

UGANDA / JUDGMENT

Twesigye v Uganda (Criminal Appeal 178 of 2015) [2025] UGCA 148 (20 May 2025)

[2025] UGCA 148

COURT

Court of Appeal of Uganda

BEFORE

Kazibwe, JA, Nakachwa, JA/JCC, Kakooza Sabiiti, JA/ JCC

CASE / FILE NUMBER

Criminal Appeal 178 of 2015

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

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT MBARARA CRIMINAL APPEAL NO. 0178 OF 2015 (ARISING FROM MBARARA CRIMINAL SESSION CASE NO.410 OF

\$2016)\$

(CORAM: Moses Kazibwe Kawumi, Florence Nakachwa, Cornelia Kakooza Sabiiti JJA)

TWESIGYE STEPHEN:..... VERSUS

<table>

UGANDA:..... 15 (Appeal from the decision of the High Court of Uganda sitting at Mbarara, Criminal Session No. 0095 of 2014 delivered by the Hon. Justice Duncan Gaswaga on 20th May 2015)

 $\$S\$\$$

JUDGMENT OF THE COURT

Background

The appellant was indicted and convicted of Murder contrary to Sections 188 and 189 of the Penal Code Act. And he was sentenced to 32 ½ years of imprisonment. The facts, briefly stated, are that on the 8th day of September 2012 at approximately 8:00am., the deceased was found lying dead near his father's residence. The deceased's father immediately suspected Twesigye Stephen and Gumisiriza Julius, as they had previously issued threats against him prior to the incident. They were both arrested, and upon arrest, the appellant confessed to the offence. A post-mortem examination was conducted on the body of the deceased, and the cause of death

was established as respiratory failure secondary to neck strangulation.

\$25\$

Page 1 of 11

At the hearing, upon the indictment being read, the appellant pleaded guilty to the S offence of murder and the trial judge sentenced him to $32\frac{1}{2}$ years of imprisonment.

Grounds of Appeal

The appellant appeals to this court on the following grounds;

- 1. The learned trial judge erred in law and in fact when he sentenced the 10 appellant to a harsh and excessive sentence, thereby occasioning a miscarriage of justice to the appellant.
- 2. The learned trial judge erred in law and in fact when he sentenced the appellant without taking into account the time the appellant had spent on remand, thereby occasioning a miscarriage of justice.

Representation

At the hearing of this appeal, the appellant was represented by **Counsel Emmanuel Tumwebaze**. The respondent was represented by **Chief State Attorney, Happiness**

Ainebyoona holding brief for Nabaasa Caroloine Hope, Principal Assistant Director \$20\$ of Prosecution.

Prior to the commencement of the hearing, counsel for the Appellant made an oral application for leave to appeal against the sentence only which was not objected to by counsel for the respondent. Accordingly, the Court granted leave to the appellant to appeal against the sentence only.

\$25\$

Both Appellant and Respondent counsel lodged written submissions and the Court adopted the said submissions as their arguments in support of the appeal.

Ground one:

Appellant's submissions. 30

$\overline{P}$ $\overline{C}$ $\overline{A}$

Page 2 of 11

Counsel for the appellant based his arguments on the principle of consistency in S sentencing persons convicted of a similar crime. Counsel cited the decision of Wabwire Iddi Vs Uganda CACA No. 78 of 2015, where the appellant was indicted for murder and sentenced to life imprisonment upon his own plea. However, on appeal, the sentence was reduced to 18 years imprisonment. Counsel also cited the case of John Kasimbazi and others Vs Uganda CACA 167 of 2013, the appellant 10 who had been convicted and sentenced to life imprisonment, on appeal, the said sentence was reduced to 12 years imprisonment. He submitted that the appellant in having pleaded guilty, the sentence of 32 $\frac{1}{2}$ years imprisonment was inconsistency with the sentences of similar offences. Counsel prayed that the sentence be reduced 15 and the appellant be sentenced to 15 years instead.

Respondent's submissions.

In reply, counsel for the respondent submitted that confessing to the offence and pleading guilty does not absolve the offender from serving a deserved punishment; the appellant was spared the maximum sentence for not wasting Court's time. The 20 sentence of 32 $\frac{1}{2}$ never exceeded the permissible ranges. Counsel was agreeable to the principle of consistency in sentencing and also invited this Court to several decisions on the offence of murder where the sentence of life imprisonment was upheld by the Supreme Court and before this Court. **Rwalinda John Vs Uganda** SCCA No.3 of 2015, Kato Kajubi Vs Uganda SCCA No. 20 of 2014, Sekandi \$25\$ Hassan Vs Uganda CACA No. 86 of 2015, and Mwikirize William Vs Uganda CACA No. 0349 of 2014.

