

UGANDA / JUDGMENT

Uganda v Asobasi (Criminal Sessions Case No. 117 of 2017) [2018] UGHCCRD 57 (26 February 2018)

[2018] UGHCCRD 57

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Criminal Sessions Case No. 117 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ADJUMANI

CRIMINAL SESSIONS CASE No. 117 OF 2017

UGANDA PROSECUTOR

VERSUS

ASOBASI RICHARD 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*. It was alleged that on 13th December, 2016 at Maali II Refugee Settlement Camp in Adjumani District, the accused murdered a one Maiku Luigi. He pleaded not guilty and the case was fixed for commencement of hearing on 22th February, 2018. On that day, the evidence of two prosecution witnesses was admitted during the preliminary hearing and on additional witness gave *viva voce* evidence whereupon the prosecution closed its case. A *prima facie* case having been established against the accused, he was put to his defence and the case was adjourned to 23rd February, 2018 for him to present his defence. On that day, the accused opted to change his plea. When the indictment was read afresh to the accused, he pleaded guilty.

The court then invited the learned Resident State Attorney Ms. Bako Jacqueline, to narrate the facts which she stated as follows; the deceased lived at Airi Central village but he sometimes he would go and live in Maaji II Refugee Settlement Camp where he had a female companion. On 13th December, 2016 at around 10.00 am, the deceased called his son one Ajiga Joseph and told him that he has been cut with a panga by the accused who was a neighbour at Maaji II where he was a neighbour. He saw cut wounds on both hands, neck and other parts of the body. He was in a critical condition covered in blood. He rushed the deceased to the Health Centre III but he died before he could be examined. His boy was examined on P. F. 48 from Adjumani Hospital where he was found to have sustained bruises on his arms, abdomen and cut wound from the temporal mandibular joint up to the carotid artery. The cause of death was Found to be spinal injury following blunt trauma to the neck. He reported the case to Maaji II police post whereupon the accused was arrested and charged with Murder c/s 188 and 189 of *The Penal Code Act*. Upon arrest the accused handed over the panga which he used to cut the deceased, to the police. He was examined on P. F 24 where he was found to be 26 years old and mentally normal. The respective medical examination reports too were admitted as part of the facts. Upon the accused confirming these facts to be correct, he was accordingly convicted on his own plea of guilty for the offence of Murder c/s 188 and 189 of the *Penal Code Act*.

In her submissions on sentence, the learned Resident State Attorney stated that; although the convict has no previous record of conviction, the offence is rampant and in this specific case he acted unreasonably towards the deceased, by attacking him with a panga having disregard to his life. She prayed for a deterrent custodial sentence so that he is kept out of circulation in order for him to learn that life is sacred. She proposed that he is sentenced to twenty years' imprisonment to deter him and other would be offenders.

On his part, counsel for the convict Mr. Arinda Herbert submitted that; the convict is a first offender. He appreciates the nature of the offence against him and he is remorseful. He acknowledges that he probably used excessive force which consequently caused the death of the deceased. The circumstances of the death are such that the deceased was found with the accused's brother's wife's home, on the accused' brother's bed and he snapped. He proposed a sentence of twelve years' imprisonment.

In his *allocutus*, the convict stated that; he is sorry for what happened and prayed for lenience. He joined Maaji II Refugee Settlement Camp on 6th September, 2016 from South Sudan. There was too much rain at the time and his brother offered him a hut with his children and wife while he occupied the second. His wife and the wife of his brother would cook together. On 13th December, 2016 the day the incident happened, he found the deceased in the house and on the bed of his brother. The convict was going somewhere with the panga and he placed it by the door way. He wanted to notify the wife of his brother that he was going somewhere. He called out and no one responded. He saw a pair of sandals in the room. He thought his brother was in the house. He called out the name of his brother Gama but there was no response. When he raised the curtain he saw someone lying on his brother's bed. It was around 7.00 am and he asked him why he spent the night there. The deceased told him to leave because he was just a mere refugee. He

is married with children, three of them. There is no one to take care of them and his mother is old yet his father died. Some of his brothers died in Sudan Eastern Equatoria, Torit County. He prayed for lenience so that he can come out of prison and educate his children.

