

UGANDA / JUDGMENT

Muhwezi Vs Uganda (Criminal Appeal No.198 of 2013) [2016] UGCA 75 (7 December 2016)

[2016] UGCA 75

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Criminal Appeal No.198 of 2013

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MBARARA

CRIMINAL APPEAL NO. 198 OF 2013

MUHWEZI BAYON APPELLANT

VS

UGANDA RESPONDENT

[Appeal from decision of Hon. Justice Paul K. Mugamba at High Court Kampala dated 9th December 2013]

CORAM:

HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE SIMON BYABAKAMA MUGENYI, JA HON. MR. JUSTICE ALFONSE C. OWINY-DOLLO, JA

JUDGMENT OF THE COURT

Background

The appellant was convicted of murder contrary to Sections 188 and 189 of Penal Code Act on 8th February 2007, by the High Court at Bushenyi presided over by Hon. Paul K. Mugamba J (as he then was) and sentenced to death. On 21st January 2009, the Supreme Court in Attorney General Vs Suzan Kigula and 417 others: Constitutional Petition Appeal No, 03 of 2006, upheld the decision of the Constitutional Court that had annulled the mandatory death penalty. The Supreme Court went further and directed that 10 all persons who had been sentenced to the mandatory death penalty be returned to the High Court for re-sentencing. Since the death penalty was no longer

mandatory, the re-sentencing procedure would include mitigation proceedings on severity of sentence.

Subsequently, the appellant's file was sent back to the High Court for mitigation and re-sentencing. On 18th November 2013, mitigation proceedings were held before Hon. Justice P. K Mugamba J, (as he then was), at the High Court, at Kampala upon which the appellant was re-sentenced to 25 years imprisonment for the murder he had earlier been convicted of.

The appellant being dissatisfied with both his conviction of 8th February 2007, and the subsequent sentence of 25 years imprisonment of 18th November 2013, appealed to this court against both conviction and sentence.

Appearances

At the hearing of this appeal the appellant was represented by learned counsel Mr. James Bwatota Bashonga on state brief while Ms. Jacquelyn Okui learned Senior State Attorney represented the respondent. The appellant was in Court.

The Appellants case

Mr. Bwatota abandoned the appeal against conviction, preferring to argue only one ground in respect of severity of sentence. Counsel submitted that the sentence of 25 years imprisonment imposed upon the appellant was harsh and manifestly excessive in the circumstances of this case.

Counsel submitted further that, as a first offender who had reported himself to the police after the murder, the appellant deserved a more lenient sentence. He argued that the appellant had been on remand for over 9 years and was 33 years old at the time of re-sentencing, he was therefore young and capable of reform. Further that, he had a wife, two young children and an elderly mother to look after.

He asked Court to reduce the sentence to at least 20 years imprisonment.

He relied on *Atiku Lino vs Uganda: Court of Appeal Criminal Appeal No 0041 of 2009* and *Kakubi Paul and Another vs Uganda: Court of Appeal Criminal Appeal No. 126 of 2008*.

The Respondents case

Ms. Jacquelyn Okui, learned Senior State Attorney, opposed the appeal and supported the sentence. She argued that the learned trial Judge had considered all the mitigating and aggravating factors before imposing the sentence. Counsel submitted further that 25 years imprisonment for the offence of murder was neither harsh nor manifestly excessive in the circumstances of this case, taking into account the fact that murder carries a maximum penalty of death.

She referred to Uwihayimaana vs Uganda: Court of Appeal Criminal No. 103 of 2009 in which this court reduced a death sentence to 30 years for murder. Therefore, she argued, 25 years imprisonment for murder was neither harsh nor manifestly excessive in the circumstances of this case.

She asked Court to confirm the sentence.

Resolution by the Court

We have heard the submissions of both counsel. We have also carefully studied the Court record and perused the authorities submitted to us. As a first appellate court, we are required to re-appraise all the evidence adduced at the trial and to make our own inferences on all issues of law and fact. See:- Rule 30(1) of the Rules of this Court and Kifamunte Henry Vs Uganda: Supreme Court Criminal Appeal No. 10 of 1997.

We shall therefore proceed to do so.

