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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MBARARA
CRIMINAL APPEAL No. 275 OF 2014

BYAMUKAMA GODIUS ::: APPELLANT
VERSUS

10 **UGANDA ::: RESPONDENT**

(An appeal from the decision of the High Court of Uganda at Rukungiri delivered by His Lordship Mr. Justice Byabashaija K. Andrew in High Court Criminal case No. 022 of 2013 on 17th June 2013)

CORAM: HON. LADY. JUSTICE ELIZABETH MUSOKE, JA

15 **HON. MR. JUSTICE BARISHAKI CHEBORION, JA**

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF THE COURT

This is an appeal from the decision of Byabashaija K. Andrew, J in High Court Criminal Case No. 022 of 2013 at Rukungiri wherein the appellant was convicted of the offence of murder contrary to Sections 188 and 189 of the Penal Code Act, Cap 120.

Background to the appeal

The brief facts as accepted by the trial court were that 18th September, 2010, the deceased was at his home when a one Kacece called him and invited him to go to a nearby distilling place in the banana plantation. The family of the deceased waited for him all night in vain. The following morning the deceased's wife found her husband lying in the nearby banana plantation, bleeding from the mouth with multiple cut wounds all over his body in a very critical condition.

30 The deceased's wife called his sister, and they lifted him to his house and called the LC1 Chairman of the area. The deceased then told them

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5 that he had been assaulted by the accused, one Barugahare and their
sister one Juliet at the distillery and that they carried him and dumped
him in the banana plantation. The deceased passed away at his home
while they were preparing to take him to hospital.

The matter was reported to Rugyeyo Police and following the deceased's
10 revelation, the others were arrested while the appellant was arrested
seven months after since he was in hiding.

The appellant, with leave of court under Section 132 (1) (b) of the Trial
on Indictments Act, Cap. 23, now appeals against sentence only as
follows:-

15 *“The learned trial Judge erred in law and fact when he passed a
sentence of 40 years imprisonment that was harsh and
manifestly excessive in the circumstances.”*

Representations

At the hearing of this appeal, Mr. Kabagambe Peter, learned Counsel
20 appeared for the appellant, while Ms. Joanita Tumwikirize, learned
Principal State Attorney represented the respondent. The appellant was
present.

The Submissions

Counsel submitted that the sentence of 40 years' imprisonment imposed
25 on the appellant was harsh and manifestly excessive in the
circumstances of this case. The appellant was a first offender at the
time of his conviction, he was a young man aged 25 and he also was
remorseful for his actions. Further, the deceased had been seen at a
distilling place and as such the circumstances that led to the death of
30 the deceased could have involved intoxication and that the death was



5 caused by more than one person, so the period of 40 years meted to only one person where other people had participated, was excessive.

Counsel referred Court to **Kiwalabye Bernard vs. Uganda, Supreme Court Criminal Appeal No.143 of 2001**, and **Ssemanda Christopher and Musingo Denis vs. Uganda, Court of Appeal**
10 **Criminal Appeal No.77 of 2010** and submitted that this Court was empowered to interfere with a sentence meted by the trial Court if it was of the opinion that that sentence was manifestly high or low so as to amount to a miscarriage of justice.

Counsel further referred Court to **Turyahika Joseph vs. Uganda**
15 **Court of Appeal Criminal Appeal No. 327 of 2014**, for the proposition that in cases involving murder, sentences ranging from 20 to 30 years are appropriate unless there are exceptional circumstances to warrant a higher or lower sentence.

Counsel invited Court to find that that the period of 40 years'
20 imprisonment was excessive, reduce it to 20 years and also consider that the appellant has been in lawful custody of 7 years.

In reply, Counsel for the respondent submitted that the sentence was not harsh or excessive and that Counsel for the appellant's submission that the offence was committed by the appellant and other people be
25 expunged and not considered by this Court. Counsel further submitted that after the appellant had committed the said offence, he went into hiding for 7 months until he was charged, tried and sentenced. He was therefore, not remorseful in any way since he wanted to abscond the long arm of justice.

30 Counsel contended that this Court should ensure that justice is served to the deceased's wife and children. Counsel asked Court to consider the



5 fact that the deceased's wife was pregnant when she lost her husband as an aggravating factor and allow the accused serve the whole of the sentence that was meted to him by the learned trial Judge.

Counsel further contended that the maximum sentence for murder is death. A sentence of 40 years was accordingly lenient and not illegal. He
10 referred Court to **Kyalimpa Edward vs. Uganda Supreme Court Criminal Appeal** for the proposition that where the sentence is not illegal, the appellate court need not interfere with it in giving an alternative sentence.

Counsel further referred Court to **Aharikundira Yustina vs. Uganda, Criminal Appeal No. 104 of 2009**, where on a charge of murder, a
15 sentence of life imprisonment was upheld by this Court. He prayed that the sentence be upheld.

Decision of the Court

We have carefully listened to Counsel on either side. We have also
20 perused the Court record and the authorities cited to us.

