

UGANDA / JUDGMENT

Ngabirano v Uganda (Criminal Appeal 469 of 2017) [2025] UGCA 90 (28 March 2025)

[2025] UGCA 90

COURT

Court of Appeal of Uganda

BEFORE

Kibeedi Mutangula, JA, Gashirabake, JA, Kihika, JA / JCC

CASE / FILE NUMBER

Criminal Appeal 469 of 2017

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THE REEPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KABALE

CRIMINAL APPEAL No. 0469 of 2017

(Coram: Kibeedi, Gashirabake, Kihika, JJA)

NGABIRANO AMBROSE ::::::::::::::::::::::::::::::

VERSUS

UGANDA :::::::::::::::::::::::::::::: (Appeal from Conviction and sentence of the High Court of Uganda at Rukungiri before Hon. Justice Micheal Elubu dated 03rd June, 2015)

Introduction

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[1] The appellant was indicted and convicted of murder contrary to sections 188 and 189 of the Penal Code Act Cap 120, he was sentenced to 15 years imprisonment.

Background

[2] The facts as ascertained from the record are that the deceased **KYOMUHENDO PAMELA** was a wife to the appellant, both of whom were residents of Kigoyi Cell, Nyakishenyi Sub-County in Rukungiri District. The deceased and the appellant had a long-standing domestic conflict,

whereby the appellant suspected the deceased to having an extra-marital affair with other men. The two have been used to quarrel quite often. In due course, the deceased acquired a new mobile phone which the appellant further suspected the same to have been bought for her by men unknown to him.

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- [3] On the 13th day of March, 2015 the appellant in a rage of anger wrestled down his wife, held her tightly and cut her neck using a panga inside his house in the presence of the Appellant's father a one ZIKABIKA AUGUSTINE and immediately fled the scene of crime leaving behind the panga. The appellant's father then reported the matter to Rukungiri Police Station upon which the accused was arrested and subsequently charged.
- [a] The appellant was tried and convicted of murder. He was sentenced to 15(fifteen) years imprisonment. Being dissatisfied with the decision, the Appellant appealed against both conviction and sentence on two grounds.

[5] Grounds of appeal

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- 1. The learned trial judge erred in law and in fact when he convicted and sentenced the Appellant on a charge of murder after he had changed his plea of guilty and occasioned ^a miscarriage of justice.
- 2. The learned trial judge erred in law and fact when he imposed on the Appellant a sentence of 15 years' imprisonment which was manifestly harsh and excessive and this occasioned ^a miscarriage of justice.

Representation

- [6] At the hearing of the Appeal, the Appellant was represented by Mr. Felix Bakanyebonera, while the Respondent was represented by Ms. Fatimah Nakafeero Chief State Attorney from Director Public Prosecution.

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The Appellant's counsel prayed for validation of the Notice of Appeal that was filed out of time. The court validated the Notice of Appeal. Counsel for the Appellant also sought leave to substitute ground No. I of the memorandum of appeal. He prayed that Ground 1 be amended to read as follows;

The learned trial Judge erred in law and in fact when he convicted the Appellant without first ascertaining that the Appellant had clearly understood the charge and the particulars thereof and this occasioned a miscarriage of justice.'

Leave to substitute ground 1 was accordingly granted.

Both Counsel proceeded by way of written submissions which have been considered in the resolution of the appeal.

Consideration of the Appeal

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[7] This being a first appeal, it must be recalled that the duty of a first appellate court is to re-evaluate the evidence, weighing conflicting evidence, and reach its own conclusion on the evidence, bearing in mind that it did not see the witnesses testify. (See *Pandya v R* [1957] EA p.336 and *Kifamunte v Uganda*, Supreme Court Criminal Appeal No. 10 of 1997 and COA Criminal Appeal No. 39 of 1996. In the latter case, the Supreme Court held that;

"We agree that on a first appeal, from a conviction by a judge the Appellant is entitled to have the appellate Court's own consideration and view of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the

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findings before the trial Judge. The appellate Court must then make up its own mind not disregarding the Judgment appealed from but carefully weighing and considering it."

