

UGANDA / JUDGMENT

Ojok v Uganda (Criminal Appeal 634 of 2015) [2025] UGCA 8 (24 January 2025)

[2025] UGCA 8

COURT

Court of Appeal of Uganda

BEFORE

Egonda-Ntende, JA, Tibulya, JA/JCC, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 634 of 2015

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT GULU

(CORAM: Egonda-Ntende, Tibulya, Kazibwe Kawumi, JJA)

CRIMINAL APPEAL NO.0634 OF 2015

(Arising from High Court Criminal Session No. 0103 of 2014 at Gulu)

BETWEEN

OJOK JUSTINE

APPELLANT

AND

UGANDA

RESPONDENT

(An appeal from the judgment of Keitirima, J delivered at Gulu on 29th August 2014)

JUDGMENT OF THE COURT

Introduction

The appellant pleaded guilty to the offence of murder contrary to sections 188 and 189 of the Penal Code Act. The particulars of the 20 offence were that on the 16th September 2013 at Awachi Trading Centre in Gulu District the appellant murdered Amal Margaret. He was convicted and sentenced to 20 years' imprisonment on 29th August 2014.

The facts of the case as accepted by the appellant are that at the material time he had a love affair with the deceased, Amal Margaret. On 16th 25 September 2013 the appellant visited the deceased. A quarrel ensued over his insistence that they carry out an HIV test which she had been hesitant to do. The appellant picked an axe and hit her on the head. She collapsed and the appellant pushed her under the bed as she profusely bled and he left for his home. 30

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She died and the body was discovered the following day. The appellant $\$ \mathit{S} \$$ was arrested and accordingly charged.

The appeal is premised on two grounds.

Grounds of Appeal.

- 1. The learned trial Judge erred both in law and fact when he failed to take into account the period spent on remand before imposing the sentence of 20 years' imprisonment.
- 2. The learned trial Judge erred in both law and fact by imposing a sentence of 20 years' imprisonment on the appellant which sentence was harsh and excessive in the circumstances of the case.

Representation and Submissions of Counsel.

Mr. Paul Julius Layoo represented the appellant on state brief while Ms. Immaculate Angutoko a Chief State Attorney in the Office of the Director of Public Prosecutions represented the respondent.

The appeal filed out of time was validated and leave to appeal against the sentence only was granted by the Court. Counsel filed submissions, which we considered in the determination of the appeal.

Counsel for the appellant argued that the sentence imposed by the trial Judge was illegal since he did not deduct the period the appellant had 25 spent on remand at the time he was convicted. The submission was premised on Article 23(8) of the Constitution and the decision of *Rwabugande Moses V Uganda* [2017] UGSC 8 decided on 3rd March 2017.

The court was urged to set aside the sentence of 20 years' imprisonment for the reason that it was illegal.

In regard to the second ground of appeal, it was argued that the trial Judge did not give due consideration to the mitigating factors that would have compelled him to impose a lesser sentence. Counsel contended that the appellant was a first time offender who

pleaded guilty implying he was remorseful which factors were not taken into account in determining the sentence.

The court was urged to invoke the principle of consistency in sentencing in order to impose an appropriate sentence.

It was contended for the respondent that the trial Judge took into consideration the period the appellant had spent on remand in arriving at the impugned sentence. Counsel argued that it was not a requirement for the sentencing court to arithmetically deduct the period spent on remand by a convict at the time the appellant was convicted and sentenced.

The court was referred to *Kizito Senkula V Uganda* [2002] UGSC 36 and *20 Kabuye Senvewo v Uganda* [2005] UGSC 23 to support this proposition.

In response to the submissions on the second ground of appeal, it was argued that the sentence was neither harsh nor excessive given the circumstances in which the deceased lost her life. The appellant murdered a lover he was supposed to protect and even attempted to hide the evidence by pushing the body under the bed.

While admitting that it was incumbent on the courts to maintain parity and consistency in sentencing, counsel for the respondent noted that no two crimes are identical citing *Mbunya Godfrey V Uganda*, SCCA No.04 of 2011 (unreported). The court was referred to cases in which this court upheld sentences in the range of the 20 years and above imposed by trial courts.

Counsel gave examples like *Mbunya Godfrey V Uganda* (supra), in which the court upheld a sentence of 25 years' imprisonment imposed on the appellant for murdering his wife.

Akbar Godi v Uganda [2018] UGSC 28 the Supreme Court also upheld a sentence of 25 years' imprisonment for killing his wife. In *Magero Patrick*

V Uganda, CACA No.076 of 2019 (unreported), the Court of Appeal upheld a sentence of 47 years' imprisonment for the murder of his wife.

The court was urged to uphold the sentence imposed by the trial Judge.

Consideration by the court. 15

The trial Judge while sentencing the appellant stated:

"I have heard both the aggravating and mitigating factors. However, much as the convict has pleaded guilty and did not waste court's time, his actions were beastly and call for deterrence. Having had a good time with the deceased, the convict should not have turned against her in the way he did. Human life is precious and should always be protected. I have considered the period the convict has spent on remand and I will now sentence him to 20 years in prison."

As correctly submitted by counsel for the respondent, trial courts were not required to arithmetically deduct remand periods from imposed sentences until the 3rd March 2017 decision of the Supreme Court in *Rwabugande Moses V Uganda* (supra).

Whereas the trial court was alive to the constitutional requirement to consider the period spent by the convict on remand, the failure to mention it in the sentencing order created an ambiguity. The trial Judge could not consider the period he did not know which rendered the imposed sentence ambiguous.

The period spent on remand by the appellant was not also mentioned by $\S$ either counsel in aggravation or mitigation of the sentence imposed by the court.

The learned trial did not ascertain and take into account the period the appellant spent in pre-trial custody. We thus find that the sentence

- imposed by the court was in contravention of Article 23(8) of the 10 Constitution and is therefore set aside. In addition, we may mention in passing that the learned judge did not take into account the other mitigating factors such as being a first and youthful offender.
- We shall therefore sentence the appellant afresh pursuant to Section 11 15 of the Judicature Act which provides as follows;

For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."

We have taken into account the fact that he was a first offender and pleaded guilty, saving this courts time and resources. He was remorseful in light of his guilty plea. The appellant was also a young man capable of reforming into a better person.

The offence he committed was, however, heinous and whatever 30 disagreement he had could have been amicably settled. The sentence imposed must also sound a warning to others to respect and protect human life.

In *Endrenzio Orenzio V Uganda*, [2024] UGCA 329 the court upheld a sentence of 20 years for murder of a wife by the appellant. 35

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[>]11. Court of Appeal to have powers of the court of original jurisdiction.

In *Langonya Moses V Uganda*, Court of Appeal [2024] UGCA 325 the S court resented the appellant to 25 years' imprisonment for murdering his wife.

In *Akbar Godi V Uganda*, SCCA No.03 of 2013 [2015] UGSC 17 the Supreme Court upheld 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.

Having considered the mitigating and aggravating factors together with in offences committed in almost similar imposed sentences circumstances, we find a sentence of 18 years' imprisonment appropriate.

We deduct the 12 months the appellant spent on remand. He shall serve 17 years from 29th August 2014 when he was convicted.

We so order.

Signed and delivered this. 24th day of

Fredrick Egonda-Ntende **Justice of Appeal**

Margaret Tibulya **Justice of Appeal**

Moses Kazibwe Kawumi **Justice of Appeal**

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