

UGANDA / JUDGMENT

Twikirize v Uganda (Civil Appeal 21 of 2017) [2025] UGCA 142 (21 May 2025)

[2025] UGCA 142

COURT

Court of Appeal of Uganda

BEFORE

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

CASE / FILE NUMBER

Civil Appeal 21 of 2017

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT MBARARA

CRIMINAL APPEAL NO.0021 OF 2017

TWIKIRIZE JONAS

UGANDA

VERSUS

RESPONDENT

APPELLANT

(Appeal from the judgment of the High Court at Mbarara (Matovu, J) delivered on 17th November 2016 in Criminal Session Case No.277 of 2015)

(Coram: Kazibwe Kawumi, Nakachwa, Kakooza Sabiiti, JJA)

JUDGMENT OF THE COURT

The appellant pleaded guilty to a charge of Murder and was accordingly convicted. He was sentenced to 18 years' and 6 months' imprisonment \$20\$ on 17th November 2016.

Background

The appellant was married to Atuhairé Daphine and they stayed at Buzooba village, Kibingo Parish in Mbarara District. On 18th December 2014, the appellant called his father in law requesting to meet him at Kagongi Police Post to resolve a dispute he had with his wife, Atuhairé.

The father in law, reported to the Police Post on 19th December 2014. In a meeting involving Police Officers, his daughter stated that the appellant wanted to kill her. The appellant did not rebut the allegation. Atuhairé was advised by the Police to relocate to her parents' home which she did.

The appellant kept calling his wife threatening to kill her and she would accordingly inform her parents of the threats. On 6th January 2015, the appellant went to Atuhairé's home and stabbed her before fleeing from

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\$\n *OP*\n *CNP*\n\$

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\$10\$

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the village. She died of the stab wounds. The appellant was arrested from \$\mathsf{S}\$ Bukanga in Isingiro District on 4th May 2015.

Prior to appearing before the trial Judge for plea taking, the appellant had enlisted for plea bargaining and with the assistance of an Advocate negotiated for a sentence of 20 years' imprisonment. The trial Judge convicted and sentenced him to the same period less the time he had spent on remand.

Dissatisfied with the sentence imposed by the trial court, the Appellant lodged an Appeal on a single ground that;

The learned trial Judge erred in law and fact when he followed a wrong procedure for convicting and sentencing the appellant under a plea bargaining agreement hence occasioning a miscarriage of justice.

The Appellant proposed that the conviction and sentence should be set aside. In the alternative, it was proposed that the sentence should be \$20\$ reduced as the Court shall determine.

Representation

\$10\$

\$25\$

Mr. Masereka Chan Geoffrey appeared for the appellant on state brief while Ms. Happiness Ainebyoona holding brief for Mr. Kulu Idhambi from the Office of the Director, Public Prosecutions appeared for the Respondent.

The court validated the Memorandum of Appeal filed out of time and further granted leave for the submissions filed by the parties to be 30 adopted as their final arguments in the determination of the appeal.

Submissions by Counsel for the Appellant

It was submitted for the appellant that he entered a plea-bargaining 35 agreement and the charge was read to him in the Runyankore language

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that he understands. It was further submitted that the appellant admitted to have voluntarily signed the plea bargaining agreement. $\$ \mathit{mathsf{S}} \$$

The complaint raised by Counsel is that the record of the court is silent on the participation of the court in arriving at the agreed prison term. It is also argued that the record of proceedings does not reflect that the rights the appellant waived were explained to him together with the contents of the plea bargaining agreement in the language he understands before it was admitted as part of the record of the court.

It was submitted that the court did not adhere to the requirements of Rule 12 of the Plea-bargaining Rules which provide for the duty of the trial 15 court to explain the contents of the agreement to an accused failure of which would render the proceedings flawed and tainted with irregularities.

$\$20 \$$

$\$10 \$$

Counsel cited Musinguzi Apollo V Uganda [2024] UGCA 279; Inensko Adam V Uganda [2018] UGHCCRD 177, and Lwere Bosco V Uganda, [2020] UGCA 2112 for the proposition that the plea-bargaining agreement occasioned a miscarriage of justice to the appellant which the court should not condone. The Court was urged to set aside the $\$25 \$$ conviction or in the alternative to reduce the sentence imposed by the trial court.