We have kept these principles in mind in resolving this appeal. We shall resolve the grounds in the order in which the parties argued them.

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The learned trial Judge erred in law and in fact when he convicted the Appellant without first ascertaining that the Appellant had clearly understood the charge and the particulars thereof and this occasioned a miscarriage of justice.

Appellant's submission

- [9] Counsel for the Appellant submitted that at the commencement of the trial, the charge was read out to the Appellant who told the court that he had heard and understood the same. Counsel further submitted that the Appellant told the court that "the charges are true." Counsel also pointed out that when the elements of the charge were explained to the Appellant, he told the court that "I killed her intentionally". Counsel further submitted that when the brief facts of the case were read out to the Appellant, he told the Court that the facts were true.

- [10] Counsel's contention was that it was not clear how the interpreter had explained the charge to the Appellant. Counsel further contended that it was not clear how the interpreter had explained "malice ^a forethought" to the Appellant. Counsel submitted that whereas the brief facts of the case were read to Appellant and he replied "the facts are true", the record does not however state the language the

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interpreter used during the proceedings. It was contended that the trial Judge had thus erroneously convicted the Appellant on his own plea of guilt.

- [11] Counsel further submitted that during allocutus, the Appellant changed the plea of guilty and raised self-defense wherein he stated that his deceased wife had a panga and that she wanted to kill him first. Counsel argued that by changing his plea even after conviction, the Appellant appears not to have clearly understood the charge and the particulars thereof. Counsel argued that it was the duty of the court to first ascertain that the Appellant was indeed unequivocal in his answers before entering a plea of not guilty and should not have proceeded to convict the Appellant.
- [12] Counsel relied on the case of; Adan v Republic [1973] EA 445 and submitted that whereas the procedure laid down in the Adan case seemed to have been followed, it appears that the Appellant failed to know at what stage to dispute or explain the facts he wished the court to know. He invited this Court to find that the Appellant did not properly understand the charge and the particulars thereof.
- [13] Counsel further submitted that since the Appellant may not have fully understood the charge and the particulars thereof, he prayed that this Court ought to set aside the conviction.

Respondent's submissions

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- [13] In respect to ground one (1) of the appeal, Counsel for the Respondent submitted that the procedure of plea taking was properly followed. He further contended that there was no evidence on the record showing that the Appellant did not understand what was going on.

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- [15] Counsel submitted that the Appellant had failed to prove that there was any illegality that occurred during the plea taking process and that this ground of appeal should fail.

Conslderatlon of Ground one (1)

- [16] Counsel for the Appellant submitted that whereas the Appellant had initially pleaded guilty to the charge of murder he, during allocutus, raised the defense of self -defense. It was Counsel's contention that the Appellant did not properly understand the charge and the particulars thereof. He further contended that from the record, it is not clear in what language the charge was read out to the Appellant. He thus invited us to set aside the conviction.
- [7] We have thoroughly studied the Record of Appeal. The proceedings relating to the plea taking are to be found at page 7 and 8 of the record. They are as follows;

" The accused is present

Mn Christopher Tiinawe: Court clerk and interpreter.

Ct: Charge rea.d and explained to the acatsed person.

Accd: I haue heard and understood the charges

The charges are true.

Elements of murder explained

i) Is Kgomuhendo Pamale.

Acc: The deceased is dead.

(ii) Did you cause the death with malice aforethought?

Accd: I killed her intentionallg W"re6of13 b/

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Ct: A plea of guilty entered.'

