

UGANDA / JUDGMENT

Layet v Uganda (Criminal Appeal 178 of 2011) [2024] UGCA 187 (17 July 2024)

[2024] UGCA 187

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Mulyagonja, JA, Luswata, JA

CASE / FILE NUMBER

Criminal Appeal 178 of 2011

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT ARUA

(Coram: Kiryabwire, Mulyagonja, & Luswata, JJA)

10 CRIMINAL APPEAL NO. 0178 OF 2011**BETWEEN**

LAYET LILLY GRACE :::::::::::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA:..... RESPONDENT

(Appeal from the Judgment of the High Court sitting at Gulu in Criminal Session
Case No. 67 of 20LO by Justice Nyanzi Yasin delivered on 25th August, 2011)

JUDGMENT OF THE COURT

Introduction

11 This appeal arose from the decision of the High Court of Uganda in which the learned trial Judge convicted the Appellant of the offence of murder, contrary to Sections 188 and 189 of the Penal Code Act, and attempted murder contrary to Section 20A of the Penal Code Act and sentenced her to life imprisonment for count I, and 20 years' imprisonment for count II, III and IV; the sentences to run concurrently. It was stated in the indictment that the appellant Layet Lilly Grace, Amony Sharon, Adong Jennifer and Anena Flavia, on the

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- ⁵ arrested and with her three accomplices, was charged before Court. Following Anek's death, the charges were amended to include murder. On 19th July, 2011 the D. P. P made the decision to discontinue all the charges against the three accomplices but then retained PW1 and PW2 as state witnesses.
- 4] The Appellant was tried and found guilty on all three counts and sentenced as stated above. Being aggrieved with the decision of the learned trial Judge, she lodged an appeal to this Court on four grounds that; 10
- i. The learned trial Judge erred in law and fact when he convicted the Appellant basing entirely on weak circumstantial evidence that was capable of various explanations thus occasioning a miscarriage of justice to the Appellant.
- ii. The learned trial Judge erred in law and fact when he ignored the glaring evidential contradictions and inconsistencies in the testimony of the witnesses which occasioned a miscarriage of justice to the Appellant.
- iii. The learned trial Judge erred in law and fact when he admitted the evidence of the Appellants coaccused persons as accomplices and used the same to convict the Appellant.
- iv. The learned trial Judge erred in law and fact when he imposed an illegal, harsh and excessive sentence

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- the four counts had been proved to the required standard thereby $\$ \mathsf{S} \$$ arriving at the final decision. The Appellant disagreed with the decision.
- 7] With particular reference to ground one, Mr. Madira submitted that the decision of the Judge that the Appellant participated in causing the death of the deceased, and the attempted murder of three other victims by fire was based on circumstantial evidence which was not clear. Counsel opined that all the evidence was weak and in some instances contradictory. Counsel noted in addition that the deceased who had an opportunity to save herself from the burning house when she opened the windows for the other occupants to run out, elected and risked to remain behind, thus grossly contributing to her own death.
- 8] In addition, counsel argued that although the defence team conceded to the first, second and third ingredients of the offence of murder and attempted murder, the Court still had the duty to satisfy itself that all three ingredients were proved by evidence adduced. In particular, that it was not proved that the deceased suffered an unlawful death because police investigations to establish the type of weapon used to cause the alleged murder and attempted murder were inconclusive, since there was no analysis by the Government Analytical Chemist's report. For emphasis, counsel argued that the evidence of petrol being the alleged murder weapon was speculative, since none was tendered into evidence, yet anything can appear and smell like petrol. Mr. Madira continued that although prosecution exhibits were

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- ⁵ arguments on the Supreme Court decision in Nfred Mumbo & 3 Ors versus Uganda, SC Criminal Appeal No. 28 of 1994 and prayed that ground two be found in the affirmative.
- 111 Under, ground four, Mr. Madira contended that when sentencing the Appellant, the learned trial Judge did not consider the period of 1 year and 8 months that she had spent on remand which occasioned a miscarriage of justice. He based those arguments on Article 23(8) of the Constitution and the decision of Byamukama Herbert versus Uganda, Criminal Appeal No. 21 of 2017 followed in Abele Asuman versus Uganda, SC Criminal Appeal No. 66 of 2016, where it was held that:

