

UGANDA / JUDGMENT

Shikanga v Uganda (Criminal Appeal 153 of 2015) [2025] UGCA 71 (12 March 2025)

[2025] UGCA 71

COURT

Court of Appeal of Uganda

BEFORE

Mulyagonja, JA, Tibulya, JA/JCC, Kazibwe, JA

CASE / FILE NUMBER

Criminal Appeal 153 of 2015

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBALE

(CORAM: Mulyagonja, Tibulya & Kazibwe Kawumi, JJA.)

CRIMINAL APPEAL NO. O153 OF 2015

(Arising from High Court Criminal Session Case No. 125 OF 20L2 at Mbale)

P

BETWEEN

SHIKANGA DAN APPELLANT

AND

UGANDA RESPONDENT

(An appeal against the decision of Kaweso tsabirye J. delivered on the 22nd day of April 20L5)

JUDGMENT OF THE COURT

The appellant was indicted with the offences murder contrary to sections 188 and 189 PCA and robbery contrary to section 285 and 286 (2) PCA. He was convicted on his own plea of guilty and sentenced to 25 years' imprisonment on each count with the sentences to run concurrently from the 31st day of July 20L8. 20

Background 2s

On count one, it was alleged that on the 3'd of June 20L1, the appellant while at Wanyera Cell in Mbale Municipality in Mbale District unlawfully caused the death of Namugowa Dickson. On count2, it was alleged that on 3'd June 20tL, the appellant while at Wanyera cell in Mbale Municipality in Mbale District robbed Namugowa Dickson of unspecified properties including a phone Nokia and immediately before or after the said robbery used a panga on the said Namugowa Dickson.

LofLL

(

s The appellant sought leave of the court to appeal against the sentence only under section 131 (1) (b) of the Trial on ndictments Act. The Respondent did not object the leave to appeal against only the sentence was granted.

rl

The ground of appea! is that; -

The learned trial iudge erred in law and fact when imposed an illegat, lo manifestly harsh and excessive sentence of 25 year's imprisonment which occasioned a miscarriage of justice.

Representation

Ms. Kanyago Agness Eres represented the appellant on state brief while 1s Mr. Kulu Indhambi Assistant DPP from the Office of the Director public

Prosecutions represented the respondent.

Counsel for the parties filed submissions, which, with the teave of Court were adopted as their final arguments in the determination of the Appeal.

zo Submissions of Counsel

Relying on Aharikundira V. Uganda 2018 UGSC 49, it was submitted that before a convict can be sentenced, the trial court is obliged to exercise its discretion by considering meticulously all the mitigating factors and other pre-sentencing requirements as elucidated in the constitution, statutes, 2s practice Directions together with general principles of the sentencing as guided by case law.

counsel cited Livingstone Kakooza v. uganda [1994] ucsc 17 where it was held that an appellate court wilt only alter a sentence imposed by the trial Court if it is evident that it acted on a wrong principle or over looked some material fact, or if the sentence is manifestly excessive in view of the circumstances.

- On the illegality of the sentence, it was submitted that the sentence offends Article 23 (8) of the Constitution as well as Guideline 15 of the Constitution (Sentencing Guidelines for the Courts of Judicature) (Practice) Direction 2013.
- Counsel relied on *Naturinda Tamson v Uganda* 2015 UGCA 3 for the submission that Article 23 (8) imposes an obligation on the trial court to take into account the period an accused has spent on remand in the determination of an appropriate sentence. Failure to comply with that constitutional provision renders the subsequent sentence a nullity. 10
- Counsel further relied on *Jagenda John v Uganda* 2022 UGCA 25 where it was held that where the court merely states that any period the convict spent in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account does not with certainty show that the period was taken into consideration.
- *Kawuli Robert v Uganda* 2024 UGCA 83 was referenced for the proposition that the period spent on remand by the appellant must be deducted arithmetically from the appropriate sentence.