- [18] The record also shows that the facts were subsequently read out to the Appellant. The Appellant is recorded to have satd "The facts are correct."
- ^I19] We do not accept the submissions of Counsel for the Appellant. It seems clear to us that the Appellant's plea of guilt was clearly unequivocal. Although the record does not indicate in what language the Appellant was communicating during the trial, the record does indicate that there was an interpreter. It is therefore safe to infer that the Appellant had followed and clearly understood the proceedings.
- [20] It is our view that the plea taking procedure adopted by the trial Court was by and large in line with the guidelines set in the case of Adan v Republic [19731 EA 445 in which it was held as follows: -

'When a person is charged with an offense, the charge and the particulars thereof should be read out to him, so far as possible in his own language, but if that is not possible in a language which he can speak and understand. Thereafter the court should explain to him the essential ingredients of the charge and he should be asked if he admits them. If he does admit his answer should be recorded as nearly as possible in his own words and then plea of guilty formally entered. The prosecutor should then be asked to state the facts of the case and the accused be given an opportunity to dispute or explain the facts or to add any relevant facts he may wish the court to know. If the accused does not agree with the facts as stated by the prosecutor or introduces new facts which, in the true meaning, raise a question as to his guilt, a change of plea to one of not guilty should be recorded and the trial should

proceed. If the accused, does not dispute the alleged facts in any material respect, a conviction should be recorded and further facts relating to the question of sentence should be given before sentence is passed."

[21] In an earlier case of the same court of **Tomasi Mufumu v R** [1959] EA 625 court held that;

> "...it is very desirable that a trial judge, on being offered a plea which he construes as a plea of guilty in a murder case, should not only satisfy himself that the plea is an unequivocal plea, but should satisfy himself also and record that the accused understands the elements which constitute the offense of murder....and understand that the penalty is loss of death."

- [22] Thus, where the plea taken does not amount to an unequivocal plea of guilty to the offense to which the accused is convicted, the conviction must be quashed. See also **R v Tambukiza s/o Unyonga** [1958] EA 212. We have borne the above principles in resolution of this ground of Appeal.
- [23] In the case before us, we note that the charge was read and the Appellant indicated that he had heard and understood the same. He replied, "the charges are true." It is also evident that when the elements of the offence were explained to him, he replied "I killed her intentionally".
- [24] It is our considered view, that the procedure as laid down in the case of **Adan v R (supra)** and **Tomasi Mufumu v R (supra)** for the recording of plea of guilty was followed, save for the omission to mention on record, the language in which the indictment and the facts were read and put to

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appellant. Given the circumstances, we consider that the plea of the guilty to the charge of murder was clearly unequivocal, notwithstanding the fact that the record does not indicate the language in which he was giving the responses.

[25] Article 28(3)(b) of the 1995 Constitution of the Republic of Uganda provides as follows;

> "Every person who is charged with a criminal offence shall be informed immediately in a language that the person understands, of the nature of the offence." $\cdot$

- [26] It is quite clear from the above provision that courts should indicate the language in which the indictment has been read and explained, and the language in which the proceedings were interpreted to the accused. It is meant to assist trial courts in discerning whether the Appellant fully understood the nature and consequences of the proceedings against $\ell \pi$ him.
- [27] However, in the circumstances of this case, we are of the view that learned trial Judge's omission to indicate on the record the language of interpretation, would not render the conviction illegal. The record clearly indicates that there was an interpreter. The charges and the facts were read and explained to the Appellant. All his answers at all stages indicate that he understood what was said to him. There is nothing on the record to show that the Appellant did not understand the proceedings for himself nor his counsel. This ground therefore fails
- $[28]$ Ground two (2)

The learned trial judge erred in law and fact when he imposed on the Appellant a sentence of 15 years'

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Imprisonment which was manifestly harsh and excessive and this occasioned a miscarriage of Justice.

Appellant's submissions

[2e] Counsel for the Appellant submitted that this court has powers and authority to give an appropriate sentence basing on its discretion. He cited Section 1 I of the Judicature Act to buttress his submission. He further cited part 1 of the Third schedule of the Constitutional Sentencing guidelines. Counsel argued that the trial court ought to have considered the mitigating factors to wit; that the Appellant was a firsttime offender, he readily pleaded guilty, he had three young children who were at the time of conviction five, three & a half and 2 years. Counsel contended that in the circumstances the sentence of 15 years' imprisonment was harsh and excessive and prayed that this Court reduce the said sentence.