We have a duty as a first appellate Court to re-appraise all the evidence adduced at the trial and to come up with our inferences on issues of law and fact. **See:-Rule 30(1) of the Rules of this Court and Bogere Moses and Another vs. Uganda, Supreme Court Criminal Appeal**
25 **No. 001 of 1997.**

This appeal is against sentence only. This court can only interfere with the sentence of the trial Court if it is illegal, is based on a wrong principle, the court has overlooked a material factor, where the sentence is manifestly excessive or so low as to amount to a miscarriage of
30 Justice. **See James vs. R [1950] 18 EACA 147 and Kizito Senkula vs. Uganda Criminal Appeal No. 024 of 2001.**



5 While passing sentence, the learned trial Judge had his to say:-

“The convict is a first offender but committed a grave offence of murder. In arriving at sentence, the Court has considered:-

i. Time spent on remand

10 *ii. The rampant nature of murder in Kanungu District and the need for sending messages that the crime is not condoned.*

iii. The manner of commission was so brutal.

iv. The need to protect society against murder.

15 *All the mitigating and aggravating factors weighed together, the convict is sentenced to FORTY YEARS imprisonment.”*

We note that the offence of murder carries a maximum sentence of death and that the deceased was survived by a pregnant wife and children. We also note from the above that while passing sentence, learned trial Judge did not consider all the mitigating factors which were
20 pleaded in mitigation. In this case, the appellant was a first offender. He was a very young man aged 29 years at the time of commission of the offence which age made him capable of reforming and being useful to society. He also had a family with wife and a child to look after.

25 Having considered all the aggravating and mitigating factors set out herein above, also taking into account the need to maintain a uniform approach to sentencing, by taking into consideration the decisions below, we now invoke the powers of this Court under **Section 11 of the Judicature Act Cap 13** which permits us to exercise the powers of
30 the trial Court, while hearing an appeal to impose an appropriate sentence.

In **Emeju Juventine vs. Uganda, Court of Appeal Criminal Appeal No. 095 of 2014**, the appellant was convicted of murder on his own plea of guilty. He had murdered his wife with an axe. The sentence of

June *Amel*

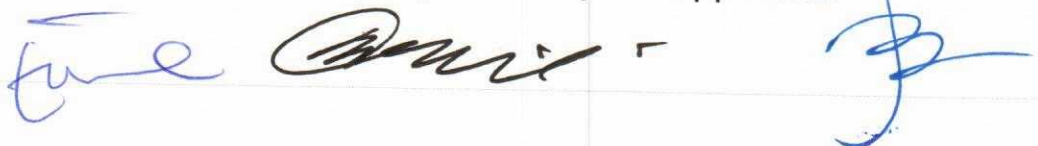
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5 23 years imprisonment imposed on him was reduced by this court to 18 years after deducting 2 years spent on remand.

In **Tumwesigye Anthony versus Uganda, Criminal Appeal No. 046 of 2012**, the Court of Appeal sitting at Mbarara set aside the sentence of 32 years imprisonment and substituted it with one of 20
10 years. The appellant in that case had been convicted of murder. The deceased had reported him for stealing his (deceased) employer's chicken. The appellant killed him by crushing his head after which he buried the body in a sandpit.

In the case of **Atiku Lino versus Uganda, Criminal Appeal No. 041 of 2009**, the appellant was convicted of murder and sentenced to life
15 imprisonment. The appellant had attacked and cut to death the deceased in the latter's house accusing him of bewitching his son. This Court, citing the case of *Tumwesigye (supra)* observed that the appellant ought to be given an opportunity to reform. The sentence of
20 life imprisonment was reduced and substituted with 20 years' imprisonment.

In yet another case of **Turyahika Joseph vs. Uganda, Criminal Appeal No. 327 of 2014**, the Court of Appeal sitting at Mbarara held that sentences ranging from 20 to 30 years are appropriate in cases
25 involving murder unless there are exceptional circumstances to warrant a higher or lower sentence. In that case the appellant had caused death by running over the deceased using a grader after she had refused to engage in a sexual act with him. This Court imposed a sentence of 26 years imprisonment, the gruesome conditions of the murder
30 notwithstanding. The deceased in that case was 15 years and she had been killed by a roller compactor operated by the appellant.



5 Taking into account all the circumstances of this case, we consider that
a sentence of 25 years imprisonment would meet the ends of justice.
From that sentence we now deduct 2 years and 4 months which the
appellant spent on pre-trial detention and order that he serves a
sentence of 22 years and 8 months in prison commencing from 17th
10 January, 2014 the date he was convicted.

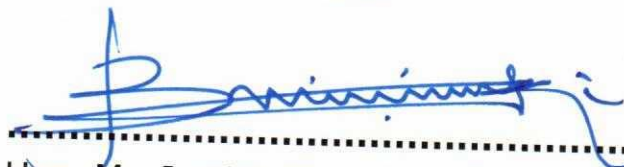
We so order.

Dated at Mbarara this 2nd day of October 2018



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Hon. Lady Justice Elizabeth Musoke

JUSTICE OF APPEAL



20
Hon. Mr. Justice Cheborion Barishaki

JUSTICE OF APPEAL



25
Hon. Mr. Justice Christopher Madrama

JUSTICE OF APPEAL