Counsel further cited this Court's recent decision of **Kapinda Boniface & Anor Vs Uganda** CACA No. 108 and 98 of 2011, where the death sentence on murder indictment was upheld. Further, the case of Florence Abbo Vs Uganda CACA No. 0168 where 40 years imprisonment for murder was upheld. The appellant, who

Page 3 of 11

pleaded guilty to murder, was resented to 35 years of imprisonment by this Court S in Tomusange Lasto & Anor Vs Uganda CACA No. 103 of 2015.

Counsel concluded that the Court was too lenient to save the appellant the maximum penalty of death or life imprisonment. That Court should be pleased to find that imprisonment of 32 $\frac{1}{2}$ years was low compared to recent decisions of this Court.

Court's consideration of ground one:

We have carefully examined the record of proceedings from the trial Court, thoroughly considered the submissions made for and against this appeal, the applicable law, and the authorities cited by both counsel. Being a first appeal, we are guided by our mandate under Rule 30(1)(a) of the Judicature (Court of Appeal Rules) Directions, SI 13-10, which requires this Court to subject the evidence adduced at trial to a fresh and exhaustive scrutiny, re-evaluate it, and arrive

at its conclusions. In undertaking this task, we remain cognizant of the fact that we are not to disregard the findings of the trial Court but must weigh and assess them with due consideration. (See: Kifamunte Henry v Uganda, Supreme Court Criminal Appeal No. 10 of 1997).

It is trite law that an appellate Court will only alter a sentence imposed by the High Court if it is evident that it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive given the circumstances. See: Livingstone Kakooza Vs Uganda Supreme Court Criminal Appeal No. 17 of 1993.

This Court is hesitant to alter a sentence imposed by a sentencing Court. In the Supreme Court decision of Kiwalabye Bernard Vs Uganda, Criminal Appeal No. 143 of 2001, the Court emphasized that:

Page 4 of 11

"The appellant court is not to 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 to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial Court ignores to consider an important matter or circumstances which ought to be considered while passing the sentence or the sentence imposed is wrong in principle." 10

During sentencing, the Trial Judge proceeded as follows, and we quote verbatim:

\$20\$

"This was not only a brutal but also a well planned murder. The deceased lost *her life apparently for no reason at all.*

- Such crimes are on the increase in this region. The convict needs to be removed from the public for a very long time. The deceased has left this world for good, and the relatives and friends will never see her again. The convict has pleaded guilty and saved Court's time. He is repentant and prays for mercy. The maximum penalty prescribed by him is death.
- He has been on remand for $2\frac{1}{2}$ years. In the circumstances, the convict will be sentenced to Thirty Two Years and Half ($32\frac{1}{2}$), which should start running *today.*"

We are mindful of the need to maintain consistency in sentencing when dealing with offenders convicted of similar offences, as rightly emphasized by both counsel. In accordance with the Third Schedule to the Sentencing Guidelines, the sentencing range for the offence of murder is from thirty (30) years' imprisonment to the death penalty, subject to the consideration of both mitigating and aggravating factors.

The Supreme Court in the case of Aharikundira Yusitina V Uganda, Supreme Court Criminal Appeal No. 27 of 2015; [2018] UGSC 49]. The court then set aside the death sentence imposed by the trial Court and substituted it with the

Page 5 of 11

sentence of 30 years' imprisonment for the appellant who brutally murdered her husband.

Further in Muhoozi & Another v. Uganda Supreme Court Criminal Appeal No. 29 of 2014; [2018] UGSC 26. The appellants were, upon conviction of murder, sentenced to 30 years' imprisonment, and the sentence was upheld on appeal to this Court. On further appeal, the Supreme Court upheld the sentence and noted that the sentence was appropriate and neither harsh nor manifestly excessive.

- In the recent decision delivered on 13th February 2025 Kaweesa Abdul Vs Uganda CACA No. 0112 of 2014 [2025] UGCA, this Court declined to find that 35 years of imprisonment for the offence of murder as harsh and excessive and upheld a sentence against the appellant who had pleaded guilty of murder before the trial judge.
- The trial judge having sentenced the appellant to 32 ½ years for the offence of murder which attracts a maximum penalty is death, in our considered view, the learned trial Judge took into account both the mitigating and aggravating factors and imposed a sentence that is consistent with established sentencing principles, we find no compelling reason to interfere with the discretion of the trial judge. The sentence 20 was neither harsh nor excessive in the given circumstances.