Respondent's submissions

[30] Counsel for the Respondent submitted that the sentence of 15 years imprisonment was neither harsh nor manifestly excessive. Counsel further submitted that the learned Judge considered the mitigating and aggravating factors, including the nature of the offense, and the manner in which the Appellant slaughtered his wife. He submitted that the sentence passed by the learned trial Judge of 15 years was justified. He prayed that the sentence be upheld.

Consideration of Ground 2

[31] This court, as an appellate court, can only interfere with the trial court's discretion in sentencing on limited grounds as has been set out in various decisions of the Supreme Court including the case of Bernard

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Kiwalabye Vs Uganda, S. C Criminal Appeal No. 143 of 2001 in which it was held as follows;

"The appellate court is not to interfere with the sentence imposed by a trial court where that trial court has exercised its discretion on sentence, unless the exercise of that discretion is such that it results in the sentence imposed to be manifestly excessive or out 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 passing sentence or where the sentence imposed is wrong in principle."

It does not matter that this Court would have given a different sentence if it had been the one trying the Appellant. (see Ogalo s/o Owoura v. R, [1954] 24 E.A.C.A.270).

[32] The Appellant was sentenced to 15 years imprisonment for murder. While sentencing, the learned trial Judge stated as follows;

"The convict shall be treated as a first offender who moved guilty thus saving the court's time. The convict killed his wife who has left home with three infant children to care for. The convict is a young man who can usefully serve the community. The convict takes into consideration of the special circumstances of this case. The convict brutally killed his wife in front of his own father. He apparently used a weapon like a panga. The murder arose out of a domestic conflict/ mental dispute. The convict suspected his wife of having an extra marital affair. The convict must send out a signal to the community that this is an abhorred means of settling mental disagreements. This offence is rampant in this area as was reported by the District Police Superintendent M

Commander before the start of a previous session. It must therefore be seriously curbed. Those guilty of the practice must be punished. The act of cutting with a knife is a very deliberate act. Secondly even after cutting the neck the convict cut the deceased on the head. The convict alleges self-defense but the nature of the injury contradicts this version of events

The conuict has spent tuto months on remand which the court takes into account in light all of all circumstances o/this case the conuict is sentenced to 15 gears in pison."(sic)

- [33] In passing sentence of 15 years, the learned trial Judge considered both the mitigating and aggravating factors and passed a sentence consistent with previous decisions of this Court and the Supreme Court.
- [3a] In Kifamunte Henry v Uganda [1998] UGSC 20 (15 May 1998f the Appellant was sentenced to a term of 20 years' imprisonment for murder. In Muhanga alias Mugume v Uganda (Criminal Appeal No. 453 of 20L7l 12023] UGCA 49 the Appellant pleaded guilty and was sentenced to a term of 25 years' imprisonment for murder. In Mulumba Kaggwa & Anor v Uganda CACA No. 0331 of 20O9 this Court reduced the l't Appellant' murder to 17 years' imprisonment s life sentence to imprisonment for
- [35] Without proof that the learned trial Judge acted on a wrong principle or ignored some material factor, this court would have no reason whatsoever to interfere with the decision of the learned sentencing Judge.

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[36] Having found that all the grounds of appeal have no merit, this appeal accordingly fails.

The conviction and sentence are hereby upheld.

We so order.

Kouzall Signed and Delivered at day of $\overline{2025}$ $\frac{1}{2}$ $\mathbf{v}$ HON. JUSTICE MUZAMIRU KIBEEDI HON. JUSTICE CHRISTOPHER GASHIRABAKE $\cdots\cdots\cdots\cdots$ HON. JUSTICE JOHN OSCAR KIHKA $\sim$

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