

5

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT MBARARA**

**CRIMINAL APPEAL NO.200 OF 2013**

**TARINDEKURA JACKSON:.....:APPELLANT**

**VERSUS**

10 **UGANDA:.....:RESPONDENT**

*(An Appeal against the sentencing order of Hon. Justice P.K Mugamba dated 9<sup>th</sup> December, 2013 in Criminal Session Case No.0244 of 2013)*

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA**

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

15 **HON. MR. JUSTICE CHRISTOPHER IZAMA MADRAMA, JA**

**JUDGMENT**

**Introduction**

This is an appeal against the decision of Mugamba, J (as he then was) in Rukungiri High Court Criminal Session Case No.0040 of 2003 wherein the  
20 learned Judge convicted the appellant of murder and sentenced him to death. In his resentencing ruling following the Supreme Court's decision in **Suzan Kigula and Others V Attorney General, Constitutional Appeal No.03 of 2006**, he set aside the death sentence and resented the appellant to imprisonment for the rest of his life. Being aggrieved with the sentence, the  
25 appellant appealed to this Court on sentence only and the sole ground of



5 appeal was that the learned trial Judge erred in law and fact when he sentenced the appellant to imprisonment for the rest of his life which was harsh and manifestly excessive in the circumstances.

At the hearing of the appeal, Ms. Kamugisha Maclean appeared for the appellant while Mr. David Ndamurani Ateenyi, Senior Assistant DPP  
10 represented the respondent.

Counsel for the appellant submitted that the resentencing Judge sentenced the appellant to imprisonment for the rest of his life which in his view was as good as a death sentence. Counsel further submitted that the appellant was 23 years at the time of commission of the offence and had been in prison for  
15 about 16 years yet he was remorseful and a first offender. He prayed for Court to acquit the appellant having served a sentence of 14 years and 4 months in addition to having been on remand for one year and 7 months.

Counsel for the respondent submitted that in his resentencing ruling, the resentencing Judge took into account both the aggravating and mitigating  
20 factors before substituting the death sentence with life imprisonment. Counsel further submitted that this case falls into the category of the rarest of the rare cases as provided for under Rule 18 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013. Counsel added that regarding the circumstances of this case, the learned resentencing  
25 Judge was quite lenient when he sentenced the appellant to life imprisonment. He prayed that Court upholds the sentence of life imprisonment imposed by the learned resentencing Judge.

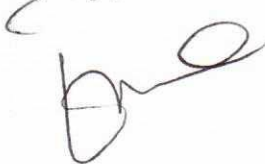


5 The facts of this case as accepted by the learned trial Judge were that  
Mushasha Fred, was an uncle to the appellant. For two years the two lived in  
the same house which belonged to the deceased. After sometime, it appeared  
the deceased was missing and PW1, on several occasions asked the appellant  
where the deceased might be. On the last occasion, the appellant told PW1  
10 that the deceased had told him he would go to Nyabushozi to visit relatives  
first before proceeding to Kampala. It was then that the appellant volunteered  
to go and check on the deceased. Thereafter the appellant did not appear until  
he was arrested. It was later when a body was discovered in a disused pit  
latrine 15 meters from the house that the appellant and the deceased  
15 occupied. The body was wrapped in a blanket and was decomposed.

The appellant was prosecuted, convicted and sentenced to life imprisonment  
which sentence he now appeals.

We are alive to the duty of this court, being a first appellate court, to re-  
evaluate the entire evidence on record and come to its own conclusion bearing  
20 in mind that it did not see the witness testify. **See Kifamunte Henry V  
Uganda SCCA No. 10 of 1997, Pandya V R (1957) EA 336 and Okeno V  
Republic [1972] EA 32.**

An appropriate sentence is a matter for the discretion of the sentencing Judge.  
Each case presents its own facts upon which a Judge exercises his discretion.  
25 It is the practice that as an appellate Court, this Court will not normally  
interfere with the discretion of the sentencing Judge unless the sentence is  
illegal or unless Court is satisfied that the sentence imposed by the trial Judge  
was manifestly so excessive as to amount to an injustice. **See Kyalimpa**





5 **Edward V Uganda, Criminal Appeal No.10 of 1995 and Ogala s/o Owoura V R (1954) 21 EACA 270.**

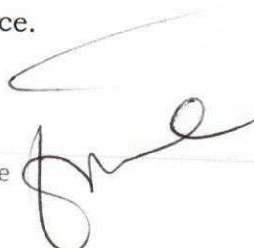
While resentencing the appellant, the trial Judge stated that he had considered the behaviour of the convict while in custody and other mitigating factors. The dastardly way in which the offence was committed as narrated in  
10 the aggravating circumstances which he found to outweigh the factors in mitigation. In the result he sentenced the convict to imprisonment for the rest of his life.

Counsel for the appellant submitted that regarding the circumstances of this case and the mitigating factors namely the appellant was 23 years at the time  
15 of commission of the offence, he has been in prison for about 16 years, was remorseful and a first offender, this Court should acquit him.

In **Mbunya Godfrey V Uganda, Supreme Court Criminal Appeal No.4 of 2011**, the appellant had been convicted of murder of his wife. The Supreme Court set aside the death sentence and imposed a sentence of 25 years  
20 imprisonment.

In **Atuku Margret Opii V Uganda, Court of Appeal Criminal Appeal No. 123 of 2008**, this Court reduced the sentence from death to 20 years imprisonment. In that case the appellant had killed a neighbour's 12 year old daughter by drowning.

25 **Section 11 of the Judicature Act, Cap 13** grants this Court the same powers as the Court of original jurisdiction including power to impose a fresh sentence.

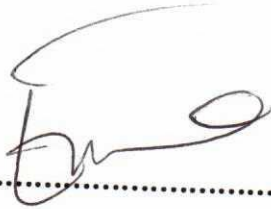


5 We have taken into account the fact that the appellant was a first offender,  
and was only 23 years at the time and ought to be given an opportunity to  
reform. We find that the sentence of life imprisonment was manifestly harsh  
and excessive and set it aside and impose a sentence of 27 years  
imprisonment. Since the appellant spent 2 years on remand, he shall now  
10 serve a term of 25 years imprisonment commencing from 13<sup>th</sup> August, 2004  
when he was convicted.

**We so order**

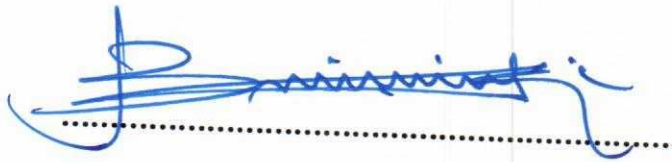
Dated at Mbarara this.....*2nd*.....day of.....*October*.....2018

15



.....  
**HON. LADY JUSTICE ELIZABETH MUSOKE**  
**JUSTICE OF APPEAL**

20



.....  
**HON. JUSTICE BARISHAKI CHEBORION**  
**JUSTICE OF APPEAL**

25



.....  
**HON. JUSTICE CHRISTOPHER IZAMA MADRAMA**  
**JUSTICE OF APPEAL**