a maximum penalty.

Convict is hereby sentenced to suffer death in the manner prescribed by the law. "

14. The appellant contends that the death sentence is harsh and manifestly excessive in the circumstances of this case.

- 15. Seeking to support the death sentence counsel for the Respondent argued that the mode of commission of the offence was abnormal, and that the Appellant even threatened to murder more people.
- 16. We have reviewed sentences which have been issued in murder cases of ^a similar nature as this case.
- 17. In *Turyahika Vs Uganda* [2016] UGCA 83, the appellant was convicted of murder and sentenced to death. Following the directive of the Supreme court in *Attorney General V Susan Kigula & 417 Ors* [2009] UGSC 6, the case was returned to High court for mitigation proceedings whereupon the appellant was resented to 36 years' imprisonment. On appeal to this court on grounds of severity of sentence, the sentence was reduced to 26 years' imprisonment. This court noted that in cases of murder, this Court and the Supreme Court have confirmed or imposed sentences ranging from 20 to 30 years. In exceptional circumstances, the sentences have been lower or higher.

- 18. In *Aharikundira Yustina vs Uganda*, SCCA No. 27 of 2015, the Supreme Court substituted a death sentence with 30 years' imprisonment for the appellant 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.
- 19. In *Mbuya Godfrey vs Uganda*, SCCA No. 004 of 2011, the Supreme Court set aside the death sentence imposed on the appellant for the murder of his

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wife which was confirmed by this court and substituted it with a sentence of 25 years' imprisonment.

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- 20. In *Akbar Hussein Godi vs Uganda*, SCCA No. 03 of 2013' 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.
- 21. In *Oyita Sam vs Uganda*, CACA No.307 of 2010, the appellant pleaded guilty to having murdered his brother and was sentenced to death by the trial judge. On appeal, this court substituted the death sentence with a sentence of 25 years.
- 22. We have considered the range of sentences for murder in the above cases whose facts mirror the facts of this case. We also considered the aggravating and mitigating factors in this case. Based on the foregoing, we determine that the sentence of death is harsh and manifestly excessive in the circumstances of this case. We therefore set it aside.
- 23. The fact that the Appellant is an army deserter is an aggravating factor, and it distinguishes this case from the cases we have cited above. He misdirected his military training to kill his wife in the most brutal manner.
- 24. Pursuant to Section I I of the Judicature Act, we sentence him to 25 years' imprisonment. We deduct the period of 8 months which he had spent on remand and order that he shall serve 24 years and 4 months from the date of his conviction, which is 3'd July 2012.

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We so order.

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..day of.devender.2024. Signed, dated and delivered at Gulu this..

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Fredrick Egonda-Ntende Justice of Appeal

Margaret Tibulya Justice of Appeal

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Moses Kazibwe Kawumi

Justice of Appeal

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