To further support his argument, counsel relied on the case of *Attorney General v Susan Kigula and 4L7 others* [2009] UGSC 6 where it was held that where there is a new rule of constitutional interpretation in respect of a penal provision, that new rule should apply to all existing matters that had not been finally resolved.

It was submitted that the trial judge ought to have taken into account the period spent on remand and deducted the same while determining the sentence both counts. It was submitted that failing to do so constituted a misdirection which rendered the sentence a nullity.

3 of 11

ff

q

In reply to the legality of the sentence, the respondent cited the case of *Kyewalabye Bernard V. Uganda* CACA No. 143 of 2001 where it was held that; -

"...on appellate Court will not 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 being manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores an important matter or the circumstances which ought to be considered while passing the sentence or where the sentence is imposed on a wrong principle."

Counsel submitted that the 25 year's imprisonment sentence imposed on the appellant was lawful as the trial judge complied with the requirements of Article 23 (8) of the Constitution. Reference was made to the case of *Kizito Senkula v Uganda* [2002] UGSC 35 where it was held that -

"as we understand the provision of article 23 (8) of the constitution, they mean that when a trial Court imposes a term of imprisonment on a sentence on a convicted person the court should take into account the period which the person spent in remand prior to his or her conviction. Taking into account does not mean an arithmetical exercise. Further, the term of imprisonment should commence from the date of conviction, not back-dated to the date the convicted person first went into custody."

It was submitted that the judge took into account the period the appellant spent on remand in the sentencing notes when she stated that; -

"The 25 years shall include the period spent on remand"

It was argued that the period the trial judge had in mind the period spent on remand during the sentencing process although he fell short of pronouncing the sentence from which he deducted the period spent on remand. 35

⁵ Counsel also relied on the case of *Luutu v Uganda* [2024] UGCA 268 where it was held that; -

"The question for this Court is whether the above sentence complied with the requirement of Article 23 (8) of the constitution. In reading that sentence, it is our view that the learned trial Judge was alive to the need to deduct the period the appellant had spent on remand. She only fell short in first declaring the sentence and then making the deduction. We find the manner in which she pronounced the sentence to be a matter of style and language, and nothing that violated the law. She deducted the remand period and declared the time the appellant would serve as a punishment. To that end, there is no ambiguity as to what the sentence was.* This was emphasised in *Abelle Asuman versus Uganda*; SCCA No. 066 of 2076, where the Supreme Court held that "where a sentencing court has clearly demonstrated that it has taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the appellate court only because the sentencing Judge or Justices used different words in their judgment or missed to state that they deducted the period spent on remand. These may be issues of style for which ^a lower court would not be faulted when in effect the court has complied with the constitutional obligation in Article 23(S) of the constitution."

Counsel further argued that the case of *Rwabugande v Uganda* [2017] UGSC 8 cannot be relied upon since it came out on 3'd March 2017 when the Judgment of the trial judge had already come out in 2015. Counsel invited the Court to note that in *Abelle Asuman v Uganda* [2018] UGSC 96 that came out on (19 April 2018), the Supreme Court held that the case of *Rwabugande* (Supra) would not bind courts for cases decided before the 3'd of March 2017. 30

Counsel invited the Court to find that the trial judge took into consideration the period that the appellant spent on remand.

5 of 11

L0

As regards the excessiveness or harshness of the sentence, it was submitted for the respondent that the 25 years' imprisonment for the offence of murder and aggravated robbery is lenient in the circumstances the offences were committed. It was argued that the offences which both attract a maximum sentence of death were committed in a brutal way and

in the same transaction 10

Counsel argued that the sentencing ranges for offences of murder is 35 years and the maximum is death and that 25 years is below the starting range under the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013. Counsel added that the appellant's counsel did not highlight any sentencing principle that was flouted by the court as required by the case of *Aharikundira v Uganda* [2018] UGSC 49.