"This Court has previously guided that a sentence arrived at without taking into consideration the period spent on remand is illegal for failure to comply with ^a mandatory Constitutional provision. "

- 121 Counsel concluded then that Court finds merit in the appeal and grants the following orders: 20
- a. An order quashing the sentence which is manifestly harsh and excessive, or in the alternative,
- b. A reduction of the sentence ordered by the trial court to a more reasonable one.

Respondent's Submissions

131 Mr. Patrick Omia opposed the appeal and supported both the conviction and sentence. He made substantial submissions on the

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- ⁵ from the area after the fire. Counsel was of the strong view that the Judge made a correct inference of the appellant's participation in the offence because there were no co-existing circumstances to weaken or destroy the inference of her guilt as the person who planned, prepared and then burnt the deceased in her house. Mr. Omia then invited the Court to consider that the prosecution evidence had accurately placed the Appellant at the scene of crime and as such, there would be no merit in ground one. 10
- 161 In reference to ground four, Mr. Omia referred to the Supreme Court decision in Nashimolo Paul Kibolo, Criminal Appeal No. 46 of 2017, where it was held that the requirement of arithmetically deducting the time spent by a convict on remand by a sentencing Judge, only applied after 3.d March 2017, after the Supreme Court decision in Rwabugande Moses versus Uganda, SC Criminal Appeal No. 25 of 2014. That since the Appellant was sentenced on 25th August, 2011 prior to the Rwabugande (supra) decision, the learned Judge did comply with the constitutional provision as it was then. That in any case, Article 23(8) was not applicable to a sentence of life imprisonment as was held in the case of Magezi Gad versus Uganda, SC Criminal Appeal No. OO17 of 2014. 15 20 25
- 17) Further citing the Supreme Court decisions in Kyalimpa Edward versus Uganda, SC Criminal Appeal No.10 of 1995 and Kanya Johnson Wavamuno versus Uganda, SC Criminal Appeal No. 16 of 2000, Mr. Omia argued that an appellate court should only interfere with a sentence imposed by a trial court in very limited

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⁵ arrest, indicates that if released, she can repeat the crime. Counsel considered it appropriate that the Appellant remains in prison for life and in addition, prayed that the sentence of 20 years' imprisonment for the three counts of attempted murder should also be maintained.

10 Decision of the Court

20] We have carefully read the record, considered the submissions for both sides, and the law and authorities cited and those sourced by the Court. We are alive to the duty of this Court as the first appellate Court to review the evidence on record and reconsider the material before the trial Judge, including the decision of the trial Court, before arriving at our own decision. Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions also refers. We also do agree and follow the decision of the Supreme Court in *Kifamunte Henry versus Uganda*, SC Criminal Appeal No. 10 of L997, where it was held that on a first appeal, this court has a duty to:

> ". . . review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgment appealed from, but carefully weighing and assessing it."

We therefore proceed to consider this appeal in line with the above principles.

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the victims pulled out of a burning house and suffered severe S burns depicted in EXP 2 and EXP 4. In addition, the fact that the injuries were not self-inflicted resulting into her death is confirmed in the death certificate exhibited in EXP 1. He was also persuaded that whoever caused the death did so with malice aforethought because they must have known that the fire would result into the death of those targeted in the house. Since evidence of the victims' injuries was not contested, it was deemed to be agreed evidence, and it was therefore not necessary to call a medical officer. The Judge relied on the evidence of PW1 and PW2 showing that the attack on the deceased was well planned before execution, and that because the deceased's burns covered the entire head and chest, both vulnerable parts of the deceased's body, she most likely succumbed to these injuries. As to the reference to the "rare weapon", the trial Judge explained that he was convinced that the one who set the deceased's house on fire used petrol, a very inflammable substance. The Judge considered the evidence on attempted murder in a similar manner.