As an appellate Court we can only interfere with the trial Court's discretion on sentencing only in limited circumstances and under principles set out by the Supreme Court in Kiwalabye Bernard versus Uganda: Criminal Appeal No. 143 of 2001 as follows:-

“The appellate Court is not to interfere with the sentence imposed by a 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 a trial court ignores to consider an important matter or circumstances which ought to be considered while passing the sentence or where the sentence imposed is wrong in principle”

Even if this Court would have imposed a different sentence had it been the trial Court, it is still precluded from doing so unless that sentence is harsh and manifestly excessive or so low as to amount to a miscarriage of justice. Of course, as set out in the Kiwalabye Case (Supra), this Court may set aside a sentence imposed by the trial Court if the sentence is illegal, or where the trial Judge ignored to consider an important factor or acted on a wrong principle. In James S/O Yoram Vs R [1950] 18 EACA 147 at P. 149. The Court of Appeal for Eastern Africa held that:-

*“It may be that had this Court been trying the appellant it might have imposed a less severe sentence but that by itself is not a ground for interference and this Court will not ordinarily interfere with the discretion exercised by a trial judge in the matter of sentence. ***Unless it is evident* *that the judge had acted on some wrong principle* or *over looked some material factor***”**(Emphasis added).*

In this case, the appellant killed his own brother after a fight over land. He speared him as he ran away. When he had fallen down, he used a panga to decapitate him. This was cruel and gruesome.

However, we note that immediately after the murder he reported himself to the police. He was remorseful at the trial. He was also a first offender with a wife and young children.

The trial Judge also took into account the period he had spent on remand, which, from the record, is about 3 years. That is from date of arrest to the date of conviction. The period the appellant had spent on remand is not over 9 years and 3 months as Counsel for the appellant had submitted.

We find that the learned trial Judge took into account all the mitigating and aggravating factors before imposing the sentence. We also find the sentence to be legal.

Be that as it may, this Court has emphasized the need to maintain consistency in sentencing of persons convicted of same or similar offences. Although the circumstances of each case may certainly differ, this Court has now established a range within which these sentences fall. The term of imprisonment for murder of a single person ranges between 20 to 35 years imprisonment. In exceptional circumstances the sentence may be higher or lower.

In Turyahabwe Ezra & 13 Others vs Uganda: Court of appeal Criminal Appeal No. 0156 of 2010, this Court confirmed a sentence of life imprisonment for the offence of murder.

In Kisitu Majaidin alias Mpata vs Uganda: Court of appeal Criminal Appeal No. 28 of 2007 this Court upheld is a sentence of 30 years imprisonment. The appellant had killed his mother.

In Uwihayimana Molly Vs Uganda: Court of Appeal Criminal Appeal No. 103 of 2009, this Court reduced a death sentence to 30 years imprisonment. The appellant had killed her husband.

In Korobe Joseph Vs Uganda: Court of Appeal Criminal Appeal No. 243/2013, this Court reduced the sentence of 25 years to 14 years noting the advanced age of the appellant and the fact that he was very remorseful.

In Atuku Margret Opii vs Uganda: Court of Appeal Criminal Appeal No. 123/2008, this Court reduced the sentence from death to 20 years imprisonment. The appellant was a single mother of 8 children and the victim who was a 12 year old girl had been killed by drowning. The victim was a daughter to the appellant's neighbour.

In Hon. Godi Akbar vs Uganda: Criminal Appeal No 3 of 2013, the Supreme Court confirmed a 25 year imprisonment. The appellant had killed his wife.

In Ssemanda Christopher & Another vs Uganda: Court of Appeal Criminal Appeal No. 77 of 2010 this Court confirmed a 35 year sentence for murder.

We find that in the circumstances of this case 25 years imprisonment for murder is neither harsh nor manifestly excessive.

We find no reason to interfere with it and we accordingly confirm the same.

This appeal therefore fails and is hereby dismissed.

Dated at Mbarara this 7th day of December 2016

HON. JUSTICE KENNETH KAKURU

JUSTICE OF APPEAL

HON. JUSTICE SIMON BYABAKAMA MUGENYI

JUSTICE OF APPEAL

HON. JUSTICE ALFONSE C OWINY –DOLLO

JUSTICE OF APPEAL

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