

UGANDA / JUDGMENT

Nuwamanya v Uganda (Criminal Appeal 353 of 2017) [2024] UGCA 186 (19 July 2024)

[2024] UGCA 186

COURT

Court of Appeal of Uganda

BEFORE

Buteera, DCJ, Gashirabake, JA, Kihika, JA

CASE / FILE NUMBER

Criminal Appeal 353 of 2017

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBARARA

CRIMINAL APPEAL NO. 0353 OF 2017

(Arising out of the Judgment and orders of His Lordship Duncan Gaswaga at *Mbarara in HCT-05-SC-0076-2016)*

NUWAMANYA ANDREW ::::::::::::::: APPELLANT

VERSUS

UGANDA :::::::::::::::

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ HON. JUSTICE CHRISTOPHER GASHIRABAKE, JA HON. JUSTICE OSCAR KIHICA, JA

JUDGMENT OF COURT

[1] The Appellant was indicted and convicted of the offence of murder

- 15 contrary to sections 188 and 189 of the Penal Code Act and sentenced to 23 years and 6 months' imprisonment pursuant to a plea bargain agreement entered into on the 10th of May 2017.
- [2] The Appellant filed an appeal faulting the learned trial Judge for the procedure taken during the plea bargain, on the following

- 20 grounds;

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1. The learned trial Judge erred in law and fact when he convicted the appellant basing on a plea bargain agreement without indicating his name and the offence charged or charges that the appellant pleaded guilty to.

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2. The trial Judge erred in law when he convicted the appellant without explaining to him his constitutional rights contrary to plea bargaining rules

Background

- 5 [3] The facts of this case as presented to the trial court are as follows; In early September 20 15, Natukunda Getrude, the deceased, visited her daughter Tumukunde Caroline at Kasubi, Lubaga in Kampala. The Appellant remained at home. While the deceased was in Kampala, the Appellant called and informed her that one cow was very sick. After one day, the Appellant called again and told her that the cow had died. 10
- t4] Two days later the deceased returned home. The deceased then called Tumukunde Caroline and informed her that the cow was killed, meat sold, and it was never sick. On 22"d September 20 15 Natukunda Getrude, Nuwamanya Andrew and Twinomugisha Silas took supper. The deceased was in the seating room while others went to sleep. The Appellant went to sleep in a room next to the seating room. The Appellant then returned and strangled Natukunda Getrude. He used a piece of cloth around her neck. 15 20
- [5] The Appellant took the deceased's body to a pit latrine and burned it. He covered the pit with soil and green vegetation. One Chrispus Ampaire returned from Kampala but did not find the deceased home and her phone number was off. He asked the Appellant where the deceased was and the Appellant told him that she had

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gone to the church. He requested that they check at the church but the Appellant refused.

- [6] The disappearance of the deceased was reported to area $LC1$ Chairperson and later to police. On $\$25/10/2015$ the Appellant was S suspected to have murdered the deceased. He was arrested and taken to Kagongi Police Post. While at police, the Appellant admitted to have killed the deceased and buried her in a pit latrine. The Appellant revealed that he wanted money to buy a motorcycle and as such wanted to sell the deceased's cows and he could not 10 do it while she was alive.
- [7] A search was conducted at the deceased's home and the body $\frac{1}{2}$ was found in the pit latrine and was exhumed. It was identified by Baingana Fred to be that of Natukunda Getrude.

Representation

[8] At the hearing of this appeal, Ms. Atugabimwe Atwine appeared for the appellant while Mr. Oola Sam, Senior Assistant DPP and Mr. Nahurira Jacob, State Attorney appeared for the Respondents.

Appellant's submissions

[9] Counsel submitted that whereas the Appellant participated in the plea bargain agreement with the prosecution, during the plea bargain process, the Appellant was never informed of how the 25 process was going and was only given the last page of the agreement to append his signature. Counsel argued that the

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Appellant was not accorded the opportunity to know the contents of the agreement, which created doubt as to whether the Appellant pleaded guilty to the offence of murder or it was reduced to a cognate offence.

[10] Counsel argued that the trial Judge simply admitted a blank plea bargain agreement form and convicted the Appellant on the same. That the plea bargain process was a nullity and the frle should be sent back to High Court for re-trial.

Respondent's submissions

- 15 [11] In reply, counsel submitted that the plea bargaining procedure is regulated by the Judicature (Plea Bargain) Rules 2016, Sections 60, 63 and 82 of the Trial on Indictments Act. Counsel relied on the decision in Adan Vs Republic (1973) 1 EA 443 which lays out the procedure of plea taking and recording a plea of guilty by the High Court. Counsel conceded that this procedure was not followed by the trial Judge and the plea bargain agreement was not properly hled.
- 20 [12] Counsel relied on the decision in Luwaga Suleman aka Katongole Vs Uganda [2019] UGCA 202 for the proposition that the plea bargain agreement was incomplete for reasons that it was silent on whether the court ascertained that the Appellant had full understanding of what a plea of guilty meant and its consequence. Counsel prayed for a retrial order.