It is evident therefore that the Judge considered circumstantial evidence to prove that the Appellant participated in the murder and attempted murder of her victims. He did so after an exposition of the principles of circumstantial evidence as laid down in *People V Bretagna*, 298 N. Y. 323, 325 (1949) where it was held that:

> "..... direct evidence of a fact from which a person may reasonably infer the existence of another fact. A person's *guilt of a charged crime may be proven by circumstantial* evidence, if that evidence, while not directly establishing

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"It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which *would weaken or destroy the inference.*"

- 25] Both counsels were in agreement that the Appellant's conviction was solely based on circumstantial evidence. Indeed, the trial 10 Judge relied on several pieces of evidence to confirm the Appellant's guilt. He found and we agree, that much of the incriminating evidence was obtained from the testimonies of PW1, PW2, PW4, PW5 and PW9. Our own re-evaluation of the evidence has confirmed the following: 15
- PW1 testified that on the same night of the fire, the Appellant \$26\$ summoned her and they met at one Opio's shop. During their meeting, the Appellant revealed that she had obtained information about a love affair between her husband Moses with the deceased, and that she did not approve of it. That the Appellant spoke with much anger stating specifically that: "Moses is taking me for granted and does not know my characters. Mary also just hears about me, I will do something that she will not forget." She also mentioned having locked Moses out of their house and cutting his clothes into pieces. PW1 noted that the Appellant had a matchbox in her pocket as she made all those pronouncements.
- During the same meeting, the Appellant told PW1 that she had \$27\$ previously done surveillance and confirmed where the deceased resided. She requested and PW1 agreed to escort her to see the deceased's house. That both women passed by that house at about 8:00 pm the same night. PW1 mentioned that she observed

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⁵ petrol which he did. PW4 also retrieved a plastic bottle smelling petrol from PW1's compound.

- 2911 PW1 further testified that the same night, the Appellant requested her to open the door to ease herself. That later in the night, at about 1:00pm, PW1 heard someone entering her house whom she confirmed to be the Appellant. When she called out, PW1 noted that the Appellant was at that point in an agitated state and breathless akin to someone who had been running. The Appellant confessed to her that she had gone out in order to set fire to the deceased's house which was about 300-600 meters away. The next morning, PW1 confirmed that the deceased had been admitted at the Gulu Independent Hospital, due to severe burns.
- 301 PW9 testified that at about mid night the same night, she heard a loud bang coming from outside her house. When she went out to investigate, she saw that the deceased's house was on fire. PW4 and PW6 who were also at the scene also saw the fire around the same time PW1 observed the Appellant to have been outside her house. PW4 and PW6 testified to have received a report of a fire at around 2:00pm. Both saw the burning house and PW6 observed the victims, being removed from it. PW4 testified that there was the smell of petrol at the scene of crime. 25

- 311 PW1 further testified that on more than one occasion, the Appellant threatened her and PW2 not to reveal what they knew about her involvement in the fire. That due to the fear of those threats, she feared to report the matter. However, while at the

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- which begun on 26th November, 2009 at the Army Barracks and S Kasubi Primary School. PW3 then received a photograph of the Appellant to assist in the search. PW4 testified that the Appellant was eventually arrested on 4th December, 2009 when she was lured by her husband by a telephone call.

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PW4 testified in addition that before the night of the fire, the 34] Appellant had removed their two children from their home in the barracks and hide them in another location called Pece.