Counsel further argued that the trial judge considered both the aggravating factor and the mitigating factors and correctly arrived at the decision. That the factors that guided the trial judge included the fact that the Appellant pleaded guilty which saved Court's time but he was a repeat offender serving a 15 years' sentence for aggravated robbery. 20

- Counsel thus invited the Court to be bound by the principle of parity and consistency but considering the circumstances in which the offences were committed since the commission of offences is not usually identical. He relied on *Byaruhanga Akot v Uganda* CACA No. 078 of 2010. 25
- To support his argument that the 25 year's sentence was within the range of sentences for murder, counsel cited the cases of *Sebuliba Siraji v Uganda* [2021] UGCA 123 where the court upheld a life sentence where the appellant pleaded guilty on an indictment for murder. *Florence Abbo v Uganda* [2023] UGCA 17 was cited in which the Court upheld a sentence of 40 years' imprisonment handed down by the trial judge. 30 35
- 6 of 11

Counsel further relied on *Bakubye & Anor v Uganda* [2018] UGSC 5, where the Supreme Court confirmed the sentences of 40 year and 30 year's imprisonment for murder and aggravated robbery respectively and *Mangero Patrick v Uganda*. CACA No. 075 of 2019 (unreported) where the court confirmed a sentence of 45 year's imprisonment where the appellants were convicted of murder and aggravated defilement. 10

Tugume Alias Macombero v Uganda [2020] UGCA 107 where the court confirmed a 27 year's imprisonment for the offence of murder and *Aria Angelo v Uganda* [2022] UGCA 15 where the court upheld a sentence of 35 years and 8 months' imprisonment on a plea of guilty for murder and aggravated robbery.

The Court was urged to find that the sentences of 25 year's imprisonment for each count was neither harsh nor excessive and that the appeal be dismissed.

Consideration by the court

We have taken cognizance of the fact that this is a first appellate Court, reviewed the record of appeal, considered the submissions of both Counsel and the authorities cited and those not cited but are relevant to this appeal.

The general principles regarding the sentencing powers of an appellate court are that the court will not interfere with a sentence imposed by the trial court unless the sentence is illegal or founded on wrong principle of law; or where the trial court has not considered a material factor in the

case; or has imposed a sentence which is harsh and manifestly excessive in the circumstances. See *Bashir Ssali v Uganda* [2005] UGSC 21.

n r

TofLL

⁵ It is contended by the appellant that the sentence of 25 year's imprisonment imposed by the trial judge is illegal, manifestly harsh and excessive. The Respondent contends that it is legal, lenient and within the range for the offences of murder and aggravated robbery. The court will examine the sentence and how it was arrived at to arrive at a fair and just decision.

10

The sentence and reasons for the same were set out by the trial judge as here below; -

"Ws!o.q-15

2s

I have considered all the aggravating and mitigating circumstances presented to this court in favour and against the accused person by the respective counsel in this case. I am also aware of the fact that the convict pleaded guilty and as such saved court's time and the taxpayer's money. This court appreciates this act by the convict and it will give it due consideration while sentencing the convict. However, in this case, there was loss of life including theft of property and others. Dickson Namugowa died clumsily for no good reason. The two crimes were orchestrated by greed, evil and selfishness on the part of the convict and his co-accused. The convict is a young man who needs to be taught that in life, nothing comes on silver platter. That people must work hard before they get what they own. That people should not kill or otherwise molest others to enrich themselves.

I have also found out that the convict is not a first time offender as this court has been informed by counsel for the accused. The convict is currently serving a 15-year imprisonment term in Mbale Government prison for aggravated robbery handed to him at Mbole High Court on 14 December 2014. I am in the circumstances convinced that justice will in that case be best served if the convict is given a custodial sentence that will keep him away from society for some good time since he is a habitual robber. 30 35

8 of 11

⁵ Sentence:

7. count one: Murder contrary to Sections 188 & 189 of the PCA. The convict is hereby sentenced to 25 years IMPRISONMENT. The 25 years shall not include the period he has spent on remand.
- 2. Count two: Aggravated robbery contrary to Sections 236(2) PCA. The convict is hereby sentenced to 25 years IMPRISONMENT. The 25 shall exclude the period the convict has already spent on remand. The two terms of imprisonment shall run concurrently." [Emphasis ours]
- The reason for the contention that the sentence is illegal is that the trial judge did not take into account the period spent on remand while the Respondents counsel avers that the period was taken into account as was the practice at the material time. 15
- We are of the view that the words used in sentencing were ambiguous and did not amount to taking into account as envisaged under Article 23 (8) of the Constitution. We bear in mind the natural and ordinary meaning of the related words "include" and "exclude." 20
- The Oxford Advanced Learner's dictionary defines the word "include" to mean 1. To have something as part of a whole. 2. To make something part of a larger group or set. The word "exclude" is defined to mean 1. Ignoring something as a consideration 2. To leave something out. 25
- Guided by the above definitions, the use of the two words in the sentencing order did not only make the sentence ambiguous but meant that the remand period was not considered. It is also evident that the remand period was not known to the court as it was not mentioned. It has been held by this Court that a sentence passed by the Court should not be 30
- ambiguous. See Bigirimana Vincent V. Uganda [2019] UGCA Z21. 35

\n

- ⁵ On the other hand, excluding a remand period contravened Article 23(8) of the constitution and rendered the sentence illegal. We therefore invoke Section 11 of the Judicature act which grants this court the same powers as the trial court to impose a sentence on the appellant.

- We are mandated to consider both mitigating and aggravating factors presented for the appellant at trial and further invoke the principles of parity and consistency in sentencing. In so doing however, we are mindful of the fact that cases are uniquely different. 10
- In this case, the appellant was convicted on his own plea of guilty for murder and aggravated robbery and sentenced to 25 years' imprisonment. In *Guloba Rogers v Uganda* [2021] UGCA 16 the appellant was convicted for murder and aggravated robbery and sentenced to 47 years' imprisonment. This court reduced the sentence to 35 years' imprisonment on each count with the sentences to run concurrently. 15 20

In *Bandebaho Benon v Uganda* [2016] UGCA 55 this court found 35 years' imprisonment for murder and aggravated robbery to be neither harsh nor excessive.

In *Mushabe Daniel v Uganda* [2024] UGCA 315 this court re-sentenced the appellant to 35 years' imprisonment on the charges of murder and aggravated robbery for which he had been sentenced to 45 years by the trial Court.

In *Bakubye Muzamiru and Anor v Uganda* [2018] UGSC 17 on a second appeal, the Supreme Court upheld sentences of 40 years for murder and 30 years for aggravated robbery.

The cited decisions give a range of 30 to 50 years sentences for murder and aggravated robbery. We however emphasize that each case is determined on its own facts. 35

We have considered the fact that the appellant pleaded guilty thereby not wasting Court's time and expressing remorse for his actions as mitigating factors. The appellant was however not a first time offender and was serving another prison term for the same offence of robbery making him a habitual offender who had failed to reform.

I

L

We find that the sentences of 25 years' imprisonment for the offence of murder and 25 years' imprisonment for the offence of aggravated robbery with the sentences to run concurrently were neither harsh nor excessive in the circumstances of this case. We deduct the period of 3 years 10 months the appellant spent on remand on each of the two counts.

The appellant is to serve a period of 21 years and 2 months' imprisonment on the count of murder and 20 years and 2 months on the count of aggravated robbery. The sentences shall run concurrently from 22nd April 2015 being the date of conviction.

) Signed, dated and delivered at Mbale this day of March 2025

i \ Irene Mu aaaa aa aaaa

Justice of Appeal

q

M rga ret Tibulya Justice of Appeal

Moses Kazibwe Kawumi Justice of Appeal

35

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2025/71/eng@2025-03-12>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/shikanga-v-uganda-criminal-appeal-153-of-2015-2025-ugca-71-12-march-2025-unknown-topic-unknown-court-2025>

Prepared on 14 October 2026 · Esheria