

UGANDA / JUDGMENT

Wakameli v Uganda (Criminal Appeal 198 of 2014) [2024] UGCA 128 (24 May 2024)

[2024] UGCA 128

COURT

Court of Appeal of Uganda

BEFORE

Egonda-Ntende, JA, Gashirabake, JA, Kihika, JA

CASE / FILE NUMBER

Criminal Appeal 198 of 2014

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IN THE COURT OF APPEAL OF UGANDA AT MBALE

I Coram. Egonda-Ntende, Gashirabake & Kihika, JJAI

CRIMINAL APPEAL NO. 198 of 2014

(Arising from High Court Criminal Session Case No.86 of 2013 at Mbale)

BF],TWF],8,N Wakameli Abel Appellant**AND**

Uganda :Respondent

(An appeal against the judgment of the High Court of Uganda [Kawesa, JJ at Mbale delivered on 15th April 2014])

JUDGMENT OF THE COURT**Introduction**

- t] This is an appeal, with leave of this court, against sentence only. The appellant was convicted, on 15th April 2014, by the High Court of Uganda (Kawesa, J.), of 2 counts of murder contrary to sections 188 and 189 of the Penal Code Act, on his own plea of guilt. The particulars of the offences were that on 29th April 2012, the appellant, at Nangono village, Mbale District, murdered Khisa Fred and Khisa Alice. The appellant was sentenced to 15 years' imprisonment on each count to run consecutively.

- 12l Dissatisfied with the sentence the appellant now appeals to this court on the following grounds,

'(I) That the Leamed Trial Judge ened in law and t'act when he sentenced the appellant to 15 years imprisonment on two counts ol murder and ordered that the sentences run consecutively which was harsh and excessive.

- (2) The leamed Trial Judge erred in law and fact when he sentenced the appellant to 15 years imprisonment on two counts of murder to run consecutively without considering

the appellant's remand period which occasioned ^a miscarriage of justice.'

t3l The respondent did not oppose ground 2 ofthe appeal. He called this court to exercise its powers under Section I I of the Judicature Act to sentence the appellant afresh.

Facts of the Case

- t4] The deceased in count I was the father of the appellant. The deceased in count 2 was the mother of the appellant. In February 2012 the appellant met his parents while they were constructing their home and told them that they shoudt complete their house properly because they were to die soon so that the family and rest of the public will know that he is a mad person. On27'h and 28'h April 2012, appellant did not go to sleep at his brother's place where he normally slept. Instead, his sisters went to sleep there.
- t5l On 29th April 2012, his two sisters who slept at the said brother's place went to check on their parents. They found that both parents had been murdered and their bodies were lying in a pool of blood in their house. appellant was nowhere to be seen.
- t6l The following day on 30th April 2012, appellant reported himself to Tororo Police Station and indicated that he was handing himself in for murdering the two deceased persons. He was arrested and transferred to Mbale central Police station, as the offence was committed in Mbale. He confessed in a charge and caution statement to the murder of his parents. Postmortem was done on both bodies and cause ofdeath were from the injuries sustained due to a sharp weapon which was used to inflict them. The weapon suspected to have been used was a sharp axe.
- 17l The appellant was charged with 2 counts of murder and he admitted them. He was convicted on his own plea of guilty and sentenced to 15 years' imprisonment on each count to be served consecutively. Hence this appeal against sentence.

Submissions of Counsel

t8] The appellant was represented by Ms Agnes Wazemwa, on state brief, while the respondent was represented by Mr Sam Oula, Senior Assistant Director of Public Prosecutions, in the Office of the Director of Public Prosecutions.

- [9] The respondent did not oppose ground 2 of the appeal and submitted that this court should exercise its authority under section 11 of the Judicature Act and sentence the appellant afresh.
- [10] Counsel for the appellant referred to *Karisa Moses v Uganda* [2019] UGSC 21; *Makonzi Patrick v Uganda* C A Criminal Appeal No. 218 of 2010 (unreported); *Aharindikundira Yusitina v Uganda* [2018] UGSC 49; and *Ssemaganda Sperito and Anor v Uganda* [2023] UGCA 200 and proposed that in light of these authorities the appropriate sentence on each count is 30 years imprisonment from which should be deducted the 2 years the appellant spent in remand to result in a final sentence of 28 years imprisonment to be served concurrently.
- Counsel for the appellant submitted that the appropriate sentence in this [11] regard taking into account the aggravating and mitigating circumstances was 15 years' imprisonment on each count to be served concurrently less the 2 years the appellant had spent on remand.

