

UGANDA / JUDGMENT

Uganda v Onegarach (Criminal Case No. 0118 of 2017) [2018] UGHCCRD 84 (28 March 2018) [2018] UGHCCRD 84

COURT

HC: Criminal Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Criminal Case No. 0118 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

CRIMINAL CASE No. 0118 OF 2017

UGANDA PROSECUTOR

VERSUS

ONEGARACH ALEX ACCUSED

Before: Hon Justice Stephen Mubiru.

SENTENCE AND REASONS FOR SENTENCE

This case came up on 23rd March, 2018 in a special session for plea bargaining. The accused was indicted with the offence of Manslaughter c/s 187 and 190 of *The Penal Code Act*. It was alleged that on 10th day of Junem 2014 at Ajei Trading Centre, Ombila Parish, Nyapea sub-county in Zombo District, the accused unlawfully caused the death one Onegi Bonifas.

When the case was called, the learned State Attorney, Mr. Emmanuel Pirimba reported that he had successfully negotiated a plea bargain with the accused and his counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Ronald Onencan. The court then went ahead to ascertain that the accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreement. The Court being satisfied that there was a factual basis for the plea, and having made

the finding that the accused made a knowing, voluntary, and intelligent plea bargain, and after he had executed a confirmation of the agreement, went ahead to receive the agreement to form part of the record. The accused was then allowed to take plea whereupon a plea of guilty was entered.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon he narrated the following facts; on 10th June, 2014 the deceased went to the market in Ataji Nyapea, Zombo District. He was the revenue collector and the accused went to him to collect money. The deceased did not have the money at the time. There was commotion in the market and a fight ensued. The accused in an attempt to intervene boxed the deceased who fell down and died after 15 minutes. The accused attempted to escape but was pursued by members of the public who caught him and assaulted him but he was rescued by the police. The body of the deceased was taken to Nyapea for a post mortem. The accused too was admitted because of the injuries sustained at the beating. He too was examined on 19th June, 2014 and found to be of the apparent age of 32 years and of normal mental status. At the post mortem examination done on 11th June, 2014 at around 11.05 am, the body of Onegi Boniface was identified by Ongom William and he was of the apparent age of 70 years. There was a bruise at the back of the head. Internally there was fracture of the left temporal bone. 6 cm long, bruised brain tissue and the cause of death was a closed head injury. The respective police forms were submitted to court as part of the facts.

Upon ascertaining from the accused that the facts as stated were 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 justification of the sentence of four (4) years' imprisonment proposed in the plea agreement, the learned State Attorney adopted the aggravating factors outlined in the plea agreement which are that; - the maximum penalty for the offence is life imprisonment, the accused took the law into his hands and fatally assaulted an old man. For his inability to restrain himself and control his anger, he deserves a deterrent sentence.

In his submissions in mitigation of sentence, the learned defence counsel adopted the mitigating factors outlined in the plea agreement which are that the accused was 32 years old at the time he committed the offence, he is a first offender, remorseful and therefore capable of reform. He had three school going children and he has spent nearly four years on remand. There was reconciliation at home. He is now 45 years old. In his *allocutus*, the convict stated that he did not wish to supplement that mitigation. The victim's family was not available in court to make its victim impact statement.

I have reviewed the proposed sentence of four years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, 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.

In none of the decisions above did the accused plead guilty. The sentences were imposed following a conviction after a full trial. A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, and the fact that the convict has already spent nearly four years on remand, I accept the sentence proposed in the submitted plea agreement entered into by the accused, his counsel, and the State Attorney and in accordance thereto sentence the accused to a term of imprisonment of four (4) years, 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 Arua this 23rd day of March, 2018

Stephen Mubiru

Judge,

23rd March, 2018.

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Prepared on 13 October 2026 · Esheria