

UGANDA / JUDGMENT

Uganda v Apiku (Criminal Sessions Case No. 0015 of 2018) [2018] UGHCCRD 59 (26 February 2018) [2018] UGHCCRD 59

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Criminal Sessions Case No. 0015 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI

CRIMINAL SESSIONS CASE No. 0015 OF 2018

UGANDA PROSECUTOR

VERSUS

APIKU SUNDAY ACCUSED

Before Hon. Justice Stephen Mubiru

SENTENCE AND REASONS FOR SENTENCE

When this case came up on 12th February, 2018, for plea, the accused was indicted with the offence of Murder c/s 188 and 189 of *The* *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 23rd February, 2018. On that day, the learned Principal State Attorney prosecuting the case Mr. Okello Richard, sought leave to amend the indictment which when granted, he amended it to one of Manslaughter c/s 187 and 190 of *The Penal Code Act*. It was alleged that on 2nd September, 2016 at Bamogi South village in Moyo District, the accused unlawfully caused the death of RA 129636 WOII Irama Tom. When the indictment was read to him afresh, the accused pleaded guilty.

The learned Principal State Attorney then narrated the following facts of the case; on 2nd September, 2016 the deceased Irama Tom found the accused with three of his colleagues at the home of one Odendi. The deceased was on his way back to Gulu Army Barracks as a UPDF soldier. He had passed by to bid the people home farewell. The accused had three colleagues of

his with him. When the deceased tried to restrain him from disturbing people, the accused turned against him. The accused was wearing gum boots. They exchanged words and in the process the accused kicked the deceased twice on the ribs. The deceased reported to the Chairman of Ramogi village at 5.00 pm. He went back home, told his wife he was assaulted and was not feeling well and he entered his bed where he slept feeling a lot of pain. At 7.00 pm as the pain increased, he went and reported the matter to Moyo Police Station. The following day he went to Moyo General Hospital where he was recommended for a scan which was from at a private clinic in Moyo St. Dominic Clinic on 3rd September, 2016. The results showed that he had sustained blunt abdominal injury with a ruptured spleen and this resulted into abdominal bleeding. He was taken back to Moyo Hospital and taken to the theatre and operated upon but died shortly after the operation. the cause of death was internal bleeding with secondary severe hemorrhagic anemia. It was done from Moyo General Hospital on 4th September, 2016. The accused was arrested a day after the incident. He was examined on 4th September 2016 and was found to be 29 years old at the time with a normal mental status. Police Forms 48B and 24A were submitted as part of the facts. The accused having confirmed those facts to be correct, he was convicted on his own plea of guilty for the offence of Manslaughter c/s 187 and 190 of *The Penal Code Act*.

In his submissions on sentencing, the learned Principal Resident State attorney prayed for a deterrent sentence on the following grounds; the convict has no previous conviction and can be treated as a first offender. He has been on remand for a year and three to four months. Much as he has pleaded guilty and saved court's time, his irrational behaviour, typical of youths picking fights unnecessarily is so rampant. What he did is totally uncalled for. He should have exercised self-restraint. He needs a custodial punishment that will help him reform. Although the maximum punishment is life imprisonment, he proposed twelve years' imprisonment.

On his part, counsel for the convict Mr. Lebu William, prayed for a lenient custodial sentence on the following grounds; the convict is visibly remorseful and sincerely so. It is unfortunate that a life was lost. The convict and the deceased come from neighbouring villages and the impact of the offence on the two families was bad. He agreed to plead guilty out of remorse for the offence. He met the medical bills of the deceased even before he died while he was in hospital. He contributed heavily to the funeral expenses even when he was already in custody. The cause of death and degree of violence used by the accused is not that of a vicious person. The degree of violence and injury show that he did not intend the result. The life could have been saved had he been rushed to hospital. A lenient sentence should be considered because the accused is a young person. He will have time to reform. He has been on remand for one year and four months. A lenient sentence of five years would be appropriate from which the period of remand should be deducted, hence three years six months would be appropriate. A customary reconciliation was initiated and some payments were made. They are now awaiting the results of the trial.

In his **allocutus**, the convict prayed for lenience on grounds that; he is now 25 years old, married and with two children. He was living in the homestead of his father and he was taking care of him. His father died this year and his wife is alone at home. One child is in primary two and the other is in baby class. He is the sole bread winner for the family. He has learnt enough from prison and he will tell people outside not to do what he did.

In his victim impact statement, Mr. Ambayo Zachary, a cousin of the deceased, stated that the deceased was a soldier and had been deployed in Somalia. It would have been better for him to be shot in Somalia other than die at home. His death exposed the family to a lot of hardship and it is the first time that he is seeing the person responsible for the death. The deceased was stopping the accused from uttering vulgar words in the presence of children. The incident happened at the home of his brother. The deceased had been weeding cassava and the following day he was to return to his work. He had just returned to pass time. He had even bought his beer and he went aside and sat alone because of the behaviour of the accused. The accused kicked him from behind. He was seated when he was kicked. He had seven children. The convict deserves a heavy punishment. However after re-consideration, he opined that he was willing to reconcile with the convict who therefore deserves a light punishment.

