

UGANDA / JUDGMENT

Picha v Uganda (Criminal Appeal 330 of 2010) [2024] UGCA 327 (27 November 2024)

[2024] UGCA 327

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Criminal Appeal 330 of 2010

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT GULU

Coram : Egonda- Ntende, Tibulya, Kazi bwe, JJA]

Criminal Appeal No. 330 of 2010

(Arising from High Court Criminal Session Case No. jj of 2010 at Gulu)

BETWEEN

| PICHARICHARD- | | ::APPELLANT |

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| | AND | |

UGANDA RESPONDENT

[An appeal from a Judgment of the High Court of Uganda sitting at Gulu (Kasule, J.), delivered on the 26th day of November 2010]

JUDGMENT OF THE COURT

- [1] The appellant was convicted by the High Court upon his own plea of guilty, on the 1st day of November, 2010 on 4 (four) counts of murder of DC No. 7459 Catogura Akera Alexis, SPC No. 25/18 Ochieng Bosco, No. 2335 Oola Fred, Obur Teresnsio, contrary to sections 188 and 189 of the Penal Code Act. He was also convicted of attempted murder of SPC No. 6674 Okwera Joe, contrary to Section 204 of the Penal Code Act.

- 12l He was sentenced to 35 (thirty-five) years' imprisonment on each of the 4 (four) counts of murder to be served concurrently and to 15 (fifteen) Years imprisonment on count 5 of attempted murder. He was condemned to a cumulative imprisonment term of 50 (Fifty) years imprisonment. With leave of this court he appealed only against the sentence.
- t3] The facts of the case are that on the 2d day of September, 2009, an assault case was registered against the appellant by Okello Walter. The Officer in-charge of C. I. D of Pajule Police Station, where the appellant worked, -

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gave the appellant an opportunity to settle the matter. Attempts at settlement failed. The O. C ordered the appellant to be placed in Police custody. The appellant grabbed a gun and shot DC No. 7459 Canogura Akera Alexis, SPC No. 25 l8 Ochieng Bosco, No. 2335 Oola Fred, Obur Terensio to death and injured SPC No. 6674 Okwera Joe. He fled the scene and after two weeks of hiding, he surrendered himself to Police. He then directed Police to the whereabouts of the gun that was used in the commission of the offence.

14l The appellant, his advocate and the respondent made sentencing submissions and the Court proceeded to render its sentence as follows;

> "The Couft has considered the factors that call for leniency to be exercised in favour of the accused. He is a first offender with no previous criminal records. He is a member of the Uganda Police Force and is only aged 26 years with two wives and six children to support. He also supports his elderly and sick parents. Before Court, the accused looked remorseful for what he had done and asked to be forgiven, so that he can reform into a better citizen and serve his Country. However, the accused as a Police Officer, failed to maintain law and order, but instead turned the gun against the very people he was supposed to protect, the majority being fellow colleagues in the Police Force; this depriving the Country a team of well-trained Police Personnel and causing much suffering to the family members of each of the deceased. The accused also caused considerable suffering to No. 6674 SPC Okwera Joe, whom he attempted to murder.

> Court has considered all the above considerations. and the

fact that the accused has been on remand for a year and a month, and sentenced the accused to a term of thirty-five years (35) without remission on each of the murder Counts 1,,2,3, and 4 . The accused is further sentenced to a term of fifteen (15) years without remission on Count 5 of Attempted Murder.

The sentences on the murder counts 1, 2,3, and 4 shall be served concurrently, while the sentence in Count 5 of Attempted Murder shall be served consecutively, so that, all in all, the accused is to serve a total collective sentence of fifty (50) years.'

t5l It is against that sentence that the appellant now appeals before this Court.

Counsel's Submissions

t6l Ms. Akello Alice Latigo, learned counsel for the appellant framed the sole ground of appeal, as follows

> "that the learned trial Judge erred in law when he failed to take into account the period the appellant spent on remand in determining the sentence and imposed an excessively harsh sentence."