Submissions by Counsel for the Respondent

It was submitted that the plea taking proceedings were interpreted to the $\$30 \$$ appellant in the language he understands and he voluntarily signed the Plea bargain agreement before pleading guilty to the offence of murder. It was further argued that the appellant further understood the facts read to him and admitted that what was read was correct before he was convicted of the offence by the court. 35

Counsel for the Respondent contended that there was no miscarriage of justice occasioned to the appellant to warrant the setting aside of the sentence imposed by the trial court. The Court was invited to administer

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substantive justice as required of it under Article 126(2)(e) of the S Constitution and maintain the conviction and sentence imposed by the trial court.

Analysis and determination

As a first appellate court, it is our duty to re-appraise all evidence that \$10\$ was adduced before the trial court and come to our own conclusions on the facts and the law while making allowance for the fact that we neither saw nor heard the witnesses testify. See *Kifamunte Henry v Uganda* [1998] UGSC 20.

We found it expedient to reproduce the record of proceedings for purposes of fully appreciating the plea taking procedure adopted by the trial Judge;-

"17/11/2016

Mr. Kato for State.

Ms. Julian Atwiine for the accused.

Accused in court

Clerk: Henry

Mr. Kato

We have an agreement

Ms. Atwiine I am aware of this agreement

Accused;

Runyankore. I signed this agreement **Understands** voluntarily.

Court.

Indictment read to the accused in open court and translated to him into Runyankore by the clerk.

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Accused.

I have heard. It is true.

Court; A plea of guilty is entered.

Mr. Kato:

The brief facts are that the accused on 6th January 2015 while at Akengoma Cell in Kiruhura District got into a struggle with the deceased, he followed her to her house and stabbed her to death. Post mortem reveals stab wounds as the cause of death. The case was reported and the accused was arrested. Accused was aged 24 years and he was normal.

Accused;

I have heard. The facts are correct.

Court:

The accused Twikirize Jonas is convicted of murder on his plea of guilty.

Accused.

I accepted to serve twenty (20) years.

Warder:

He has been on remand for 1 year and 6 months.

SENTENCE:

The convict accepted to serve twenty (20) years. After deducting the 1 year and six (6) months on remand, he is sentenced to serve a prison term of eighteen (18) years and six (6) months."

Counsel for the Appellant admits that the plea and facts relating to the \$30\$ charge were communicated to the appellant in the Runyankore language he understands. The Appellant therefore fully understood the nature of the offence he is alleged to have committed and he knowingly admitted

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\$20\$

\$25\$

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\$10\$

to it through an equivocal plea recorded by the court. The guidelines on \$\mathsf{S}\$ plea taking laid out in Adan v R (1973) EA 365 were to that extent followed by the court.

\$15\$

The first complaint relates to the failure by the court to explain to the appellant the rights he had waived by executing the plea bargain agreement. The procedure regarding rights of an accused pleading guilty through Plea bargain is set out in Rule 12 of the Plea bargain rules.

Rule 12 of the Plea Bargain Rules provides;

"12. Recording of plea bargain agreement by the court.

- 1) Subject to the procedure prescribed in 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-
 - > (i) the right to plead not guilty or having already pleaded the effect of that plea;
 - (ii) to be presumed innocent until proved guilty;
 - (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
 - (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."

A perusal of the Plea bargain agreement which was admitted on the court record reveals that the appellant signed all sections including the acknowledgment that he had waived his rights. The Advocate further confirmed that she had explained the rights and the effect of signing the

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agreement to the appellant and this was confirmed by the Prosecuting \$\mathsf{S}\$ Agent.

The agreement was also executed by the trial Judge acknowledging that he had confirmed that the accused had a full understanding and knowledge of the contents of the agreement and its effect. The interpretation of the agreement was done by Ms. Atwiine who happened to be the same Advocate who represented the appellant during the plea taking proceedings. The Advocate was an officer of the court on state brief and was not disowned by the appellant.

All the above safeguards considered; we find the failure for the Judge to indicate on record that the rights were read to the accused to be a minor contravention that should not vitiate the proceedings.

We are of the view that the appellant knew of the rights he waived by \$20\$ executing the plea bargain agreement since he raised no complaint to the effect that his Advocate did not explain them and/or other contents of the Plea bargain agreement to him before he executed it. It was also his statement to the trial Judge that he voluntarily signed the agreement and we find no basis to assume that he did not know what he was consenting \$25\$ to.