Florence Irama, the widow of the deceased, on her part stated that after the death of her husband, she could not even manage the school fees of her children. She had a child who was proceeding for a course and there was no one to pay fees yet he passed very well. She is not employed and has no money to pay fees. Her eldest child is 21 years old and the youngest in primary four. She could not offer any information regarding the general conduct of the convict. Although she initially prayed that he is sentenced to life imprisonment, considering that his family contributed two head of cattle, one for the funeral and one for the uncles, and the fact that she is ready to reconcile with him, he should be given a lenient sentence.

Finally, Mr. Idro Lee, the L. C.1 Chairman of the village stated that the convict is not a bad person and was captain of the village football team. He did not expect the convict to do this. The relatives of the convict contributed to the burial expenses. He deserves lenience because he has two children and they are suffering.

Under section 190 of **The* *Penal Code Act,** the offence of manslaughter is punishable with the maximum penalty of life imprisonment. However, this represents the maximum sentence which is usually reserved for the worst of such cases or situations in which the manner in which the offence was committed indicates that the convict is hardened of heart, a danger to society if released from custody or where the circumstances otherwise give rise to the necessity for court to send out a strong deterrent message and in order to stabilise public fears over the threat posed by dangerous criminals. Courts are further inclined to impose the sentence of life imprisonment where a deadly weapon was used in committing the offence. In this case, there is no evidence that the convict used such a weapon. I do not consider this to be a case falling within the bracket of the most extreme cases of manslaughter nor have I been presented with evidence to show that the convict generally poses a danger to society. I have for that reason discounted the sentence of life imprisonment.

The starting point in the determination of a custodial sentence for offences of manslaughter has been prescribed by Part II (under Sentencing range for manslaughter) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 15 years' imprisonment. The sentencing guidelines however have to be applied bearing in mind past precedents of courts in decisions where the facts have a resemblance to the case under trial (see *Ninsiima v. Uganda Crim. C. A Criminal Appeal No. 180 of 2010*).

I have for that reason taken into account the current sentencing practices in relation to cases of this nature. I have considered the case of *Livingstone Kakooza v. Uganda, S. C. Crim. Appeal No. 17 of 1993*, where the Supreme Court considered a sentence of 18 years' imprisonment to have been excessive for a convict for the offence of manslaughter who had spent two years on remand. It reduced the sentence to 10 years' imprisonment. In another case of *Ainobushobozi v. Uganda, C. A. Crim. Appeal No. 242 of 2014*, the Court of Appeal considered a sentence of 18 years' imprisonment to have been excessive for a 21 year old convict for the offence of manslaughter who had spent three years on remand prior to his trial and conviction and was remorseful. It reduced the sentence to 12 years' imprisonment. Finally in the case of *Uganda v. Berustya Steven, H. C. Crim. Sessions Case No. 46 of 2001*, where a sentence of 8 years' imprisonment was meted out to a 31 year old man convicted of manslaughter that had spent three years on remand. He hit the deceased with a piece of firewood on the head during a fight.

I have considered the key aggravating factor in the case before me which is the fact that by his assault, the convict caused severe internal injury that ultimately caused the death of the deceased. He recklessly attacked the deceased for rebuking him not to use vulgar language. His reaction is a demonstration of a very disturbing degree of irresponsibility for a person of his age. He has as a result caused untold hardship to the family of the deceased who lost their loved one and support in such unfortunate circumstances. Accordingly, in light of those aggravating factor, I have adopted a starting point of ten years' imprisonment.

Against this, I have considered the fact that the convict has pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence and granted him the traditional discount of one third (three years) hence reducing it to seven years.

Under article 126 (2) (d) of *The Constitution of the Republic of Uganda, 1995*, courts are enjoined to promote reconciliation of parties. From the criminal justice perspective, this entails using considerations of reconciliation as a means toward building confidence in the justice

system and meeting the needs of victims as central to the role of the judiciary. The offender meeting the victim face to face and hearing about the impact of their actions frequently brings about a real sense of remorse and desire to change. Restorative justice is an effective response to crime. It empowers victims by giving them a chance to meet or communicate with their offender to explain the real impact of the crime. It also holds offenders to account for what they have done and helps them to take responsibility and make amends.

However in the absence of specific legislation, restorative justice processes such as were disclosed during the mitigation submissions of defence counsel can only be undertaken alongside a custodial sentence. Restorative justice can take place while the offender is serving a custodial sentence. This will not, however, form part of their sentence and will be only taken into consideration in determining the appropriate custodial sentence. In any event, restorative justice may also be carried out very effectively even post-sentence.

I have nevertheless considered the fact that the convict is a first offender, a relatively young man at the age of slightly over 30 years (considering that the charge sheet indicates he was 29 years old in September, 2016) with family responsibilities. A reformatory sentence would be appropriate in the circumstances. In light of the mitigation, I consider a period of five (5) years' imprisonment as suiting the purposes of a reformatory sentence in light of the mitigating factors. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period spent on remand from the sentence considered appropriate, after all factors have been taken into account, I observe that the convict was charged on 19th September, 2016 and been in custody since then. I hereby take into account and set off a period of one year and five months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of three (3) years and seven (7) months, to be served starting from today.

Having been convicted on his own plea of guilty, the convict is advised that he has a right of appeal against the severity and legality of the sentence, within a period of fourteen days.

Dated at Adjumani this 26th day of February, 2018.

Stephen Mubiru

Judge.

26th February, 2018.

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