17l She submitted that the learned trial judge was obliged to take into account the period spent on remand prior to trial by the appellant in accordance with Article 23(8) of the Constitution and sections 84 and 85 of the Prisons Act. In her submissions, she submitted that the trial judge should have deducted the period spent on remand before handing the sentence as well as the age of the convict who was very young person at the time of commission of the offence since he was only 25 years and capable of reform. She prayed that

the cumulative sentence of 50 (fifty) years be set aside and substituted for a sentence of 15 (fifteen) years.

t8] Ms. Ainebyoona Happiness, Chief State Attorney and Mr. Magala Joel, State Attorney, jointly appearing for the respondent, conceded to the appeal on the account of the fact that the learned trial judge ordered the appellant to serve his sentences without remission, an order that had no foundation in law, rendering the sentence illegal.

Analvsis

- t9] The position that has been established by Courts in a myriad of authorities such as in Livingstone Kakooza v Uganda, [1994]UGSC 17; Kiwalabye Bernard v Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported), is that an appellate court will only alter ^a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, while not being precedents, do afford material for consideration.
- [10] Counsel for the respondent conceded to this appeal on the ground that the learned trial judge erred in law when he ordered that the sentences imposed upon the appellant are to be served without remission. This was illegal and contrary to the law She asked us to exercise our powers under section 11 of the Judicature Act and sentence the appellant afresh.
- [11] We agree with the position taken by counsel for the respondent. Ordering ^a sentence of imprisonment to be served without remission is unknown to the

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law. It is illegal. See *Wamutabanawe Jamiru v Uganda* [2018] UGSC 8.

- [12] We shall now proceed to sentence the appellant afresh pursuant to our powers under section I I of the Judicature Act.
- [1 3] We have considered the guidance of the following authorities in resentencing. In *Livingstone Kakooza versus Uganda* (1994) UGSC 17, the Supreme Court was of the view that the sentences imposed in previous cases of similar nature do afford material for consideration while this court is exercising its discretion in sentencing. We are duty bound to maintain consistence or uniformity in sentencing while being mindful that offences are not necessarily committed under the same circumstances.
- [14] This court in *Amaria Michael v Uganda* [2017] UGCA 93, set aside the sentence of 45 years for murder and substituted it with 20 years' imprisonment in a case where the appellant had shot and killed the victim.
- [5] In *Feni Yasin Ajias Gais v Uganda* [2020] UGCA 29, the appellant was convicted of murder and sentenced to 28 years' imprisonment by the trial court. On appeal, this court set aside the sentence and substituted it with 20 years' imprisonment.
- [16] In the instant case, we note in particular, the fact that the appellant was convicted on all 5 counts upon his own plea of guilty, hence saving court's time. He was remorseful for the offences he had committed. He was a first offender. He had a young family of two wives and children that looked up to him for provision and care. The appellant was only 25 years old at the time of the commission of the offence.
- [1 7] However, the appellant, a police officer, committed a heinous offence turning his gun on his colleagues, breaching the sacred trust of his office.

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[1 8] We are of the view that a sentence that denounces his unlawful conduct while at the same time giving him an opportunity to redeem himself with the possibility of future re-integration in the community would be appropriate.

Decision

- [19] We are of the view that a sentence of 18 (eighteen) years' imprisonment on each of the said counts 1,2,3 and 4 will serve the ends of justice. The ¹ year and 1 month that the appellant spent on remand is deducted from the 18 years. The appellant will serve a term of imprisonment of 16 years and ¹ months on counts 1, 2, 3 and 4, which sentences will be served concurrently from 1st November 2010, the date of conviction.

- [20] On count 5 of attempted murder, we sentence the appellant to imprisonment for 10 years. The pre-trial remand period of 1 year and 1 month is deducted from the 10 years. The appellant will henceforth serve a term of 9 years and 11 months' imprisonment on count 5 concurrently with the sentences on counts, 1,2,3 and 4 from the 1st November 2010, the date of conviction.

Signed, dated and delivered at Gulu this 27th day of November 2024

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Fredrick Egonda-Ntende Justice of Appeal

A M t Tibulva

Justice of Appeal

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Moses Kazibwe Kawumi Justice of Appeal

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