The question for determination however is whether the failure of the trial Judge to explain the rights waived by the appellant rendered the plea a nullity? We are of the opinion that it did not much as it is the ideal requirement as provided by Rule 12 of the Plea bargain rules.

For this court to set aside the sentence imposed, there must be proof that a failure of justice was occasioned to the appellant. No such claim was raised in the submissions filed in support of the appeal.

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Further still, any omission in the plea taking procedure by the trial court \$\mathsf{S}\$ had to be raised by the appellant or his Counsel at that stage of the trial. The requirement is provided for in section 139 of the Trial on Indictments Act

Section 138 of the Trial on Indictments Act [CAP 25] provides that;- \$10\$

"138. Reversability or alteration of finding, sentence or order by reason of error, etc.

(1) Subject to the provisions of any written law, no finding, sentence or order passed by the High Court shall be reversed or altered on appeal on account of any error, omission, irregularity or misdirection in the summons, indictment, order, judgment or other warrant, proceedings before or during the trial unless the error, omission, irregularity or misdirection has, in fact, occasioned a failure of justice.

(2) In determining whether any error, omission, irregularity or misdirection has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

We find that since the appellant was represented by an Advocate who did not raise any objection on the issue raised on appeal during the trial. The appellant's complaint is an afterthought this court cannot condone more so when no claim to any form of injustice was occasioned to him.

In Uganda v Guster Nsubuga & Others, SCCA No.92/2018, the court was 30 faced with a situation where plea was not taken on an amended charge sheet on a second appeal. The Court of Appeal had found that the trial was a nullity for want of plea. In resolving the issue on the second appeal, the court held;-

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\$20

"There is no denying the fact that we would not be here had the respondents been asked to take plea after the ammendment. It would have been neater . It would have removed any excuses. However, court would be expecting too much to demand that all trials must run like clockwork, short of which they would result in nullification of the entire trial. We do not live in a perfect world so we have to evaluate the impact of any particular imperfection on the entire trial."

In our view, it would be impractical to set aside the sentence imposed by the court after administering a charge unequivocally pleaded to by the 15 Appellant. The omission by the court to explain the waived rights which in any case had been explained to the appellant by his Advocate would not be cured by a reversal of the sentence and/or ordering a re-trial.

- The trial Judge is further faulted for not participating in the arriving at the \$20 agreed term of imprisonment. We find no basis for the accusation since the role of the court in determining the sentence is not executed at the plea taking stage so as to be reflected in the record of the court.
- Counsel for the accused and the Prosecution consult the trial Judge about $\overline{25}$ the proposed sentence before the plea taking stage. The court reviews the nature of the case and the aggravating and mitigating circumstances before advising counsel on what would be the appropriate sentence.

This stage of the Plea bargain process which precedes plea taking is not reflected on the court record. \$30

The court cannot be faulted for not participating in arriving at the agreed sentence which process does not take place in open court. Counsel for the appellant invited the Court to rely on the case of Musinguzi V Uganda (supra) to quash the sentence imposed by the trial Court. We perused the cited authority and noted that it was not relevant to the circumstances of this case.

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- The Court in that case quashed the sentence for the reason that no plea S was taken and there was no conviction or sentence on record since the trial court just adopted the plea bargain agreement by the parties. The Court found that to be an irregularity which vitiated the proceedings.

- Similarly, in *Lwere Bosco V Uganda*(supra), the court found that the \$10\$ appellant did not have a full understanding of the plea bargaining procedure. The Court however concluded that the appellant had properly taken plea at the beginning of the trial and was convicted on his own plea of guilty. Section 11 of the Judicature Act was invoked to set aside the sentence since the trial court had not expressly deducted the period 15
- spent on remand by the appellant. In the instant case, the trial Judge convicted and sentenced the appellant to 20 years imprisonment and deducted the time he had spent on remand. We find no merit in the appeal which we accordingly dismiss.

\$25\$

Signed, delivered and dated at Mbarara this day of May 2025.

Moses Kazibwe Kawumi Justice of Appeal

Florence Nakachwa Justice of Appeal

Cornelia Sabiiti Kakooza Justice of Appeal

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