35] We agree the above evidence pieced together, results in moral 15 certainty that it was the Appellant who set fire to the deceased's house. Although her motives need not be proved, the Appellant was clearly incensed by the romantic relationship between her husband and the deceased and made a meticulous plan to kill the deceased. She removed her children from her home in preparation 20 of her escape from the village, and chose to spend a night in PW1's house which was situated quite near the crime scene. PW1, heard the Appellant order for petrol and watched her receiving it, and later observed her returning to her house during the night. It is not the law that in all murder cases, a murder weapon must be 25 adduced and proved. In this case, two witnesses saw the Appellant in the possession of matchboxes before the fire, and two others smelt petrol at the crime scene. Each described the fire as ferocious and difficult to contain. It is conceivable that petrol an 30 extremely inflammable vector was used to start the fire. There would be none left to be exhibited. It was indeed a mistake not to exhibit the mineral water bottle suspected to have contained the

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- ⁵ amount of petrol in the mineral water bottles to be a minor inconsistency.
- 39] Furthermore, the trial Judge progressively indicated during the proceedings what he considered contradictions in the testimonies of some of the prosecution witnesses. Much of those were contradictions were differences between what PW1 and PW2 had stated in their statements at police on the one hand, and their evidence in Court on the other. The Court chose to believe the later testimonies. It was a correct decision because, their statements merely being plain statements (as opposed to charge and caution statements), they could not override what was stated on oath in Court. Further, any inconsistencies were quite minor and did not go to the root of their varied evidence to prove the ingredients of the offence. We too choose to consider those inconsistencies as ²⁰ minor.

40] Accordingly, ground two fails as well.

Ground four

⁴1] The Appellant considered the sentences she received as illegal, harsh and excessive. Both this Court and the Supreme Court have on numerous occasions given direction on the powers of an appellate court on the issue of sentence. It was held in *Kyalimpa Edward versus Uganda*, SC Criminal Appeal No. 10 of 1995, (which followed *R vs. De Haviland* (f 9831 5 Cr. App. R(s) 109 as follows: 25 30

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sentence that is imposed upon a convict. However, the judgment S in this case was rendered on 25th August, 2011 prior to the **Rwabugande** decision; when the position was different. All that was required of a sentencing judicial officer at the time, was to show in their ruling that they had given attention to the period of remand and considered it as a factor in deciding on an appropriate 10 sentence suiting the circumstances of the case. A case in point is the decision of the Supreme Court in *Kizito Senkula versus* U Uganda Criminal Appeal No. 24/2001, decided on December, 2002 in which it was held in part that:

"We understand the provisions of article 23(8) of the 15 *Constitution, they mean that when a trial court imposes* a term of imprisonment as sentence on a convicted person the court should take into account the period which the person, spent in remand prior to his/her conviction. Taking into account does not mean an 20 *arithmetical exercise.*"

The Supreme Court handed down similar decisions in other cases like that of *Kabuye Senvewo versus Uganda*, SC Criminal Appeal No. 2 of 2002, *Katende Ahamed versus Uganda*, SC Criminal Appeal No. 6 of 2004 and *Bukenya Joseph versus Uganda*, SC Criminal Appeal No. 17 of 2010.

- $\mathsf{44}$ While sentencing the Appellant, the learned trial Judge found as follows:
- "I have heard the state's submission and the reasons stated." *Mr.* Oyet Moses for the accused had given his reasons for leniency against the extreme position of the state seeking

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respect of count II, III and IV. All sentences in respect of count *II, III and IV shall run concurrently." (Sic!)*

Hon. Justice Nyanzi Yasin

Judge..."

- 45] We have confirmed from the record that during the proceedings, the state prosecutor did clearly submit and it was recorded that 10 the Appellant had by that date, been on remand since 3rd December, 2009, but the Judge made no reference to that submission. The trial Judge was expected to have tailored his sentencing decision in manner as to show that he had at least taken into account or factored that period into the final sentence. 15 By failing to do so, we find that the sentences of 20 years in respect to counts 2, 3 and 4 of the indictment were illegal and made on a wrong principle. Under Section 11 TID, we do have powers to interfere with those sentences and accordingly, set them aside.
- 46] However, we agree with respondent's counsel that the same 20 principle would not apply to the sentence of life imprisonment. The Supreme Court while following the Indian Case of **Gopal Vinayak Godse versus The State of Maharashtra & Others** (1962) ISCJ 423, (1961) 39 AIR 1961 SC 600, (1962) MLJ 269 held that: 25

"....a sentence of imprisonment for life is not for any definite *period and imprisonment for life must prima facie be treated* as imprisonment for the whole of the convict's natural life". See Tigo Stephen versus Uganda (supra).