Analysis

It has been conceded by the respondent that the sentence imposed upon the [12] appellant was illegal on account of not having complied with article 23 (8) of the Constitution. For ease of reference, we shall set out the sentencing order of the learned trial Judge in the court below.

> **Court:** The offence is a capital one. Maximum Penalty is death. There is only one mitigation which is that convict is a first offender and has readily pleaded guilty. However, as rightly observed by Resident State Attorney this is the 'rarest of the rare' cases where the maximum sentence ought to be meted out. The accused/ convict took the life of his own parents under very painful circumstances. No explanation is forthcoming why this happened. Accused needs rehabilitation. Deterrence is a must. This court will sentence him to a stiff sentence with the effect of keeping him away from society. He is sentenced to a custodial Sentence of 15 years on count 1, and custodial sentence of 15 years on count 2. The sentences shall run consequently. I so Order.'

Clearly the learned trial Judge did not comply with the requirements of article 23 (8) of the Constitution, which compel a sentencing court to take into account, while determining a period of imprisonment of an offender, the period such offender had spent in pretrial custody. The failure to do so, rendered his decision unconstitutional. See *Kizito Senkula v Uganda*

[2002] UGSC 36; *Kabuye Senvewo v Uganda* [2005] UGSC 23; *Katende Ahamad v Uganda* [2007] UGSC 11; and *Bukenya Joseph v Uganda* [2013] UGSC 3, the prevailing authorities at the time the court below made its decision.

- [14] We commend Mr Sam Oula, counsel for the respondent, for readily conceding the appeal on this point.

- The sentences imposed upon the appellant are set aside accordingly. It is \$[15]\$ now our duty to sentence the appellant afresh.
- [16] We shall start by setting out the sentencing proceedings in the court below.

'RSA: No previous Record of Crime. He is a first offender. The offence is of a serious nature. We pray for a deterrent sentence. The circumstances warrant a maximum sentence notwithstanding the fact that convict has pleaded guilty. This is the rarest of the rare, occurrence that would justify a maximum sentence. If this court is lenient enough not to give the maximum, then we pray that the convict be removed from society by giving him life imprisonment. The convict planned, and meticulously premeditated and committed his actions. He had warned them in February that they would die. The murder in April had been premeditated for same time. Both deceased persons were his biological parents. No matter the grievance, a parent should be respected. The convict's conduct did not only offend the law but unknown cultural practice on earth. The society does not need a person of his standing. The court has to safeguard society by permanently keeping away as prayed. I so pray.

Wamimbi: Convict has spent 2 years on remand. He is 24 years only. He prays for lenience that he is sorry for whatever happened. He was attacked by evil spirits. Grandparents were always attacking him. While in prison, Christians have prayed for him. His mind is now settled. He prays for lenient sentence. We pray for an appropriate sentence.

Accused: I pray for leniency. I do not know how this happened.'

Much as the authorities referred to us by counsel for the respondent would \$[17]\$ have been helpful, none matched the facts of this case. The appellant had reported himself to the police, for the offences he had committed. He admitted to having committed the said crimes in his charge and caution statement. He pleaded guilty at first opportunity on arraignment before the High Court of Uganda.

- [8] The appellant committed 2 grave offences for which we must impose ^a punishment upon each offence. The offences are capital in nature involving the loss of human lives. The appellant killed his own parents. What brought about this offence is somewhat unclear. It appears that the appellant was suffering from some mental instability much as the PF 24 report indicated that he was of normal mind at the time of examination. This is evident from the conversation he had with his parents in February 2012 in which he indicated that they should complete their house and then the world will see that he is mad person. In his allocutus he states that he does not know how this happened. It is unfortunate that he was not subjected to psychiatric examination soon after his arrest. It is questionable whether the appellant was possessed fully of his mental faculties or was not labouring with mental instability or illness at the time this offence was committed.

- ^I^I9] The appellant is a first offender who readily pleaded guilty to the offences he was charged with. He cooperated with the police. He is remorseful. He was a young offender, 23 years old at the time the offences were committed. He is capable of reform especially if he receives medical help.

Decision

1201 Considering the mitigating and aggravating factors in this case we find ^a sentence of 15 years imprisonment on each count as appropriate. We deduct therefrom the period of 2 years spent on remand and impose upon the appellant, on each count, a term of imprisonment of 13 years to be served concurrently from 15th April 2014, the date of conviction.

Signed, dated, and delivered 615 5ufday of 1^ n a:f ²⁰²⁴

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redrick Egonda-Ntende Justice of Appeal

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