Ground two:

\$10\$

Appellant's submissions

Counsel submitted that the trial judge simply stated the time the appellant had spent 25 on remand, but did not state whether he had deducted the time or considered it in the final sentencing of the appellant. The trial judge, therefore, erred in law when he sentenced the appellant without deducting or considering the time the appellant had spent on remand, thereby causing a miscarriage of justice. Counsel prayed that the sentence of 32 ½ years imprisonment be set aside, being illegal, and instead this 30

Page 6 of 11

\$v\$ \$c\$ \$k\$

court should sentence the appellant to 15 years imprisonment and deduct the period spent on remand.

Respondent's submissions

Counsel submitted citing an earlier decision of Twongyeirwe John Vs Uganda

- CACA 201 of 2013, which held that a trial judge cannot be faulted for not \$10\$ arithmetically deducting the period spent on remand once the matter was decided before Rwabugande. Counsel added that since the legal regime did not require arithmetic calculation, the learned trial judge did what he was legally required of him.
- 15

Court's consideration of ground two.

Article 23 (8) of the 1995 Constitution provides as follows;

"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of *imprisonment.*"

Further still, Regulation 15(2) of the Constitutional (Sentencing guidelines for Courts of Judicature) (Practice) Directions 2013 enjoin Court to deduct the period spent on remand from the sentence, considering an appropriate sentence after all factors have been taken into account.

\$25\$

During the sentencing, the trial judge proceeded as follows;

"He has been on remand for \$2\frac{1}{2}\$ years. In the circumstances, the convict will be sentenced to Thirty Two Years and Half (32 ½), which should start running today."

It is pertinent to note that the appellant was sentenced on \$20^{th}\$ May 2015. We concur 30 with counsel for the respondent that, at the material time, it was not a mandatory

Page 7 of 11

$\mathcal{F}$ $\mathcal{M}$

requirement for the trial judge to arithmetically deduct the remand period from the S sentence imposed. The applicable legal position then was guided by the decision in Kizito Senkula v Uganda, Supreme Court Criminal Appeal No. 24 of 2001 [2002] UGSC 36 (decided on 19th December 2002), wherein the Court, when faced with a scenario similar to the present case, in interpreting Article 23 observed as follows: 10

"As we understand the provisions of article 23(8) of the Constitution, they mean that when a trial court imposes a term of imprisonment as sentence on a convicted person, the court should take into account the period which the person spent in remand prior to his/her conviction. Taking into account does not mean an

arithmetical exercise." 15

> However, on 3rd March 2017, the Supreme Court departed from its earlier position in *Kizito Senkula* in the case of *Rwabugande Moses v Uganda*, Supreme Court Criminal Appeal No. 25 of 2014 [2017] UGSC 8, where it held as follows:

- "It is our view that the taking into account of the period spent on remand by a court 20 is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused.
- According to *Rwabugande*, the trial Court was required to calculate the period a convict has spent on remand and subtract it from the term of imprisonment the court has imposed, it would no longer be sufficient or lawful for a trial court to merely state when sentencing that it has taken into account the period the convict has spent on remand."
- It is, however, imperative to note that, in light of the principle of retrospectivity, the 30 decision in *Rwabugande Moses* does not apply to the present appeal, which was

Page 8 of 11

decided on 20th May 2015. This was clearly underscored by the Supreme Court in 5 *Sebunya Robert & Another v Uganda*, Supreme Court Criminal Appeal No. 58 of 2016 [2018] UGSC 73.

"*Rwabugande* does not have any retrospective effect on sentences which were passed before it by courts, "taking into account the periods [a convict] spends in

- lawful custody". Accordingly, we find no justifiable reason to fault the High Court 10 for passing or the Court of Appeal for confirming the sentences that were imposed on the appellants as those sentences were in conformity with the law that applied at the time the sentences were passed."
- The position taken in *Rwabugande Moses* was subsequently clarified by the 15 Supreme Court in *Abelle Asuman v Uganda*, Supreme Court Criminal Appeal No. 66 of 2018 [2018] UGSC 10 (decided on 19th April 2018), where the Court held as follows:

"What is material in that decision is that the period spent in lawful custody prior to the trial and sentencing of a convict must be taken into account, and according to 20 the case of *Rwabugande*, that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts, but those metaphors are *not derived from the Constitution.*"

- 8 / 9

Moses Kazibwe Kawumi Justice of Appeal

Florence Nakachwa Justice of Appeal

CKLes

Cornelia Kakooza Sabiiti Justice of Appeal

\$10\$

$\$S\$$

\$15\$

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/2025/148/eng@2025-05-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/twesigye-v-uganda-criminal-appeal-178-of-2015-2025-ugca-148-20-may-2025-unknown-topic-unknown-court-2025--6a3ea4dc3b1caa91297e9bc3>

Prepared on 12 October 2026 · Esheria