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- 5 father who was present in court stated that his wife and eldest daughter were so shocked by the incident, that they developed high blood pressure, from which his wife succumbed. That he had to sell a cow to pay the hospital expenses and was left alone to raise the deceased's five children. Defence counsel accordingly ¹⁰ sought the maximum sentences for all the offences.
- 48] Conversely, it was submitted in mitigation that the Appellant who had remained on remand since 3rd December 2009, was a first time offender with no previous record. Further that at the time of her sentencing, she was expecting "Moses'child" and as a result of the pregnancy, she suffered from emotional changes and had hormonal changes in the body which at times resulted into violent acts. It was stated in addition that the Appellant by then had five children under the age of five years, the youngest being only one year and four months old, whose interests needed consideration. It was also submitted that the Appellant by then a teacher in Kasubi, worked with the UPDF as a functional literacy instructor and therefore, a useful person to the community. Defence counsel also implored that at the

material time, northern Uganda had just come out of war, and that there was a possibility that she had been disillusioned by the war, and that her custody would result into her children adding to the many orphans in the region. In conclusion, counsel prayed for leniency. The Appellant herself prayed for leniency. She offered to compensate the deceased's family for their loss and stated that she was prepared to reconcile with them. That she too was survived by an old weak mother and one of her children had run away from home. Further that she

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- ⁵ 501 We have noted the authorities offered by respondent's counsel to support sentences of life imprisonment. We are also aware of other decisions of the Supreme Court confirming a similar sentence. See for example, Sebuliba Siraji versus Uganda, Criminal Appeal No. 319 of 2009 and Kazarwa Henry & Others versus Uganda, SC Criminal Appeal No. 17 of 2015. However, this Court and the Supreme Court have in other cases confirmed more lenient sentences. For example, in Tusingwire Samuel versus Uganda, Criminal Appeal No. 11 O of 2007 [2016] UCTCCA 53, this Court considered a sentence of life imprisonment imposed for murder to be harsh and manifestly excessive and reduced it to 30 years' imprisonment. Also in Aria Angelo versus Uganda, CA Criminal Appeal No. 439 of 2015 this Court declined to interfere with a sentence of 36 years and 8 months' imprisonment for an appellant who pleaded guilty on a plea bargain agreement on four counts of murder. Again in Bakubye Muzamiru versus Uganda, SC Criminal Appeal No, 27 of 2015, it was held that a term of 40 or 30 years' imprisonment was neither premised on wrong principles of law nor manifestly excessive since the offence of murder attracts a maximum sentence of death. In Kisitu Majaidin alias Mpata versus Uganda, CA Criminal Appeal No. 028 of 2007, this court upheld a sentence of 30 years' imprisonment for murder, for an appellant who was convicted of killing his mother. 10 15 20 25

- ⁵1] Having considered the facts of this case, submissions of both counsel in the allocution proceedings, and court precedents, we

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- ⁵ deduct 1 year, 8 months and 22 days that the Appellant had spent on remand prior to her conviction. She will therefore serve a period of 18 years, 4 months and 8 days for counts II, III and IV. The sentence of life imprisonment and the sentences in respect of counts II, III, and IV shall run concurrently.

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54] For the reasons above, the sentence of life imprisonment for murder is sustained.

551 Accordingly, this appeal has succeeded only in part in the terms given.

Dated at Arua this ... day of 2024. 20 HON. KIRYABWIRE JUSTICE OF APPEAL 25 HON. IR-ENE A
JA JUSTI OF APPEAL 30 HO LUSWATA JUS 35 I+ OF APPEAL

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