Murder is one of the most serious and most severely punished of all commonly committed crimes. The offence of murder is punishable by the maximum penalty of death as provided for under section 189 of *The Penal Code Act*. In cases of deliberate, pre-meditated killing of a victim, courts are inclined to impose the death sentence especially where the offence involved use of deadly weapons, used in a manner reflective of wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of the sanctity of life. This maximum sentence is therefore usually reserved for the most egregious cases of Murder, committed in a brutal, gruesome or callous manner. However, failed defences at trial are relevant to finding extenuating circumstances and for that reason murders involving ordinary provocation not amounting to legal provocation or emotional disturbance, and accomplice liability may reduce moral blameworthiness and provide grounds for not imposing a death sentence. The facts of this case suggest such circumstances and it is for that reason that I have not imposed the death sentence.

Where the death penalty is not imposed, the starting point in the determination of a custodial sentence for offences of murder has been prescribed by Item 1 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* as 35 years' imprisonment. The sentencing guidelines though 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. In this regard, I have considered the case of *Bukenya v. Uganda C. A Crim. Appeal No. 51 of 2007*, where in its judgment of 22nd December 2014, the Court of Appeal upheld a sentence of life imprisonment for a 36 year old man convicted of murder. He had used a knife and a spear to stab the deceased, who was his brother, to death after an earlier fight. In *Sebuliba Siraji v. Uganda C. A. Cr. Appeal No. 319 of 2009*, in its decision of 18th December 2014, the court of appeal confirmed a sentence of life imprisonment. In that case, the victim was a businessman and the accused was his casual labourer. On the fateful day, the accused waited for the deceased with a panga hidden in a kavera (polythene bag) and when the deceased opened his vehicle, the appellant attacked him and cut him with a panga on his head, neck and hand. In *Uganda v. Businge Kugonza H. C. Cr. Sess. Case No. 162 of 2012* the accused was convicted of murder after a full trial and was on 11th September 2013 sentenced to 20 years' imprisonment. The convict in that case had dug hole in the wall of the victim's house and cut him to death with a panga while he slept in his bed. In *Uganda v. Ocitti Alex and another, H. C. Cr Sessions Case No. 0428 of 2014*, an accused who plead guilty to an indictment of murder was on 7th November 2014 sentenced to 25 years' imprisonment. The 43 year old accused hit the deceased with an axe at the back of his head multiple times. In *Uganda v. Mutebi Muhamed and another, H. C. Cr Sessions*

Case No. 038 of 2011*, one of the accused who pleaded guilty to the offence of murder was on 17th January 2014 sentenced to 25 years' imprisonment while the other convicted after a full trial was sentenced to 30 years' imprisonment. The two convicts had killed the deceased by stabbing repeatedly on vulnerable parts of the body such as the head, the chest and near the breast during a robbery. Lastly, the case of *Tom Sazi Sande alias Hussein Saddam v. Uganda C. A Cr Appeal No. 127 of 2009*, where in its decision of 24th March 2014, the Court of Appeal upheld a sentence of 18 years' imprisonment for an accused who pleaded guilty to an indictment of murder. He had been on remand for 2 years and 3 months.

In light of the fact that the convict fatally assaulted the deceased with a panga and thereafter abandoned him by the roadside which in a way is indicative of his hardness of heart and disrespectfulness of the sanctity of life, I consider a starting point of thirty 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 but because it has come belatedly at the point after he was put to his defence and not at the earliest opportunity, I will not grant the convict the traditional discount of one third (ten years) but only an eighth (four years), hence reduce it to twenty six years.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to twenty years' imprisonment. 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 note that the convict has been in custody since December, 2016. I hereby take into account and set off a period of one year and two months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of eighteen (18) years and ten (10) months, to be served starting today.

Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this 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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