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Court's Consideration of the Appeal

- 5 [13] As a hrst appellate court, this Court is enjoined to carefully and exhaustively re-evaluate the evidence as a whole and make its own decision on the facts, bearing in mind that it has not had the opportunity to see or hear the witnesses, especially if the demeanour of the witnesses is key to the findings made.

- [14] Even where the demeanour of witnesses is relevant, this Court may reverse the decision of a trial Judge if it is of the view that considering all the circumstances, the decision cannot stand. Where the question is one of drawing inferences from the facts adduced, this Court is free to reverse the findings of the trial Judge, if after reviewing the evidence, it is of the view that the findings of the trial judge were wrong (See the cases of Pandya 10
- v. R [195] EA 336; Kifamunte Henry v. Uganda SCCA No. 1() of 1997, and Bogere Moses and Another v. Uganda, Supreme Court Criminal Appeal No. 1 of 1997. 15

[15] Rule 30 of the Judicature (Court of Appeal Rules) Directions to SI 13-10 provides that;

"30. Power to reappraise evidence and to take additional evidence

- (1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—
- (a) Reappraise the evidence and draw inferences of fact"

25 We have borne the above principles in mind in resolving this appeal.

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[16] The plea bargain process is provided for in the Judicature (Plea Bargain) Rules, 2016 and Rule 4 defines plea bargain to mean;

> "the process between an accused person and the prosecution, in which the accused person agrees to plead guilty in exchange for an agreement by the prosecution to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by court."

- [17] 10 In the instant appeal, the Appellant was on his own plea of guilt convicted of murder and sentenced to 23 years and 6 months' imprisonment following a plea bargain agreement.
- [18] However, the evidence on record shows that the Appellant signed a blank plea bargain agreement that had no summary of the facts of the case against him.
- [19] Rule 12 of the Judicature (Plea Bargain) Rules 2016 provides for the recording of a plea bargain agreement and states that;

" 72. Recording of plea bargain agreement with the court.

(1) subject to the procedure prescribed in the Schedule 2, the court shall inform the accused person of his or her rights, and shall satisfy itself that the accused person understands the following-

- (a) the right-
- (i) to plead not guilty, or having already so pleaded, the effect of that plea;

(ii) to be presumed innocent until proved guilty;

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(iii) to remain silent and not to testify during the proceedings;

(iv) not to be compelled to give self-incriminating evidence;

(v) to a full trial; and

(vi) to be represented by an advocate of his or her choice at his or her expense or in a case triable by the High Court, to legal representation at the expense of the State;

(b) that by accepting the plea bargain agreement, he or she is waiving his or her right as provided for under paragraph (a);

(c) The nature of the charge he or she is pleading to;

(d) The maximum possible penalty, including the imprisonment, fines, community service order, probation or conditional discharge;

(e) Any applicable forfeiture;

(f) the court's authority to order compensation and restitution or both; and

(g) that by entering into a plea agreement, he or she is waiving the right to appeal except as to the legality or severity of sentence or if the judge sentences the accused outside the agreement.

(2) The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.

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(3) The prosecution shall lay before the court the factual basis contained in the plea bargain agreement and the court shall determine whether there exists a basis for the agreement.

(f) The accused person shall freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all the matters.

(5) A Plea Bargain Confirmation shall be signed by the parties before the presiding Judicial Officer in the Form Set out in the Schedule 3 and shall become part of the court record and shall be binding on the prosecution and the accused."

- [20] In the instant case, the above procedure was never followed, the Appellant signed on a blank plea bargain agreement without the facts of the case having been explained to him. The plea bargain agreement was not complete and the record is silent on whether the court ascertained that the appellant had full understanding of what a plea of guilty meant and its consequences.

- [21] The learned trial Judge ought to have taken that into consideration and for that matter, we find that the plea bargain agreement was not conducted in compliance with the Judicature (Plea Bargain) Rules 2016. The plea bargain was therefore
- defective. 20
- In *Luwaga Suleman Alia Katongole vs. Uganda* [2019] UGCA 202, the Court of Appeal held that:

"In general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction

is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to

fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame. It does not necessarily follow that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for retrial should only be made where the interests of justice require it."

[23] In the instant case, having found that the Plea Bargain Agreement

- was defective, we find that the interests of justice will be served by ordering a retrial in the following terms;
- 1. A retrial of the case is hereby ordered
- 2. The conviction and sentence of 23 years and 6 months' imprisonment is hereby set aside.

We so order.

On 14th day of 2024. Delivered and dated this

20 RICHARD BUTEERA Deputy Chief Justice

CHRISTOPHER GASHIRABAKE

25 Justice of Appeal

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OSCAR JOHN KIHICA
Justice of Appeal

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